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PROJECT NO. 41111

RULEMAKING RELATED TO  
ADVANCED METERING  
ALTERNATIVES

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**REPLY COMMENTS OF THE REP COALITION**

The REP Coalition<sup>1</sup> respectfully submits these reply comments regarding proposed new P.U.C. SUBST. R. 25.133, relating to Advanced Metering System Customer Options, and amendments to P.U.C. SUBST. R. 25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff). Section IV in these reply comments includes alternative rule language addressing the collection of the initial one-time fee if the transmission and distribution utility (TDU) does not directly bill this charge to the customer.

**I. Introduction**

The REP Coalition re-emphasizes that the communications, interface and administration responsibilities in proposed new P.U.C. SUBST. R. 25.133 should be allocated between the TDU and the retail electric provider (REP) in a manner consistent with the role each entity serves in the opt-out process. The REP Coalition likewise argues that an opt-out program logically fits within the existing construct in P.U.C. SUBST. R. 25.214 for the performance and billing of construction services relating to non-standard facilities, which allows the TDU to directly bill the customer for the performance of those services directly requested by the customer. The REP Coalition also maintains that further customer outreach relating to an opt-out program is unnecessary. Finally, the REP Coalition requests the inclusion of a 45-day notice requirement

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<sup>1</sup> The REP Coalition consists of the following: Alliance for Retail Markets (ARM); Reliant Energy Retail Services; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. Members of ARM participating in this proceeding are: Champion Energy Services, LLC; Constellation NewEnergy Inc.; Direct Energy, LP; Gexa Energy, LP; Green Mountain Energy Company; Liberty Power; Noble Americas Energy Solutions LLC; and Texas Power. Members of TEAM participating in this proceeding are: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy.

for any new or adjusted fee or charge assessed by the TDU to the customer's REP of record pursuant to P.U.C. SUBST. R. 25.214 and the Tariff.

## **II. Preamble Question No. 3 and Proposed Subsection (c): Allocation of Opt-Out Program Responsibilities**

The Transmission and Distribution Utilities (Joint TDUs) and Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (TLSC/Texas ROSE) both assert the REP—as opposed to the TDU—is the appropriate entity assigned with primary responsibility for interacting with a customer requesting a non-advanced meter.<sup>2</sup> For the reasons stated in its initial comments, the REP Coalition disagrees.<sup>3</sup> P.U.C. SUBST. R. 25.133 should allocate this responsibility in a manner consistent with the roles the TDU and the REP respectively serve in effectuating a customer's opt-out request. The Steering Committee of Cities Served by Oncor (Oncon Cities) agree with this rational approach for reasons similar to those expressed in the REP Coalition's initial comments and advocate that the TDU, rather than the REP, should be the entity with primary responsibility for interacting with a customer concerning electric service using a non-advanced meter.<sup>4</sup> The REP Coalition agrees that the TDU should have certain communication and interface responsibilities with respect to customer opt-out inquiries and requests, but also recognizes that the REP will need to play a role in this process as well. The proposed revisions to subsection (c) in the REP Coalition's initial comments allocate the communications, interface and administration responsibilities in P.U.C. SUBST. R. 25.133 in a manner that logically and appropriately assigns responsibilities between the TDU and the REP.<sup>5</sup>

Under PURA § 39.107(a), the TDU is required to provide metering services within its service area to those customers for which the independent system operator (*i.e.*, ERCOT) does not require an interval data recorder meter. The TDU's provision of such metering services

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<sup>2</sup> Initial Comments of the Joint TDUs at 1-2, 3-4 (April 1, 2013); Initial Comments of TLSC/Texas ROSE at 3 (April 1, 2013).

<sup>3</sup> Initial Comments of the REP Coalition at 3-6, 7-11 (April 1, 2013).

<sup>4</sup> Initial Comments of Oncor Cities at 2-4 (April 1, 2013).

