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PROJECT NO. 35768

RULEMAKING RELATING TO
RETAIL ELECTRIC PROVIDER
DISCLOSURES TO CUSTOMERS

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COMMENTS OF RELIANT ENERGY, INC. ON
PROPOSED RULES RELATING TO INFORMATION DISCLOSURES

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PROJECT NO. 35768

RULEMAKING RELATING TO	§	PUBLIC UTILITY COMMISSION
RETAIL ELECTRIC PROVIDER	§	
DISCLOSURES TO CUSTOMERS	§	OF TEXAS

**COMMENTS OF RELIANT ENERGY RETAIL SERVICES, LLC. ON
PROPOSED RULES RELATING TO INFORMATION DISCLOSURES**

I. INTRODUCTION

Reliant Energy Retail services, LLC. ("Reliant") respectfully submits the following comments in response to the Commission's proposed repeal of P.U.C. SUBST. R. 25.475, new P.U.C. SUBST. R. 25.475 and amendment to P.U.C. SUBST. R. 25.476. Reliant appreciates the Commission's efforts to establish clarity regarding disclosure requirements for the retail electric market and provides comprehensive comments on the preamble questions and proposed rules. As discussed more fully below, Reliant offers an alternative set of product definitions that are simpler and more direct than the proposed definitions. Additionally, Reliant identifies numerous areas in the proposed rules where additional clarification is needed. Reliant also discusses several proposals that would increase costs to REPs without providing substantial benefit to the marketplace. Finally, Reliant proposes deleting the requirement to develop and maintain a fuel mix and emissions disclosure.

II. RESPONSES TO PREAMBLE QUESTIONS

Question 1: What information should constitute sufficient evidence that a customer has relocated as contemplated in §25.475(c)(2)(D)?

As discussed further in our comments on specific rule language, Reliant does not support an increased burden on consumers to provide evidence that they have relocated in order to avoid a termination penalty. Therefore, discretion to require additional information is unnecessary. A requirement to provide evidence of relocation is administratively burdensome to the customer.

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The current rules do not require customers to provide any information to their current REP when they move locations, even something as routine as a forwarding address.

However, if the Commission decides to allow REPs to require evidence of relocation, Reliant would recommend that this be limited to a forwarding address. Providing a forwarding address is appropriate for both residential and small commercial customers because it is a common practice in the conduct of business, and allows the REP to direct its future correspondence, such as a final bill, to the customer in a more efficient manner. Even under that limited requirement, Reliant would note that there are instances when residential customers might not have a forwarding address to provide and any requirement that the Commission establishes should accommodate a customer who cannot provide the required information.

Question 2: What customer protection provisions should be delineated in the waiver for commercial customers contemplated in the proposed §25.475(j)?

Reliant does not support the proposed language in P.U.C. SUBST. R. 25.475(j), which would require REPs to disclose to commercial customers each specific term of the customer protection provisions commercial customers would be waiving. First, the requirement is duplicative of P.U.C. SUBST. R. 25.471, relating to *General Provisions of Customer Protection Rules*, which specifies which customer protection provisions are not subject to waiver and requires REPs to reduce to writing any agreements containing materially different protections.

Specifically, proposed P.U.C. SUBST. R. 25.475(j) requires “a copy of the list of rights [the customer is] waiving.” This proposal does not meet the requirements of PURA §39.001(d), which states that regulatory authorities “shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition.” Requiring REPs to create and maintain a waiver that recites requirements that already exist in the Commission’s rules increases costs and impacts competition without providing additional benefit to the marketplace. As a rule of thumb, customers who meet the 50 kW threshold for allowing waiver of the standard protections in the Commission’s rules operate businesses with annual revenues between \$500,000 and \$1,000,000. These customers are sophisticated business operators that should have the opportunity to weigh the benefits and risks of different electricity products and choose the best product for their unique circumstances. Requiring additional regulations, which will likely

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be reflected in the prices these customers pay, does not serve the interests of a business customer that is focused on cost minimization.

Question 3: Should there be a disclosure statement in the contract for the purchase of electricity by a REP from a Distributed Renewable Generation owner or Independent School District Solar Generation Owner? If so, what specific disclosures should be required?

Reliant does not believe a disclosure statement in the contract should be required. Both PURA § 39.914, which provides for the sale of out-flows produced by an Independent School Districts ("ISD") building's solar electric generation panels, and PURA § 39.916, which establishes standards for distributed renewable generation ("DRG") require that the REP and the seller, the ISD or DRG owner, agree to the terms of the transaction. For both a buyer and seller to agree Reliant anticipates that specific contract negotiations may be required. To the extent that terms are different for each ISD or DRG owner, it would be futile to mandate a generic set of disclosures at this time. However, Reliant believes that a REP should be permitted to include the disclosures in its terms of service at its discretion.

Reliant does not propose any specific contract language at this time, because specific contract language should be left up to each REP to develop. Since proposed subsection (g)(6) provides the ability to include other material terms and conditions in the TOS, Reliant believes that any language could be included pursuant to this subsection.

Question 4: Should the commission allow products for residential and small commercial customers that do not have a method of determining the price from publicly available data or otherwise independent of the retailer's proprietary knowledge? If so, can these be considered 'contracts' because there may not be a meeting of the minds on price?

Yes. The Commission should allow products that do not have a method of determining the price from publicly available data or otherwise independent of the retailer's proprietary knowledge, and should permit REPs to serve residential and small commercial customers with such products. PURA §39.001(c) establishes that "prices shall be based on customer choices in the normal forces of competition." REPs should have the opportunity to develop unique products to best meet customers' needs. Allowing REPs flexibility in establishing pricing also provides opportunities for lower retail electricity prices, because a REP could capture

opportunities in the wholesale market that do not necessarily coincide with pre-defined data, formulas or time periods and pass those savings on to their customers.

The Commission's question presumes that a meeting of the minds on price can only be achieved if the price is calculated based on public data. Reliant disagrees. Reliant believes that a meeting of the minds to establish a valid contract could be reached based on the current price of a product and the customer's knowledge of how the price could change. As long as the method is clearly described and the customer understands how his or her price might change and agrees to that methodology, there is a meeting of the minds on these essential contract terms. Pricing models that include price changes based on REP proprietary data or discretion should not be prohibited.

Question 5: If the commission retains a variable price product should there be additional customer protections put in place? If so, what additional protections should the commission put in place?

No additional customer protections are needed for variable price products beyond those that Reliant proposes in its proposed definition of variable price product in subsection (b)(8). As more fully described below, Reliant proposes that the current price of the product should be easily available and the frequency of potential price changes should be disclosed.

Question 6: Is the 50 kW the appropriate threshold for allowing waiver of the standard protections in the commission's rules?

The marketplace has been operating under the 50 kW threshold for allowing waiver of customer protections since the market opened. Although several parties filed comments on the strawman suggesting that the current threshold was not adequate, there is no evidence that the current threshold is not appropriate. Accordingly, Reliant supports maintaining the current 50 kW threshold.

III. COMMENTS ON PROPOSED NEW P.U.C. SUBST. R 25.475

Subsection (a) – Applicability

Proposed subsection (a) calls for a three-month compliance period. Reliant proposes to extend the implementation window to six months after the effective date of the adopted rule.

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The proposed rule introduces fundamental changes to the way that REPs communicate with their customers, and REPs should be afforded the opportunity to implement the changes in a manner that will provide the best customer experience possible – both at implementation and throughout the customer lifecycle. Reliant is concerned that three months will not be enough time to develop a comprehensive solution to execute necessary system changes and submits that six months is a more realistic timeline for compliance.