<sup>5</sup> See Initial Comments of the REP Coalition at 7-11.

entails its ownership of the meters at the customers' premises. Indeed, the TDU's assessment of the non-bypassable surcharge pursuant to PURA § 39.107(h), which in part recovers the cost of the advanced meter, reflects this ownership. Given the TDU's provision of advanced metering services and its ownership of advanced meters, the TDU is the appropriate entity to convey technical, rate, and other information to the customer relating to the disablement of the communications functionality of an advanced meter and the access requirements associated with the operation and maintenance of the resulting non-advanced meter.

For example, the TDU can better explain how the de-activation of an advanced meter's communications functionality serves to eliminate radio frequencies and/or electromagnetic fields to and from the meter. Likewise, the TDU can better respond to customer questions about the nature of the non-recurring and recurring costs recovered through the discretionary service charges applicable to an opt-out request. The TDU is also in a better position to explain the difference between its operation and maintenance of non-advanced meters versus its operation and maintenance of advanced meters.

The proposed rule, however, inappropriately assigns the primary responsibility to convey information about these technical matters to the REP instead of the TDU. While a REP may have a general working knowledge of the technical, costs, and operational aspects of a TDU's opt-out program, the TDU will have a detailed and well-informed understanding about those matters, making it the better candidate as the source of information about the program. Imposing primary responsibility on the REP to communicate and interface with the customer with respect to these topics runs the risk of frustrating customers navigating the opt-out process.

The responsibility a REP should bear in the opt-out process directly relates to its role as the provider of retail electric service to the customer. This responsibility is two-fold: (1) to convey information to the customer regarding the compatibility of the customer's request for a non-advanced meter with the current retail product or service in which the customer is currently enrolled, and (2) if an incompatibility exists, to work with the customer to resolve the issue if the customer decides to continue to pursue the opt-out request. In this regard, the REP Coalition agrees with the Joint TDUs' observation that the REP knows the type of retail product in which

the customer is currently enrolled and the terms of the customer's current service agreement, including the price charged for retail service and the applicability of any early termination and/or other fees if the customer moves to another retail product.<sup>6</sup> The REP Coalition's proposed revisions to P.U.C. SUBST. R. 25.133(c) in its initial comments recognize the REP's superior knowledge of such retail matters.

For these reasons, it makes sense that the TDU should serve as the initial and final point of contact for the customer during the opt-out process. Of course, if a customer initially contacts the REP to inquire about a non-advanced meter, nothing precludes the REP from informing the customer whether the retail product in which the customer is currently enrolled relies on an advanced meter or prohibits the REP from working with the customer to eliminate (if possible) any retail service incompatibility prior to the customer's submission of a formal request for a non-advanced meter to the TDU. But even under such a scenario, the responsibilities allocated to the TDU in the REP Coalition's proposed revisions to P.U.C. SUBST. R. 25.133(c) remain intact.

Indeed, the paradigm employed in the REP Coalition's proposed revisions to P.U.C. SUBST. R. 25.133(c) is not unique in the context of metering services. For those TDUs with Commission-approved advanced metering system (AMS) deployment plans, advanced meters constitute—or will constitute—the standard meter in their service territories.<sup>7</sup> Without question, the objective of those approved plans is the ubiquitous deployment of advanced meters within those areas. Consequently, a customer's request for non-advanced meter is, in effect, a request for a non-standard meter. Under § 5.7.5 of the Tariff, a customer today may directly request delivery service utilizing non-standard facilities from a TDU, subject to the operational feasibility of installing or constructing those facilities and the requirement that the customer pay

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<sup>6</sup> Initial Comments of the Joint TDUs at 1-2, 3.

<sup>7</sup> Two TDUs—Oncor Electric Delivery Company and CenterPoint Energy Houston Electric, LLC—completed their AMS deployment plans last year. Taken together, AEP Texas Central Company and AEP Texas North Company have installed 73 percent of the advanced meters in their deployment plans as of February 28, 2013. As of the same date, Texas New-Mexico Power Company has completed 34% of its deployment of advanced meters. To date, Sharyland Utilities, L.P. has not sought Commission approval of an AMS deployment plan. AMS Install Numbers Update to RMS (March 20, 2013).

the cost of those facilities directly to the TDU. Likewise, § 5.7.8 of the Tariff allows a customer to directly request a TDU to remove a meter, subject to similar operational restrictions and payment requirements applicable to requests involving non-standard facilities.