Additionally, it is unclear whether proposed subsection (a) requires automatic renewals to meet the new requirements before the end of an existing contract. The phrase “renewal of a term contract after December 31, 2008 must comply with the requirements” could be interpreted to mean that only *a contract entered into after December 31, 2008* must comply with the new requirements or it could be interpreted that *activation of any automatic renewal provision after December 31, 2008* must comply with the new requirements.. Reliant believes that the new requirements related to automatic renewal provisions should apply to existing term contracts relatively soon. Therefore, to the extent that contracts must be revised to conform to the new automatic renewal provisions, they should be changed within the same six month implementation period that Reliant proposes.

Further, the phrase “renewal of term contracts” implies that only new contracts with an existing REP are covered by the provision. However, all contracts entered into after December 31, 2008 should comply with all updated standards. Finally, it appears that the Commission inadvertently expanded the applicability of this section to REPs and aggregators that serve commercial and industrial customers. Reliant believes that this section, just like current P.U.C. SUBST. R. 25.475, should only apply to REPs and aggregators that serve residential and small commercial customers. Reliant proposes modifications consistent with these comments.

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and, when specifically stated, aggregators, in connection with service and marketing to residential and small commercial customers. REPs and aggregators are responsible for representations to customers and prospective customers concerning retail electric service that are made through advertising or other means. REPs have ~~three~~ six months from the effective date of this section to conform all electricity products and contract documents to the requirements of this section. ~~However, REPs are not required to conform term contracts in effect on December 31, 2008, but any renewal of a term contract after December 31, 2008 must comply with the requirements of this section.~~ except any automatic renewal clause in such contracts must conform within six months from the effective date of this section. All term contracts entered into after December 31, 2008 must comply with the requirements of this section.

Subsection (b) - Definitions

The proposed rule defines four product types – guaranteed fixed price product [proposed subsection (b)(6)], indexed product [proposed subsection (b)(7)], limited fixed price product [proposed subsection (b)(8)] and variable price product [proposed subsection (b)(11)]. Reliant is concerned that the proposed product definitions are too complex, could lead to customer confusion, and could restrict innovation of products that might not fit squarely within the proposed product definitions. Reliant proposes deleting the four product types and replacing them with two new product types that capture the information that is important to customers: 1) fixed: a product where the price or prices disclosed at enrollment will not change during the term, except in limited, disclosed circumstances, and 2) variable: a product where the price could change during the term.

Fixed price product

Reliant uses the proposed definition for limited fixed price product as the foundation of its proposed definition of fixed price product. However the phrase “same throughout the contract” found in the proposed definition unnecessarily limits the variety of products that could be offered under the definition. “Same throughout the contract” restricts available products to those comprised of a single numeric price during the contract period. However, it seems from the context of the rule that the key concept defining this product type is not that the price is the *same*, but that the price is *known*. In other words, a product that has more than one price during the contract term should still be defined as a fixed price product, so long as all prices or price components are known and disclosed at the time of enrollment. This change is necessary not only to accommodate future product innovations, but also product types long-present in the electric industry, such as time-of-use or seasonal rates. These product types are clearly fixed, provided the rates and periods when they apply are disclosed up front, even though the price is not the same throughout the contract.

Further, Reliant recommends that the Commission refrain from using the term “billing period” in the adopted rule. Again, this phrase imposes unintended restrictions on product types, particularly prepaid products, where the customer pays as needed, not pursuant to a “billing period.” Additionally, Reliant proposes language to include changes in charges related to the

transition to the Nodal Market in the list of specific instances when the price of a fixed price product may vary from the disclosed amount.

To address these issues, Reliant proposes deleting the definition of “guaranteed fixed price product” and modifying the definition of “limited fixed price product” to “fixed price product.” Corresponding changes also need to be made throughout the proposed rule.

~~(b)(6) **Guaranteed fixed price product** -- A retail electric product for which the price for each billing period is the same and will not change throughout the term of the contract and includes all Transmission and Distribution Utility (TDU) recurring charges.~~

(b)(8) ~~**Limited Fixed price product**~~ -- A retail electric product for which the price or prices (including recurring TDU charges) ~~for each billing period of the~~ for the entire contract period is the same throughout the contract are known. Such product may include different price components related to factors such as time-of-use, season or usage block if the individual price components are known for the entire contract period. The prices and may vary from the disclosed amount solely to reflect actual changes in the TDU charges, changes to the ERCOT administrative fee, changes in charges related to the transition to the Nodal Market, changes to the or Texas Regional Entity Fee 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.

Variable price product

Reliant uses the proposed definition for variable price product as the foundation of its proposed definition of variable price product. Reliant supports providing critical product information to customers so that they may make an informed product selection. Accordingly, Reliant proposes language that would require a REP to disclose the frequency of potential price increases and make the price currently in effect available to affected customers. Reliant believes the following are examples of product types that would be supported by its proposed definition of variable price product:

- a product that presents a formulaic price, the numeric value of which will be determined based on a public index
- a product that does not present a formulaic price, but does disclose the time periods for which the price will be established and that prices could change within a defined bandwidth each month based on market conditions
- a product for which pricing is based on a real-time determination, such as MCPE

- a product for which pricing is determined at the REP's discretion

Reliant proposes deleting the definition of "indexed product" and modifying the definition of "variable price product". Corresponding changes also need to be made throughout the proposed rule.

~~(b)(7) Indexed product -- A retail electric product for which the price, including recurring TDU charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or elements and is disclosed to the customer.~~

(b)(11) **Variable price product** -- A retail electric product for which price may vary according to a method determined by the REP and that is disclosed to the customer. The frequency of potential price changes must be disclosed to the customer. The price currently in effect must be available to the customer via a toll free telephone number, online account access, the REP's website, or any other communication method agreed to between the REP and the customer.

Other definitions

Reliant proposes that the definition of "automatic renewal" be modified to clarify that such renewal does not require a material change notice. Subsection (b)(2) should be modified as follows:

(b)(2) **Automatic renewal** -- Renewal of a contract at the end of an original contract period without obtaining the customer's affirmative consent and without a material change notice.

Reliant proposes a minor typographical correction to the definition of "contract period." Subsection (b)(5) should be revised as follows:

(b)(5) **Contract period** -- The time period the contract is in effect.

Reliant recommends that the definition of "price" be modified to clearly exclude any applicable taxes. Additionally, Reliant proposes that the option to include or exclude non-recurring charges in the calculation of a price should be deleted. Reliant's primary concern with the proposed language is that a REP could interpret it as allowing cash or gift card enrollment incentives to be included in EFL price calculation, a practice contrary to long-standing PUC policy. This outcome is possible because in various regulatory practices the term "charge" includes a "credit." Reliant's proposed changes are consistent with the Commission's treatment of price under P.U.C. SUBST. R. 25.479 (c)(1)(H), relating to *Issuance and Format of Bills*, which states that the billed price is exclusive of taxes and does not include any non-recurring charges or credits. Subsection (b)(9) should be modified as follows:

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- (b)(9) **Price** -- The cost for a retail electric product that includes all recurring charges ~~but may exclude non-recurring charges, exclusive of applicable taxes.~~

Reliant proposes a minor modification to the definition of "recurring charge" that recognizes most customers do not purchase electric service on a calendar-year basis. Since the definition of price depends on determining which charges are recurring charges, the definition of recurring charges should better reflect the manner in which most customers purchase electric service. Reliant also deletes the phrase "in every billing period" as redundant to "three or more billing periods." Subsection (b)(10) should be modified as follows:

- (b)(10) **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 calendar-year 12-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.

Subsection (c) - General Retail Electric Provider (REP) requirements

Reliant appreciates the Commission's attempt in new subsection (c)(1)(A) to provide clarity on marketing practices that are "misleading, fraudulent, unfair, deceptive, or anti-competitive." Specifically, proposed subsection (c)(1)(A)(ii) prohibits "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." Reliant is concerned that ambiguity may remain in REPs' interpretations of this provision. Despite the Legal Enforcement Division's belief in Docket 30198¹ that it was inappropriate to imply that REPs served customers prior to 2001, slightly modified claims continue to be made. Recent ads include:

- Advertising the lengthy history of its parent company by a REP that became a subsidiary of another organization after its REP certification was issued.
- An advertising claim by a REP that touts industry expertise from a company with roots that date back over 100 years.

¹ *Agreed Notice of Violation and Settlement Agreement Regarding TXU Energy Retail Company LP's Alleged Violations of PURA §39.101(b)(6)*

It is unclear if these recent ads would or would not violate the standard in proposed subsection (c)(1)(A)(ii). Reliant requests the Commission clarify whether it intends for the example ads to be prohibited or allowed and clarify the provision accordingly.

Reliant proposes the following changes to proposed subsection (c)(1)(A)(i) to correct a minor typographical error and align the section with Reliant's proposed definition of fixed price product in proposed subsection (b)(8):

(c)(1)(A)(i) Using the term ~~or terms~~ "fixed" to market a product that does not meet the definition of a ~~guaranteed fixed or limited~~ fixed price product.

Reliant proposes the following modification to proposed subsection (c)(1)(A)(v) to employ the defined term "contract period":

(c)(1)(A)(v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the actual contract period.

References to rules or laws

Proposed subsection (c)(1)(B) imposes new requirements on REP communications that do not provide additional customer protections and are burdensome to REPs. Reliant understands the Commission's desire to provide consumers with additional information so that they may better understand the competitive landscape and participate in the marketplace, but the proposal to include the text of laws and Commission rules that are referenced in REP communications does not advance that goal and should be deleted. Providing consumers with multiple pages of information may be imposing because of its length, and may actually cause a customer to refrain from reading any of the information he or she gets. A smaller package probably has a better chance to be read and understood. Further, increasing the costs that REPs face to communicate with customers will increase the cost to provide electricity. For that reason, the practical result of this requirement will be that REPs limit references to rules and laws in their communication, which will hamper the efforts of the customers who choose to undertake research on the rules underlying the competitive market.

Additionally, requiring REPs to include their certified name in advertisements, online advertisements, and websites only increases REP costs without an associated benefit to the market or consumers. Since the Commission issues each REP a unique certificate number,

including the certificate number on communications should provide the consumer enough information to identify the REP with the Commission.

Accordingly, Reliant proposes the following modifications to subsection (c)(1)(B):

- (c)(1)(B) ~~Written and electronic communications shall not refer to laws, including commission rules without providing those rules.~~ All printed advertisements, electronic advertising over the Internet, and websites, shall include the REP's ~~certified name~~ or the aggregator's ~~registered name, and the number of the certification or registration number.~~

If the Commission believes that providing the text of laws and Commission rules is necessary, Reliant proposes that REPs should have the ability to limit how the information is made available so that it can target the information to consumers who demonstrate an interest in it. Reliant proposes the following alternative modifications to subsection (c)(1)(B):

- (c)(1)(B) Written and electronic communications shall not refer to laws, including commission rules without providing an Internet link to those rules or making those rules available to consumers upon request. All printed advertisements, electronic advertising over the Internet, and websites, shall include the REP's ~~certified name~~ or the aggregator's ~~registered name, and the number of the certification or registration number.~~

Retention periods

Proposed subsection (c)(1)(D) extends the amount of time a REP must retain a copy of each version of the TOS, EFL and YRAC from the existing requirement of two years to four years after the contract period ends. Reliant supports maintaining the current two year document retention period. Reliant is not aware of any circumstances or problems in the competitive market that would warrant doubling the required document retention period. Accordingly, Reliant requests that Commission maintain the current two year document retention requirement.

- (c)(1)(D) A REP shall retain a copy of each version of the TOS, EFL, and YRAC during the time the plan is in effect for a customer and for ~~four~~ two years after contract period ends.

Proposed subsection (c)(1)(F) introduces a retention period for the "methodology" used to calculate the average price on the EFL. This provision to retain "methodology" is superfluous considering that the EFL itself must be retained, and that the average price for each EFL can be easily verified based on the information contained in the EFL and the average price calculation methodology described in proposed subsection (h)(2)(B). However, Reliant does note that, in order for this calculation to be verified for small commercial products, the Commission must establish a load profile for those small commercial customers. Reliant opposes new

administrative and cost burdens being placed on REPs when a problem has not been identified. For these reasons, Reliant proposes deletion of proposed subsection (c)(1)(F).

~~(c)(1)(F) — A REP shall retain the methodology used to calculate the average price on the EFL for four years after the contract period ends.~~

Filing of TOS and EFL

Reliant opposes the language in proposed subsection (c)(1)(E) that establishes a requirement for REPs to file a copy of the TOS and EFL for each product offered during the quarter. While the Commission may need to review the documents that support products sold by REPs from time to time, the proposal for a mandatory filing each quarter is not required to meet that objective. The proposed filing requirement is burdensome, and is contrary to the mandate PURA §39.001(d) to “order competitive rather than regulatory methods to achieve the goals of [Chapter 39]...” Moreover, REPs should not be required to file reports to the Commission that could inadvertently reveal competitive or operational competencies. Instead, the rules should support the Commission’s review of the TOS and EFL on an ad hoc basis. Like some of the other proposals, this requirement imposes an administrative and a cost burden without identifying the problem that needs to be addressed. Accordingly, Reliant proposes the following changes to proposed subsection (c)(1)(E):

(c)(1)(E) Each TOS and EFL shall be subject to review by the commission and shall be furnished to the commission or its staff upon request. A REP shall file a copy of the TOS, and an EFL for each product offered during the quarter on March 30, June 30, September 30, and December 30 of each year in a project designated by the commission.

New (c)(1)(F)

Reliant proposes a new subsection (c)(1)(F) to clarify that all documents and notices provided pursuant to this section may be emailed to customers, unless the specific requirements provide otherwise. Delivering documents to customers through email can provide cost savings and environmental benefits.

(c)(1)(F) — All documents and notices may be emailed to customers, unless the specific requirements provide otherwise.

TOS, EFL, and YRAC

As discussed above related to proposed subsection (c)(1)(B), Reliant opposes the new requirement to include the text of laws or Commission rules in proposed subsection (c)(2)(A) and recommends that it be deleted.

- (c)(2)(A) A TOS, EFL, and 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 unless otherwise permitted by the commission. ~~References to laws including commission rules in these documents shall include the law.~~

If the Commission believes that providing the text of laws and Commission rules is necessary, Reliant proposes that REPs should have the ability to limit how the information is made available so that it can target the information to consumers who demonstrate an interest in it. Reliant proposes the following alternative modifications to subsection (c)(2)(A):

- (c)(2)(A) A TOS, EFL, and 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 unless otherwise permitted by the commission. References to laws including commission rules in these documents shall include an Internet link to the law or the REP shall otherwise make those laws available to consumers upon request.

Proposed subsection (c)(2)(B) could be interpreted to require that REPs produce and distribute the TOS, EFL and YRAC in both English and Spanish to all customers. Reliant opposes that interpretation and offers the following language to make it clear that while a REP must maintain all of the contract documents in both English and Spanish, it is only required to distribute the documents to customers in the preferred language indicated in the enrollment.

- (c)(2)(B) All contract documents shall be created in English and Spanish. All contract documents shall be distributed to customers in the language chosen by the customer during enrollment.

Customer relocation

Proposed subsection (c)(2)(D) discusses a customer's rights and obligations when she decides to relocate. As discussed in our response to question 1 above, Reliant does not support the proposal to introduce an increased burden on consumers to provide evidence that they have relocated. Additionally, Reliant challenges the notion that a customer's contract period would end when the REP receives evidence that the customer no longer lives at the subject residence. A customer could move to a new residence and still own and want electricity provided to the residence from which she just moved. Instead, Reliant asserts that the contract period should end when the customer is no longer responsible for electric service at the covered premise. Reliant

also offers a minor modification to clearly indicate that the exemption from charges co-incident to relocation is limited to termination penalties imposed by the REP, not charges imposed by the TDSP, such as a move-out charge.