Regarding the acknowledgment requirement in proposed subsection (c)(1)(B), the REP Coalition disagrees with the Joint TDUs' contention that the notification requirements in the proposed rule will not impose any material additional burden on the REP,<sup>8</sup> if the Joint TDUs mean to include the acknowledgement requirement within the scope of those obligations.<sup>9</sup> Imposing this requirement on the REP is particularly onerous given that the majority of the conditions listed in proposed subsection (c)(1)(A) and included in the acknowledgement apply to the TDU's advanced meter and its provision of discretionary services relating to such a non-standard meter. Moreover, such a requirement is unnecessary because the customer's informed request to opt out after the receipt of pertinent information and payment of the initial one-time fee should serve as the customer's affirmation to receive electric service through a non-advanced meter. Finally, given the TDU is allowed cost recovery under the proposed rule, it is better positioned to recover the costs associated with administering this potentially time- and resource-intensive step in the opt-out process. However, if the adopted rule retains an acknowledgment requirement, the Commission should impose the obligation on the TDU for the reasons stated in the REP Coalition's initial comments.<sup>10</sup>

Finally, the REP Coalition urges the Commission to reject TLSC/Texas ROSE's recommendation to amend the proposed rule to require a "consumer outreach campaign" notifying all consumers of the opportunity to opt out.<sup>11</sup> Before initiating the instant rulemaking,

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<sup>8</sup> Initial Comments of the Joint TDUs at 1.

<sup>9</sup> The Joint TDUs link the notification and acknowledgement requirements in arguing that disassociating the REP from those communications would disserve the customer if their purpose is to "make the customer more informed about opting out...." *Id.* at 4.

<sup>10</sup> Initial Comments of the REP Coalition at 5-6.

<sup>11</sup> Initial Comments of TLSC/Texas ROSE at 3-4. TLSC/Texas ROSE does not propose specific language to implement this proposal or identify the placement of such a provision in the proposed rule. For the sake of discussion, the REP Coalition assumes this requirement would appear in proposed subsection (c).

the Commission sought written public comment in Project No. 40190<sup>12</sup> and hosted a public forum in the investigatory project on August 21, 2012. The public forum was well attended, and interested persons have submitted over 700 filings in the project to date. Furthermore, the Commission has scheduled a public hearing in this rulemaking project for April 19, 2013 at the request of an interested organization representing members from various parts of the State who plan to attend and testify at the hearing.<sup>13</sup> The REP Coalition submits that interested consumers are well aware that the opt-out issue is under review by the Commission, by virtue of Project No. 40190 and the instant proceeding.

Should the Commission choose to allow a customer to opt out of receiving electric service through an advanced meter, both TDUs and REPs will incur costs and expend resources to implement that new paradigm. The proposed rule addresses a TDU's recovery of those costs through Commission-approved rates. A REP may choose to address the increased cost of doing business attributable to an opt-out program through institution of a fee, particularly if P.U.C. SUBST. R. 25.133 imposes the proposed acknowledgement requirement on the REP or requires the REP to notify its customers that an opt-out program exists. As to the latter, the REP Coalition maintains that the Commission should not unnecessarily add to the costs of an opt-out program by requiring notice of an option about which interested customers will be aware.

For the reasons stated in its initial comments and these reply comments in response to Preamble Question No. 3, the REP Coalition urges the Commission to adopt its proposed revisions to P.U.C. SUBST. R. 25.133(c).

### **III. Proposed Subsection (e): Effective Date of New or Revised Fees and Charges**

Under proposed P.U.C. SUBST. R. 25.133(e), a TDU must submit a compliance tariff to establish the initial one-time fee and the recurring monthly charge that respectively recover the non-recurring costs and the ongoing costs referenced in proposed subsection (c)(1)(A)(i). In its initial comments, the REP Coalition maintains that both rates should be treated as discretionary

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<sup>12</sup> *Project Relating to Advanced Metering Issues*, Project No. 40190.