- (c)(2)(D) 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. There shall be no termination penalty charge to the customer as a result of the relocation of the customer, ~~if the customer provides reasonable evidence that the customer no longer occupies the location specified in the contract. The contract terminates on the day the REP receives reasonable evidence that the customer no longer occupies the location specified in the contract.~~

Proposed subsection (c)(2)(E) provides that each product a REP offers would fall within the product type descriptions prescribed by these rules, and that the contract should specify “the product it provides.” The proposed language in this section could be subject to interpretation as to whether the contract must specify the product name or the product type. Assuming the intent is that the contract would specify the product type, Reliant offers the following clarification. In addition, Reliant proposes changes to correct a minor grammatical error and align the subsection with its proposed definition of fixed price product in proposed subsection (b)(8) and variable price product in proposed subsection (b)(11).

- (c)(2)(E) A contract shall be only for one of the following types of products: a guaranteed fixed price product, limited fixed price product, indexed product or a variable price product. ~~In addition, the contract shall clearly specify the product type to which it applies it provides.~~

Use of credit score, credit history, or utility payment data

Proposed subsection (c)(2)(F) incorporates the requirements of PURA §17.008(e) into the Commission’s rules. Reliant notes that the proposed rule language does not track the PURA requirement in its entirety. Reliant offers the following revisions so that the Commission’s rule aligns with the statutory language.

- (c)(2)(F) A REP 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 period of 12 months or less for an existing residential customer or in response to an applicant’s request to become a residential electric service customer.

Contract period

Proposed subsection (c)(3)(A) discusses the “contract period” for a guaranteed fixed price product and imposes limitations on the contract terms that a 45-day notice can change. Reliant proposes to add language that would clarify that the 45-day notice limitations discussed

in this section would apply only during the current contract period. Reliant also proposes changes to this subsection that are consistent with its definition of fixed price products in proposed subsection (b)(8), and to use the defined term “contract period” rather than “contract term”.

- (c)(3)(A) The contract period of a guaranteed fixed price product shall be disclosed, shall not change throughout the contract period of the contract and shall be a minimum of six months. For a guaranteed fixed price product, the 45-day notice permitted in subsection (e) of this section may not be used to change customers’ length of contract ~~term~~ period, prices, or pricing methodology during the contract period.

Reliant proposes deleting proposed subsection (c)(3)(B) because it is no longer applicable under Reliant’s proposed product type framework.

- ~~(e)(3)(B) The contract period of a limited fixed price product shall be disclosed, shall not change throughout the contract period and shall be for a minimum of six months. For a limited fixed price product, the 45-day notice permitted in subsection (e) of this section may not be used to change customers’ length of contract term, pricing methodology, or prices, during the contract term.~~

Proposed subsection (c)(3)(C) discusses the “contract period” for a variable price or indexed product and imposes limitations on the contract terms that a 45-day notice can change. Similar to its proposal above, Reliant proposes to add language that would clarify that the 45-day notice limitations for products with contract periods longer than 31 days discussed in this subsection would apply to the current contract period. This proposed modification furthers consistency among the different products types that support contract periods longer than 31 days. The last sentence of proposed subsection (c)(3)(C) states that a 45-day notice can be used to change the length of a contract. If the contract is already a month-to-month contract, a 45-day notice should not be used to change the length of a contract because the only possible change would be to a longer term, say six months. However, such an extension to a contract term via a 45-day notice seems to be inconsistent with other provisions of the proposed rule that require affirmative consent to place a customer on a term contract that is longer than 31 days². In addition, the last sentence of proposed subsection (c)(3)(C) needs to be modified to allow a 45-day notice to be used to change a price, in addition to changing the price methodology, when the contract is a month-to-month contract. A REP may choose to use a 45-day notice to announce

² See proposed subsection (f)(5).

price changes to a customer on a variable product and the rule should provide for this option. To consistently use the defined term "contract period", "term" is changed to "contract period".

- (c)(3)(C) The contract period of a variable price product ~~or an indexed product~~ may be month to month or longer term, and the length of the ~~term contract period~~ shall be disclosed in the contract. For variable price ~~or indexed~~ products with contract periods longer than 31 days, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' pricing methodology or length of contract ~~terms for the variable price product or indexed product contracts period during the contract period~~. If the contract period is month to month or less than or equal to 31 days, the 45-day notice may be used to change the price or pricing methodology or length of contract.

Availability of contract documents

Proposed subsection (c)(4)(B) discusses the availability of contract documents when a REP offers retail electric products for enrollment on its website. Reliant proposes a minor clarification to recognize that residential or commercial is one example of distinguishing the "type of service being sought." There are other types of service where customer eligibility may need to be determined, especially because meter technology continues to advance. For example, a REP might develop products that can only be supported by advanced meters. In that instance, REPs would need to have the ability to ask if the customer has an advanced meter to determine the type of service for which the customer might be eligible.

- (c)(4)(B) Each REP that offers retail electric products for enrollment on its website shall prominently display the EFL for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (e.g., residential or commercial). The EFL shall be printable in no more than a two page format. The EFL, TOS, and YRAC for any products offered for enrollment on the website shall be available for viewing or downloading.

Subsection (d) – Advertising Claims

Proposed subsection (d)(1) discusses the disclosure requirements for print advertisements. In many instances, REPs include the required contact information in the body of the advertisement, so including the phone number or website in the disclaimer statement is redundant. Reliant offers proposed language that would allow REPs to streamline their communications while still providing detailed contact information.

- (d)(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 shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement shall be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet

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address (if available) of the REP)." If the REP's 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 shall provide the contract documents relating to a product being advertised.

Proposed subsection (d)(2) discusses the disclosure requirements for television, radio and internet advertisements. Under the proposed rule, the Commission would require REPs to provide information used to develop or substantiate comparisons made in an advertisement to the general public upon request. Reliant opposes the requirement to disclose the information to the public, but recognizes that the Commission or its staff might need to review the basis for comparative advertisements. Accordingly, Reliant proposes a clarification that REPs should provide information that would substantiate the comparison made in an advertisement to the Commission or its staff upon request. Reliant also offers a minor change to bring consistency between the required disclosures in subsections (d)(1) and (d)(2), as well as corresponding language to its proposed revision of subsection (d)(1).

- (d)(2) **Television, radio, and internet advertisements.** A REP 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~~may 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 REP's 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 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 shall provide the contract documents relating to a product being advertised ~~and~~. Upon the commission or its staff's request, a REP shall provide any information used to develop or substantiate comparisons made in the ~~an~~ advertisement.

Proposed subsection (d)(3) discusses the disclosure requirements for outdoor advertisements. Because of the unique space considerations of outdoor advertising (billboards), providing the disclosures that subsection (d)(3) contemplates could raise safety concerns and limit their viability as a means to communicate with current and potential customers. The Outdoor Advertising Association of America provides guidelines on the number of words and or visual elements that are readable "at a glance." The general rule of thumb for standard billboards is one key visual, logo and 7 words or less of copy at maximum size. Minimizing billboard content also promotes driver safety because text that is too small could be distracting. However, the proposed requirements described in proposed subsection (d)(3) could take up a substantial amount of the available space on a billboard.

Reliant offers proposed changes that would provide consumers with REP contact information and, at the same time, maintain the viability of billboards as a communication tool.

- (d)(3) **Outdoor advertisements.** A REP shall include, in a font size and format that is legible to the intended audience, ~~its certified name, certification number, either a~~ telephone number ~~and or~~ Internet address (if available).

Subsection (e) – Changes in contract and notice of changes

Reliant proposes the following changes to proposed subsection (e) to align the section with Reliant's proposed definition of fixed price product in proposed subsection (b)(8) and variable price product in subsection (b)(11):

- (e) **Changes in contract and notice of changes.** A REP may change the terms and conditions of a contract for a retail electric product only to the extent permitted by this section and by the terms of the contract. A REP shall provide written notice to its customers at least 45 days in advance of the date that the material change in the contract will be applied to the customer's usage or any other provisions of service. ~~For a limited fixed price product, variable product or an indexed product, a~~ material change notice is not required for a price change that is consistent with this section and the price terms set forth in the contract.

Proposed subsection (e)(1) details the required contents of a material change notice. The disclosure required in subsection (e)(1)(D) presumes that a customer has only two choices when presented with a material change notice: either accept the change or terminate the contract. A contract can be "terminated" by the customer switching to another REP. However, REPs may want to make alternatives to termination available to the customer. For example, the REP may offer that if the customer does not like the terms described in the material change notice, the customer should call the REP to ask about other product options. Reliant suggests that the intention behind subsection (e)(1)(D) is that the customer should be fully informed about the actions the customer must take to reject the proposed change to the contract. Such options include other alternatives beyond terminating service with the existing REP by switching to another REP.

- (e)(1)(D) clearly specify what actions the customer needs to take ~~to terminate the contract~~ if the customer does not accept the proposed changes to the contract, including, but not limited to the option to switch to another REP; and

Proposed subsection (e)(2) discusses the instances when a material change notice is not required. Proposed subsection (e)(2)(B) is redundant with last sentence of the introduction to

subsection (e) and could introduce confusion as to why this particular provision is repeated. Reliant proposes deleting subsection (e)(2)(B).

- (e)(2) **Notice not required.** Notice consistent with paragraph (1) of this subsection is not required for the following changes:
- (A) ~~_____~~ Aa change that benefits the customer;
 - (B) ~~_____~~ For a limited fixed price product, a pricing change that is made to reflect actual changes in TDU charges, ERCOT Administrative or TRE fees or actual charges resulting from a federal, state or local law.

Subsection (f) – Contract expiration and renewal offers

Proposed subsection (f) introduces a new requirement for REPs to issue a separate contract expiration notice prior to contract expiration for term contracts. As currently drafted, it is unclear whether term contracts with an automatic renewal clause would be subject to the requirement to issue a contract expiration notice. Reliant provides modifications to require the expiration notice unless an automatic renewal provides that the customer's price will stay the same or the customer has affirmatively accepted a contract for service at the end of its current contract. Reliant notes that the requirement to send the notice under separate cover with a required statement on the outside of the envelope will increase costs and might ultimately result in increased electricity prices for consumers who take service under a term contract.

Reliant proposes that contract expiration notices sent pursuant to subsection (f) should be sent at least 45 days, but no more than 60 days, prior to the date of contract expiration, rather than 60 to 75 days in advance. The longer the time period between when REPs must determine pricing and when pricing is effective, the more costly it will be to provide service, especially in the current financial market environment. A recent Wall Street Journal article is illustrative³ of the effect of the current financial market. Despite GE being one of the few AAA-rated companies, its cost of commercial paper recently increased by 0.4 percentage points or \$360 million dollars. In addition, GE's long-term debt (nine months) was trading at a ten percent annual yield, up from four percent a few months ago. In order to be responsive to customers who desire fixed priced contracts REPs would need to set prices more than 60 days in advance under the rule's requirement for a 60 day contract expiration notice. With respect to month-to-month contracts, the Commission has addressed the problem of noticing prices well in advance of their

³ Dennis K. Berman, "Market's Got You Worried? Just Watch for the Layoffs," Wall Street Journal, 30 September 2008, p. C1.

applicability by eliminating the provision in the strawman that would have required a variable price product's EFL to provide the price *for the first month of service*. Under the proposed rule, which contains no such requirement, the pricing methodology stated in the variable price EFL may result in prices that change between the time of enrollment and the receipt of the first bill. Reliant supports this acknowledgement of the Commission, and requests that the Commission address a similar problem with fixed price contracts by shortening the contract expiration notice to 45 days. In addition, because the contract expiration notice will likely cause shopping activity, it is reasonable that it would be provided on the same timeline as a material change notice to the contract, which could also result in shopping activity. .

- (f) **Contract expiration and renewal offers.** The REP shall send a notice of contract expiration separate from the bill at least ~~60~~ 45 days prior to the date of contract expiration but no more than ~~75~~ 60 days in advance of expiration. This notice is required even if the contract contains an automatic renewal clause, unless the automatic renewal clause provides that the customer will be charged the same price the customer was charged for the final bill of the contract period. This notice is not required if the customer has affirmatively consented to a new contract for electricity service at the end of its current contract. Nothing in this section shall preclude a REP from offering a new contract to the customer at any other time during the contract period.

Because proposed subsection (f)(1)(C) is included under the header "contract expiration" it can be interpreted to mean that the REP is prohibited from charging a termination penalty under the existing contract once the REP issues the required contract expiration notice. From the REP's perspective, including this provision would have the effect of materially changing the bargain reached between the REP and its term customers by removing the customer's obligation to maintain service with the REP for the full contract period specified in the contract. Reliant's belief is that the Commission intended this provision to apply, not to the existing contract that is about to expire, but to the new contract that goes into effect based on the actions or inactions the customer takes once notice is received. Therefore, to avoid confusion, this provision should be moved to subsection (f)(2) regarding renewal offers. Reliant proposes the deletion of (f)(1)(C) and modifies (f)(2) below to address this issue appropriately.

~~(f)(1)(C) — A statement in bold lettering no smaller than 14 point font that no termination penalty shall apply for 60 days from the date that the notice is sent. No such statement is required if the customer would not be subject to a termination penalty under any circumstances.~~

In proposed subsection (f)(2), Reliant first addresses (f)(2)(C) because the Commission's decision on that provision affects the other provisions of proposed subsection (f)(2). Proposed

subsection (f)(2)(C) allows REPs to disconnect customers at the end of a contract period. Reliant submits that it would not be good for the competitive retail market to have Commission rules that allow REPs to disconnect customers at contract expiration simply because the customer does not take affirmative action. At a minimum, REPs need to provide notice of a month-to-month service that will apply if the customer takes no action. If the customer is not satisfied with the default month-to-month service, she can take action to switch. There is no valid reason REPs should disconnect service at contract expiration. PURA §39.101 states that customers have a right to choose their retail electric provider and to have that choice honored, and that the customer's chosen provider will not be changed without the customer's informed consent. If REPs are allowed to disconnect customers at contract expiration, the REP's choice is being honored, not the customer's. There are many reasons a customer might not have received the contract expiration notice, such as a vacation, postal service delivery issue, or military service, and it is not appropriate to penalize customers who are paying their bills. Reliant does not believe that customers generally expect that their service could be disconnected at the end of a contract term simply because they do not take affirmative action. That is not what happens with phone service or cable service, and it should not happen for electric service, either. Accordingly, Reliant recommends deletion of proposed subsection (f)(2)(C).

In addition to requiring REPs to disclose the month-to-month service that will apply if the customer takes no action, the rule should acknowledge that REPs may offer other options to customers. Reliant's suggested modifications also move the prohibition on charging a termination penalty for 60 days from the contract expiration section, subsection (f)(1), to the renewal offer section, subsection (f)(2). In moving the prohibition on charging a termination penalty, Reliant changes the number of days from 60 to 15 and counts the 15 days from when the new contract terms go into effect. This is equivalent to the proposed 60 day prohibition from the date the contract expiration notice was sent because 45 days will have passed before any new terms go into effect. Further, this prohibition on a termination penalty should not apply if the customer affirmatively consents to enroll in a new product, such as a term product.