<sup>13</sup> Project No. 41111, Request for Hearing by Texas Eagle Forum (March 29, 2013).

service charges in the Tariff.<sup>14</sup> Furthermore, those initial comments propose that the compliance tariff also include discretionary charges for electric service affected by the customer's election of a non-advanced meter.<sup>15</sup> The Joint TDUs seek to expand proposed subsection (e) to allow a TDU, at its sole discretion, to update the one-time fee and recurring monthly charge approved in the compliance tariff required under P.U.C. SUBST. R. 25.133(e).<sup>16</sup>

The REP Coalition does not oppose the Joint TDUs' proposal, provided REPs are given reasonable notice (*i.e.*, 45 days) of any revisions to the initial one-time fee and recurring monthly charge. Indeed, for any new or updated TDU fee or charge encompassed within the scope of P.U.C. SUBST. R. 25.133(e) that a TDU assesses to the customer's REP of record, the REP Coalition requests an effective date no less than 45 days after the TDU files the Commission-approved compliance tariff reflecting the approved new or revised rate. The REP Coalition has consistently requested a 45-day effective date in other Commission proceedings to allow REPs adequate time to properly implement new or amended TDU fees and charges. Sufficient notice of any new or revised TDU rate is paramount to a REP's ability to adjust its billing systems and timely recover the approved rate from its customers. Indeed, the 45-day notice period requested here is consistent in principle with the effective date applicable to other types of TDU rates in compliance tariffs approved by the Commission, such as energy efficiency cost recovery factors (EECRFs).<sup>17</sup>

Furthermore, in requesting the discretion to adjust the one-time fee and recurring monthly charge approved in the compliance tariff in the future, the Joint TDUs presumably envision rates

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<sup>14</sup> Initial Comments of the REP Coalition at 12. To ensure this appropriate treatment of those charges, the REP Coalition recommends in these reply comments the inclusion of the following sentence in subsection (e): "Both the initial one-time fee and monthly recurring fee shall be treated as discretionary charges for electric service".

<sup>15</sup> *Id.* at 13.

<sup>16</sup> Initial Comments of the Joint TDUs at 4-5.

<sup>17</sup> See P.U.C. SUBST. R. 25.181(f)(9)(B) (providing that "[i]n no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF."). The Commission approved this effective date for new and revised EECRFs based on the same rationale offered by the REP Coalition here in Project No. 39674, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Order Adopting Amendments to §25.181 as Approved at the September 28, 2012 Open Meeting at 131-132 (Oct. 17, 2012).



expressed as specific dollar amounts rather than “as calculated” amounts that may vary from customer to customer. To the extent the Joint TDUs, however, contemplate using the “as calculated” approach currently used for certain discretionary services in the Tariff today, the REP Coalition would oppose the Joint TDUs’ request and urge the Commission to ensure the compliance tariff and any future updates reflect specific rates for both the initial one-time fee and the monthly recurring charge. Although this issue can be addressed (if necessary) at the time a TDU files its compliance tariff pursuant to P.U.C. SUBST. R. 25.133(e), a clear directive from the Commission beforehand would be helpful.

For these reasons, the REP Coalition proposes the inclusion of language in P.U.C. SUBST. R. 25.133(e) that is patterned after language approved recently in Project No. 39674 in the context of the effective date of a new or revised EECRF. This proposed revision to subsection (e) would apply regardless of whether the Commission adopted the Joint TDUs’ proposal to allow a TDU to update the initial one-time fee and monthly recurring charge at its sole discretion. Also, it would apply only in the context of a new or revised fee or charge assessed by a TDU to the customer’s REP of record, which the REP Coalition advocates should not include the initial one-time fee.<sup>18</sup> The REP Coalition’s proposed language would appear as the last sentence in subsection (e), or as the last sentence in subsection (e)(1) in the alternative version of subsection (e) addressed in Section IV of these reply comments. The sentence would read as follows:

The effective date of any new or adjusted fee or charge assessed by the TDU to the customer’s REP of record under this section shall occur no less than 45 days after the TDU files the Commission-approved compliance tariff reflecting the approved new or adjusted rate.

#### **IV. Alternate Proposed Subsection (e): REP Recovery of Initial One-Time Fee**

The REP Coalition continues to believe that its proposed revisions to subsection (e) in its initial comments would be the most effective and efficient manner to handle the billing and collection of customer opt-out fees. Under this proposal, the TDU would directly bill the initial one-time fee to the customer electing an advanced meter to recover the cost of modifying or

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<sup>18</sup> Initial Comments of the REP Coalition at 11-12.

replacing and later restoring the advanced meter at the premise. The TDU would directly assess the monthly recurring charge recovering the increased cost of service associated with an advanced meter to the customer's REP of record, which would pass the amount through as an additional charge on the customer's bill.<sup>19</sup> Requiring the TDU to directly bill and collect the initial one-time fee from the customer is the best way to protect against the risk of non-payment of such a fee.

In the event the Commission does not require a TDU to directly bill and collect the initial one-time fee from the customer, P.U.C. SUBST. R. 25.133(e) must provide a REP with the ability to secure payment of this fee from the customer. Because a TDU will directly assess this discretionary charge to a REP under this alternative scenario, the REP will have no choice but to pay the fee to the TDU. Unlike other discretionary charges, however, the REP should not be required to bear the entire risk of non-payment of the initial one-time fee, due to the potentially significant amount of the fee and the possibility that many customers charged the fee may not feel compelled to pay it. Granted, treating the initial one-time fee as a discretionary service charge for electric service will allow a REP to compel payment of the fee through potential service disconnection, if necessary. But unless the REP is more fully protected against the certain and tangible risk of non-payment, a customer could request a non-advanced meter and then switch to another REP to avoid paying the initial one-time fee, resulting in bad debt for the unpaid REP.

The proposed revisions to subsection (e) in the alternative would authorize a REP to address the risk of non-payment of this initial non-recurring fee in two ways. First, a REP could require the customer to remit full payment of the initial one-time fee before the opt-out request proceeds. Second, if the REP elects not to require the up-front and full payment of the fee, it could place a switch-hold on the customer's account until the initial one-time fee is paid in full, subject to informing the customer of the REP's right to apply a switch-hold prior to allowing the opt-out request to proceed.

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<sup>19</sup> Initial Comments of the REP Coalition at 5, 11-12.

Providing a REP with these alternative methods of recovery is necessary because the efficacy of a particular method may vary depending on the billing and other systems utilized by the REP to serve its customers. That said, current market processes and REP internal systems would need to undergo significant modification to perform the transactions in either scenario. With respect to the first alternative, new market processes would need to be established to enable a REP to bill and collect the initial one-time fee from a customer prior to allowing the opt-out request to go forward.<sup>20</sup> Additionally, the REP would need to design and implement new internal processes to ensure the removal of this TDU charge from its bill to the customer, given the customer has prepaid the amount.<sup>21</sup> With respect to the second alternative, new market processes would need to be developed to create a switch-hold category designed specifically for opt-out requests.<sup>22</sup>

The complexity and costs associated with either option in the alternative version of subsection (e) are compelling reasons further justifying why the TDU should bill and collect the initial one-time fee for a non-advanced meter in the same manner it bills construction charges pursuant to the Tariff today. As referenced in the REP Coalition's initial comments, a TDU already has systems in place to directly bill and collect this type of fee from customers, including fees relating to their meters. Should the Commission determine the TDU is not required to bill and collect the initial fee from the customer, the REP Coalition proposes the following revisions

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<sup>20</sup> Currently, there are no TDU discretionary fees collected by a REP in full prior to the submission of an order to the TDU for the performance of the discretionary service. While a REP can require payment of applicable TDU fees from a prepaid service customer prior to establishing or reconnecting electric service, the upfront collection of those charges is distinguishable from the advance collection of a specific discretionary service charge within the context of a post-pay retail electric product. *See* P.U.C. SUBST. R. 25.498(c)(14).