- (f)(2) **Renewal Offers.** In the contract expiration notice the REP shall include:
- (A) The contract terms including the EFLs of any the month-to-month renewal offers available that will apply to the customer if the customer takes no action;
 - (B) At the REP's option, a description of other products available to the customer and the action the customer must take to select one of the other offers;

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- (C) ~~In the event that no renewal offers are presented to the customer, or the customer declines all renewal offers for which affirmative consent is required, a disclosure that the failure of the customer to switch to another REP by the specified date will result in the disconnection of service; and~~ A statement in bold lettering no smaller than 14 point font that no termination penalty shall apply for 15 days from the date any new contract terms go into effect. No such statement is required if the customer would not be subject to a termination penalty under the new contract terms or if the customer gives affirmative consent to enroll in a product that includes a termination penalty;
- (BD) The actions the customer needs to take (if any) if the customer does not accept the proposed changes to the contract, including, but not limited to the option to switch to another REP; and
- (DE) A statement in bold lettering no smaller than 14 point font that establishing service with another REP can take up to 45 days.

Proposed subsection (f)(3) discusses the operation of automatic renewal for term contracts. The proposed rule's description of pricing for an automatic renewal after the original term of the contract is vague. Specifically, Reliant does not understand what "permitted by this section" is intended to reference. Proposed subsection (g)(7) provides guidance regarding when an EFL reflecting the terms of an automatic renewal provision must be provided to the customer and what the TOS must contain about an automatic renewal. Moreover, all products have to comply with the product types allowed by the rule. Reliant does not know what else might be intended by "permitted by this section." REPs cannot be expected to comply with such an open ended and vague provision. Therefore, Reliant suggests that the most appropriate modification is to delete "permitted by this section" and reference subsection (g)(7).

- (f)(3) **Automatic Renewal.** If a customer's TOS includes an automatic renewal clause, a REP may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with this section. Any service renewed through the use of an automatic renewal clause shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be ~~permitted by this section and~~ consistent with the contract and with subsection (g)(7) of this section.

Reliant opposes the proposal to automatically prorate termination fees on term contracts lasting more than 12 months. As noted above, including provisions that reduce or eliminate termination fees materially changes the bargain reached between the REP and its term customers by removing the customer's obligation to maintain service with the REP for the full contract period specified in the contract. The termination fee relates to not finishing an agreed upon term and is not mitigated simply because the customer may have been customer for a longer period of time. Moreover, this provision is contrary to PURA § 39.001(d), in that it is not "limited so as to

impose the least impact on competition.” To the contrary, this provision imposes a specific contract attribute that would otherwise be subject to customer choice in the competitive market. Accordingly, Reliant proposes the deletion of proposed subsection (f)(4).

~~(f)(4) — Proration of Early Termination Fees. For any contract with a term of one year or longer, the REP shall prorate any early termination fees after three quarters of the term has expired, if the customer is current in the payment of all charges. The REP shall prorate such a fee by reducing the fee by the ratio of the portion of the original term that has expired to the original term (in months).~~

Proposed subsection (f)(5) provides the requirements for re-enrolling a customer on a new term product. Proposed subsection (f)(5)(E) includes a requirement to disclose the contract start and end date of the contract period for the re-enrollment. Reliant proposes that this requirement be deleted because it is redundant with proposed subsection (c)(3)(D) which establishes the availability of this information. Additionally, including a contract start date in a written LOA for residential service is not practical, because it is impossible for a REP to determine the contract start date until the customer signs and returns the agreement.

~~(f)(5)(E) Indicate the date of the re-enrollment, the contract period, and the start and end dates of contract period;~~

Subsection (g) – Terms of service document

Proposed subsection (g)(2)(A) calls for REPs to include the amount of any non-recurring charges resulting from a move-in or switch that may be charged to the customer. It appears that this requirement would contemplate including the specific dollar amount that a TDSP might charge for performing these services. It is not practical to require REPs to include this specific information in their TOS because REPs do not have control over if and when such charges change. Moreover, the customer can choose among various options, such as a priority move-in, for initiating service, making it impossible to include a specific dollar figure in the TOS. Instead, the rule should allow a REP to describe the potential charges that a TDSP might assess for these services, which is what existing P.U.C. SUBST. R. 25.475 requires.

~~(g)(2)(A) A description 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;~~

Proposed subsection (g)(2)(C) calls for REPs to include the specific cost of non-recurring charges in the TOS, including termination penalties. With the exception of termination penalties,

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the cost of the listed non-recurring charges is not based on specific product attributes. However, much like price and term, the cost of termination penalties is linked to a specific product. In fact, proposed subsection (h)(4) requires disclosure of the term and termination penalty on the EFL. Reliant believes proposed subsection (g)(4)(B) provides customers sufficient notice that a termination penalty may apply, and disclosure of the cost of the termination penalty should occur in the EFL pursuant to proposed subsection (h)(4). Accordingly, Reliant proposes the following revisions to proposed subsection (g)(2)(C).

- (g)(2)(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, ~~and charges for cancellation or termination of service;~~

Proposed subsection (g)(4) discusses rescission, cancellation, termination and disconnection. Reliant recommends substituting “terminated” for “cancelled” in proposed subsection (g)(4)(B) and deleting the term “cancellation” from proposed subsection (g)(4), in the interest of consistency with other Commission rules. If the Commission intends to create a distinction between “cancel” and “terminate,” that distinction should be explained in the rules. Additionally, it is Reliant’s understanding that penalties, as described in proposed subsection (g)(4)(B), would include any fee that a REP might charge a customer who decides to stop taking service from the REP. The Commission should clarify whether administrative or other fees that could be charged at the end of a customer relationship would be considered termination penalties.

(g)(4) Rescission, Cancellation, Termination and Disconnection:

- (g)(4)(B) A statement as to how service can be ~~canceled-terminated~~ and any penalties that may apply, including any administrative fees that would be charged at the end of the customer’s relationship with the REP;

Reliant proposes changes to proposed subsection (g)(4)(C) that are consistent with its opposition to requiring customers to submit evidence of a relocation, as discussed related to subsection (c)(2)(D) above.

- (g)(4)(C) A statement of customer’s ability to terminate service without penalty if customer moves to another ~~premise~~premises ~~and the notification and evidence required;~~

Consistent with its comments on proposed subsection (c)(2)(F), Reliant offers revisions to proposed (g)(5) that align with the language of PURA §§ 39.101(c), 17.004(a)(4) and

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17.008(e). Additionally, Reliant offers revisions to the proposed language that are consistent with the prohibition against discrimination in section 25.471(c).

- (g)(5) **Antidiscrimination.** A statement informing the customer that the REP cannot ~~deny~~ unduly refuse to provide 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 period of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential electric service customer.

Proposed subsection (g)(7) describes the information that must be contained in the TOS to describe any applicable automatic renewal provision. The proposal requires the REP to disclose the "renewal pricing" *and* the EFL. This implies that "renewal pricing" is something *beyond* the pricing disclosure information required in the EFL. Reliant modifies the proposed subsection to strike "renewal pricing" because it is not clear what such information would be beyond what is required to be in the EFL. To be consistent with Reliant's earlier comments that the contract expiration information should be provided 45 days prior to expiration, Reliant changes the 60 days to 45 days in subsection (g)(7). Also, Reliant replaces the phrase "contract term" with the defined term "contract period."

- (g)(7) **Automatic renewal.** If a product offered by a REP includes an automatic renewal of the contract at the end of the contract period, the TOS shall contain a statement disclosing that to the customer. The statement must clearly indicate if the price during the renewal term will be different than the price during the preceding contract ~~term-period~~ and disclose the ~~renewal pricing~~ corresponding EFL if different, or state that the ~~month-to-month renewal price~~ EFL will be provided ~~60~~ 45 days prior to the expiration of the contract.