<sup>21</sup> The REP Coalition reiterates that the initial one-time fee billed and collected by the REP in advance of its submission of an opt-out request to the REP must be expressed as a specific dollar amount rather than as an "as calculated" amount that may vary from customer to customer. Otherwise, the REP could not obtain upfront full payment of the fee from the customer due to the uncertainty of the amount the TDU will charge the REP upon the customer's receipt of a non-advanced meter from the TDU.

<sup>22</sup> At present, two types of switch-holds exist in the market: (1) the switch-hold applied by a TDU to ensure the payment of meter tampering charges under P.U.C. SUBST. R. 25.126(g), and (2) the switch-hold applied by a REP pursuant to certain types of deferred payment agreements under P.U.C. SUBST. R. 25.480(l)-(m). The current market current systems developed by ERCOT for these switch-hold transactions, however, are not designed to indicate the placement of a switch-hold for reasons other than those two situations, *e.g.*, to ensure payment of the initial one-time fee applicable to an opt-out request.

to subsection (e) in the alternative (including the two sentences proposed in Section III of these reply comments):

- (e) **Cost and fee recovery.** Costs incurred by a TDU to implement this section shall be borne only by each customer who chooses to receive service using a non-advanced ~~transmitting~~ meter.

(1) Not later than fifteen (15) days after the effective date of this section, each TDU shall file a compliance tariff to establish a one-time fee for the costs to initiate and ultimately discontinue service using a non-advanced ~~transmitting~~ meter, which should include construction charges relating to the removal, modification or installation of the applicable meter. In addition, the compliance tariff shall include a recurring monthly fee to recover the ongoing costs associated with providing electric service using a non-advanced ~~transmitting~~ meter, including costs associated with meter reading and billing. Both the initial one-time fee and monthly recurring fee shall be treated as discretionary charges for electric service. The compliance tariff shall also specify the discretionary charges for existing electric services performed by the TDU that are affected by the customer's election of a non-advanced meter. The effective date of any new or adjusted fee or charge assessed by the TDU to the customer's REP of record under this section shall occur no less than 45 days after the TDU files the Commission-approved compliance tariff reflecting the approved new or adjusted rate.

(2) A REP may require a customer to remit full payment of the initial one-time fee before submitting the customer's opt-out request to the TDU. If the REP does not require full prepayment of the initial one-time fee, the REP may apply a switch-hold to the customer's account until it receives full payment for the initial one-time fee from the customer. If the REP will require placement of a switch-hold, it must disclose this information to the customer before submitting the request for an advanced meter to the TDU or allowing the request to proceed. This disclosure shall explain that a switch-hold means the customer will not be able to buy electricity from other companies until the customer pays the initial one-time fee to the REP in full.

#### V. New Proposed Subsection (f): Effective Date of New Rule

The REP Coalition agrees with the Joint TDUs that all market participants will need time to establish processes to handle customer opt-out requests and that a new subsection regarding the adopted rule's effective date should be included.<sup>23</sup> However, the REP Coalition does not yet

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<sup>23</sup> Initial Comments of the Joint TDUs at 5.

have an opinion on whether that effective date should be 180 days after publication of the final rule in the *Texas Register*, as proposed by the Joint TDUs. The REP Coalition believes the calculation of the effective date should be based on several factors. First, the date should be based on a reasonable estimation of the time it will take for market processes to be developed to handle customer opt-out requests. Second, the date will need to allow for sufficient time for the Commission to review and approve the TDUs' compliance tariffs relating to opt-out service. Finally, the date should factor in a 45-day notice period from the date of compliance tariff approval to allow REPs adequate time to implement any new charges assessed by the TDU to a REP, as requested in Section III of these reply comments. Consequently, the REP Coalition would like to work with Commission Staff and other parties in this proceeding to determine the most appropriate effective date once the opt-out process in P.U.C. SUBST. R. 25.133 is finalized.

#### **VI. Conclusion**

The REP Coalition appreciates the opportunity to submit reply comments in this rulemaking and respectfully requests that the Commission adopt its recommendations relating to new § 25.133 and the amendments to § 25.214, as expressed in both its initial and reply comments.

**Respectfully submitted on behalf of  
The REP Coalition**

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