Subsection (h) – Electricity Facts Label

Proposed subsection (h)(1) calls for a REP to include contact information, including mailing address, Internet address, a toll-free telephone number and hours of operation, on each of its EFLs. Reliant opposes including the contact information on the EFL because the information is already available on the TOS and the Commission has not demonstrated why duplicating the information is needed. Additionally, Reliant opposes the requirement to include the REP's certified name on EFLs. Instead, Reliant proposes that the REP certification number should be included. As noted above, the REP certification number is an efficient method for identifying REPs, whether they are operating under their certified named or an assumed name.

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

Proposed subsection (h)(2) discusses the pricing disclosures required for EFLs. Reliant offers changes to proposed subsection (h)(2) to align the section with Reliant's proposed definition of fixed price product in proposed subsection (b)(8) and variable price product in subsection (b)(11). Additionally, Reliant questions whether the average price levels for residential service included in proposed subsection (h)(2)(B)(i) represent typical residential use. For example, the proposal removes the industry-standard benchmark usage of 1000 kWh per month and includes a new usage point of 2500 kWh per month. While it may not be uncommon for a customer to use 2500 kWh during a single hot summer month, it is important to remember that the EFL usage points refer to average monthly usage. An average monthly usage of 2500 kWh translates to an average annual usage of 30,000 kWh, and, according to the Commission's load profile for residential customers, an August consumption of 3535 kWh in the Oncor area, or 3765 kWh in the CenterPoint area. This level of usage is hardly a representative figure for the majority of consumers. Instead, Reliant proposes maintaining the current average monthly usage points of 500, 1000, and 1500, and adding a new usage point of 2000.

- (2) **Pricing disclosures.** Pricing information shall be disclosed by a REP in an EFL. The EFL shall state specifically whether the product is a guaranteed fixed price product, ~~limited fixed price, or a~~ or variable price ~~or indexed~~ product.
- (A) The EFL shall provide the total average price for electric service reflecting all recurring charges to the customer.
- (B) The total average price for electric service 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, 1,500, and 2,500 kilowatt hours per month using the commission-approved load profile; and
- (ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month.

Reliant offers changes to proposed subsection (h)(2)(D) to align the section with Reliant's proposed definition of fixed price product in subsection (b)(8).

- (h)(2)(D) For a guaranteed fixed price product ~~or a limited fixed price product~~, the EFL shall include the total average price for electric service over the term of the plan and the pricing components (e.g., monthly service charge or charge for failing to meet or exceeding a specified kWh, if any, and per-kilowatt hour charges and a description of when such charges apply) included in the average pricing disclosure.

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Proposed subsection (h)(2)(E) describes the EFL pricing disclosures applicable to variable price or indexed products, including products that offer a promotional rate. Reliant offers changes to proposed subsection (h)(2)(E) to align the section with Reliant's proposed definition of variable price product in subsection (b)(11). Because "estimate" is used in the first part of the sentence where it states that "REP shall estimate," Reliant believes that for consistency the word "estimated" should be inserted before the phrase "price for each specified kWh usage over the term of the contract." Reliant also believes the rules should state that a REP "shall" rather than "may" put the charges for the promotional period below the average charges. Additionally, Reliant proposes to delete the last sentence of proposed subsection (h)(2)(E) because it could be read to require a capped price for variable price products. If Reliant's interpretation of the last sentence of proposed subsection (h)(2)(E) is incorrect, the Commission should provide further clarification on its intentions regarding the proposed sentence so REPs will understand the standard to which they are being held. Reliant believes that under proposed (h)(2)(E), its Power Tracker EFL would comply. Power Tracker discloses the current month price and provides separate estimates in separate lines at select gas prices levels. The Commission should clarify if Reliant's belief is incorrect. Reliant offers the following revisions:

(h)(2)(E) For a variable price ~~or indexed~~ product, the REP shall estimate ~~(or use actual values if known)~~ ~~the variables used to determine the variable price or the formula used to determine the indexed price~~ for the period of the contract and shall calculate the estimated price for each specified kWh usage over the term of the contract. The EFL shall state the average price per kWh that results from the calculation. If the REP offers a promotional rate, the REP ~~may~~ shall put the charges for the promotional period below the average charges and must clearly label the promotional rate and the time for which it is in effect. ~~The REP shall notify the customer how much the price may change during the contract.~~

Proposed subsection (h)(3)(B) requires a REP to include a listing of all fees that may be charged to customers in the EFL. Reliant submits that this requirement should be limited to those fees that a REP might assess a customer and exclude those fees that may be assessed by a TDSP. Reliant modifies proposed subsection (h)(3)(B) accordingly.

(h)(3)(B) A listing of all fees that the REP ~~may be charged~~ assess to the customer.

Reliant supports the Commission's proposal to include renewable energy disclosures on the EFL. Proposed subsection (h)(5) contains a requirement for the percentage of renewable energy versus the percentage of renewable energy in the statewide average mix. Reliant believes that this is the key information that customers are interested in with respect to renewable energy.

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Reliant believes that it would be more efficient for the rules that govern the calculation of the renewable energy disclosures to be located in this rule, rather than P.U.C. SUBST. R. 25.476, relating to *Fuel Mix and Emissions Disclosure*, as proposed. Reliant proposes corresponding changes to P.U.C. SUBST. R. 25.476. Further, this provision should recognize that the registration agent calculates and publishes the statewide average of renewable energy. Proposed changes to P.U.C. SUBST. R. 25.475 (h)(5) are as follows:

- (h)(5) **Renewable Energy disclosures.** The EFL shall include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix. A REP shall verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers. The registration agent shall calculate the statewide average of renewable energy, and REP's shall use the most recent calculation. The percentage used shall be rounded to the nearest whole number.

Reliant proposes changes to the sample EFL in proposed subsection (h)(6) that are consistent with other changes proposed in these comments. Additionally, revisions are offered to provide grammatical consistency and recognize that some of the proposed disclosures are not applicable to all product types.

- (h)(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 shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph:

Electricity Facts Label (EFL)
[Name of REP] [Certificate Number], [Name of Product], [Service area (if applicable)],
[Name of Product]
[Service area (if applicable)]
[Issue Date]

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A

Electricity price	Average Monthly Use	500kWh	<u>1,000kWh</u>	1,500kWh	2,500 kWh
	Average price per kWh	[x.x]¢	[x.x]¢	[x.x]¢	[x.x]¢
	For POLR use: Minimum price per kilowatt-hour.	[x.x]¢	[x.x]¢	[x.x]¢	[x.x]¢
	For promotional pricing: Additional line permitted for pricing in an additional way.				
<p>This price disclosure is an example based on [criteria used to construct the example] - [if applicable] your average price for electric service will vary according to [relevant variation].</p> <p>[If applicable] On-peak [season or time]:[xxx]</p> <p>[If applicable] Average on-peak price per kilowatt-hour: [x.x]¢</p> <p>[If applicable] Average off-peak price per kilowatt-hour: [x.x]¢</p> <p>[If applicable] Potential surcharges corresponding to the given electric service.</p>					
Other Key Terms and questions	<p>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</p>				

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Disclosure Chart	Type of Product	(guaranteed fixed, limited fixed or variable)
	Term/Contract Period	(number of months)
	Do I have <u>Is there</u> a cancellation <u>termination</u> fee or any fees associated with cancelling or terminating service?	(yes/no) (if yes, how much)
	Can the my price change during contract period?	(yes/no)
	If the 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)
	What other fees may I be charged?	(List, or give direct location in TOS.)
	Is this a pre-pay or pay in advance product?	(yes/no)
	Renewable Content	(This product is x% renewable)
	The s Statewide average for renewable content is	(% of statewide average for renewable content)
Additional information may be added below.		

Type used in this format

Title: 12 point

Headings: 12 point boldface

Body: 10 point

Proposed section (h)(7) appears to require a REP to publish the EFL version number on the TOS document instead of the EFL. Reliant offers language to correct this typographical error.

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

Subsection (i) – Your Rights as a Customer disclosure

Proposed subsection (i)(7) calls for a REP to include contact information, including mailing address, Internet address, a toll-free telephone number and hours of operation, on its YRAC. Reliant opposes including the contact information on the YRAC because the information is already available on the TOS and the Commission has not demonstrated why duplicating the information is needed. Additionally, Reliant proposes including the certification number on the YRAC instead of the REP's certified name because the REP certification number is an efficient method for identifying a REP.

- (i)(7) **Identity and contact information.** The REP's ~~certified name~~certification number and business name (dba), ~~certification number, mailing address, 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.~~

Subsection (j) – Commercial Customer disclosure

Reliant opposes the proposal to establish a Commercial Customer disclosure under proposed subsection (j) as described in its answer to Question 2.

- (j) ~~Commercial Customer disclosure. Notwithstanding §25.471(a)(3) of this title (relating to General Provisions of Customer Protection Rules), all commercial customers over 50-kW shall be given a copy of the list of rights they are waiving to enter into a contract not governed by the commission's customer protection rules and must affirmatively choose to waive those rights. Such disclosure shall also inform the customer that they have the right to choose a product from the REP (if applicable) and other REPs that do not require a waiver of these rights.~~

Subsection (k) – Fuel mix and emissions disclosure

Reliant appreciates the Commission's proposal to remove the fuel mix and emissions disclosure information from the EFL. However, simply moving the information to a different document does not solve the problem. Reliant submits that the proposal would not address the fact that the underlying calculations do not produce accurate, product-specific information. This effect is the result of a number of factors, including the fact that the data is usually that of an entire generation companies' portfolios rather than unit-specific data and that REPs often rely on the statewide average because they buy from third parties and the actual source of the generation cannot be verified. In addition, moving the information to a different document would not relieve REPs and generators from complying with a cumbersome process requiring multiple data submissions to ERCOT to comply with these provisions of the rule although the provisions do not provide accurate data and therefore bring little value to the customer. In fact, requiring a fuel mix and emissions disclosure to be created as a separate document from the EFL and distributed on demand actually creates more burden on REPs, and increases costs, without providing any additional meaningful information to the customer. Accordingly, Reliant proposes deletion of proposed subsection (f) and makes corresponding changes to the proposed revisions to P.U.C. SUBST. R. 25.476, relating to *Fuel Mix and Emissions Disclosure*.

- (k) ~~Fuel mix and emissions disclosure. A fuel mix and emissions disclosure pursuant to §25.476 of this title shall be available upon request.~~

IV. COMMENTS ON PROPOSED CHANGES TO P.U.C. SUBST. R 25.476

Reliant offers the following proposed modifications to P.U.C. SUBST. R. 25.476, consistent with its comments on P.U.C. SUBST. R. 25.475(h)(5) and (k) above. The proposed modifications remove all information related to calculating the renewable energy disclosure and fuel mix and emissions disclosure. However, Reliant believes it is important to maintain the procedures for calculating the statewide average for renewable energy, as it was previously calculated through the compilation of scorecard data pursuant to subsection (e). Accordingly, Reliant proposes a revised subsection (e) [now subsection (d)] that is limited to calculating the statewide average renewable energy produced. For efficiency, Reliant includes only the remaining language, with proposed changes, rather than a comprehensive redline of the entire section.

§25.476. Renewable Energy Fuel Mix and Emissions Disclosure

- (a) Purpose. The purpose of this section is to establish ~~the procedures by which retail electric providers (REPs) calculate and compose their Fuel Mix and Emissions Disclosure (FMED) pursuant to this section, and their renewable content pursuant to §25.475 of this title (relating to General REP Requirements and Information Disclosures to Residential and Small Commercial Customers); marketing standards for renewable electricity products.~~
- (b) Application.
 - (1) This section applies to all REPs. Additionally, some of the reporting requirements established in this section apply to the registration agent.
 - (2) Nothing in this section shall be construed as protecting a REP against prosecution under deceptive trade practices statutes.
 - (3) In accordance with the Public Utility Regulatory Act (PURA) §39.001(b)(4), the commission and the registration agent will protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information.
- (~~dc~~) **Marketing standards for "green" and "renewable" electricity products.**
 - (1) A REP may market an electricity product as "green" only in the following instances:
 - (A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d), Texas natural gas as specified in PURA §39.904(d)(2), or a combination thereof, and
 - (B) All statements representing the product as "green," if not containing 100% renewable energy, as defined in PURA §39.904(d), shall include a footnote, parenthetical note, or other obvious disclaimer that "A 'green' product may include Texas natural gas and renewable energy. "
 - (2) A REP may market an electricity product as "renewable" only in the following instances:
 - (A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d); or
 - (B) All statements representing the product as "renewable" use the format "x% renewable," where "x" is the product's renewable energy fuel mix percentage.
 - (3) If a REP makes marketing claims about a product's "green" content on the basis of its use of natural gas as a fuel, the REP must provide the registration agent ~~include with the report required under subsection (f)(1) of this section~~ proof that the natural gas used to generate the electricity was produced in Texas.
- (~~ed~~) **Compilation of scorecard data Calculation of statewide average renewable energy produced.**
 - (1) ~~The registration agent shall create and maintain a database of generator scorecards reflecting each owner of generation assets' company-wide fuel mix and environmental~~

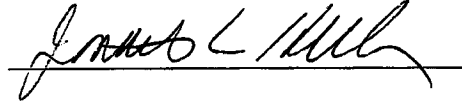
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- ~~impact data based on generating facilities located in Texas. These scorecards shall be used by REPs in determining the fuel and environmental attributes of electricity sold to retail customers.~~
- (21) Each generator's ~~fuel mix and environmental impact-renewable energy~~ data for the preceding calendar year shall be published on the registration agent's Internet web site by April 1 of each year and shall state the :
- (A) ~~percentage of MWh generated from each of the following fuel sources: coal and lignite, natural gas, nuclear, renewable energy, and other sources; and~~
- (B) ~~MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the owner of generation assets for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors).~~
- (32) Not later than March 1 of each year, each owner of generation assets shall report to the registration agent net generation in MWh from all of its generating units in Texas the following data for the preceding calendar year: ~~net generation in MWh from each of its generating units in Texas; the type of fuel used by each of its generating units in Texas; and the MWh-weighted average annual emissions rate, on an aggregate basis for all of its generating units in Texas (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. For purposes of calculating its average emissions rates, each owner of generation assets shall rely upon emissions data that it submits to the United States Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), or the best available data if the owner of generation assets does not submit pertinent data to the EPA or TCEQ.~~ An owner of generation assets shall not be required to submit information to the registration agent regarding the net generation of its generating units located within the Electric Reliability Council of Texas (ERCOT) region if, upon request, the registration agent advises the owner of generation assets that it already has such information available from its polled settlement meter data.
- (4) ~~Not later than March 15 of each year, each REP shall report to the registration agent the total MWh of electricity it purchased during the preceding calendar year, specifying the quantity purchased from each owner of generation assets or from other generation sources during that calendar year.~~
- (52) Not later than April 1 of each year, the registration agent shall calculate and publish on its Internet website a state average percentage of fuel mix renewable energy produced; ~~statewide system average emission rates for each type of emission, and a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.~~
- (A) ~~The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.~~
- (B) ~~Default emission rates for each type of emission shall be calculated by dividing total pounds of emissions or waste by total MWh, using data only for generation not authenticated.~~

Reliant appreciates the opportunity to submit comments on the proposed rule, and looks forwarding to working with all interested parties during this proceeding.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael L. Jines", is written over a horizontal line.

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