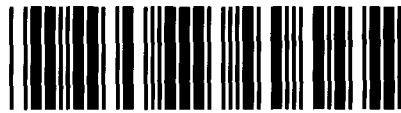


Control Number: 49794



Item Number: 4

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**PROJECT NO. 49794**

**RULEMAKING FOR BROKER  
REGISTRATIONS**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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PUBLIC UTILITY COMMISSION  
FILING CLERK

### **STAFF STRAWMAN RULE**

The Public Utility Commission of Texas (Commission Staff) requests comments on its strawman rule implementing Senate Bill 1497, which added Section 39.3555 to Subchapter H, Chapter 39 of the Utilities Code. Commission Staff's strawman rule proposes to add new sections 16 TAC §§ 25.112 and 25.486 and amend 16 TAC §§ 25.5, 25.8, 25.472, 25.473, 25.474, 25.475, 25.482, 25.485, 25.491, and 25.492 to make certain customer protection provisions, marketing guidelines, and disclosure requirements applicable to brokers.

Staff requests that interested persons submit written comments on this strawman by September 30, 2019.

Comments may be filed by submitting 16 copies to the Commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All responses should reference Project No. 49794.

Questions concerning this project should be referred to Cliff Crouch at (512) 936-7296 or James Kelsaw at (512) 936-7338.

1   **§25.112 Registration of Brokers.**

2       (a) **Registration required.** Any entity that provides brokerage services in Texas must register  
3       with the commission. Retail Electric Providers (REPs) may not register as brokers and  
4       must not knowingly provide bids or offers to an entity who provides brokerage services in  
5       Texas for compensation or other consideration and has not registered as a broker.

6       (b) **Requirements for entities seeking to register as a broker.** An entity seeking registration  
7       under this section must provide the information listed in this subsection on a registration  
8       form approved by the commission.

9           (1) **The name(s) of the registering entity.** A registering entity may operate under a  
10       maximum of five assumed names. At the time of registration, the registering entity  
11       must provide all names to the commission. Business names must not be deceptive,  
12       misleading, inappropriate, confusing, or duplicative in whole or part of any name  
13       currently in use or previously approved for use by a broker, aggregator, or REP in a  
14       way that may be confusing or misleading;

15          (2) **The address, telephone number, and email address of the principal place of business**  
16       of the registering entity;

17          (3) **The name, title, telephone number, and email address of the customer service contact**  
18       person;

19          (4) **The name, title, business mailing address, telephone number, and email address for**  
20       the regulatory contact person;

21          (5) **The name, title, business mailing address, and telephone number of each of the**  
22       registering entity's directors, officers, or partners;

23          (6) **A description of the brokerage services that are provided by the registering entity;**

1 (7) The types of electricity customers to whom the registering entity intends to provide  
2 brokerage services;

3 (8) Information on file with the Texas Secretary of State, including, but not limited to,  
4 the registering entity's certification of status, form of business being registered (e.g.,  
5 corporation, company, partnership, sole proprietorship, etc.), any assumed names,  
6 and date business was registered;

7 (9) Information on file with the offices of the county clerks in the counties where the  
8 registering entity maintains a business premise and in all counties where the  
9 registering entity conducts business under an assumed name; and

10 (10) Any other information required of a registering entity on a registration form  
11 approved by the commission.

12 (c) **Registration procedures.** The following procedures apply to entities seeking to register  
13 as brokers:

14 (1) A registration application must be made on the form approved by the commission,  
15 verified by notarized oath or affirmation, and signed by a registering entity owner or  
16 partner, or an officer of the registering entity. The form may be obtained from the  
17 central records division of the commission or from the commission's Internet site.  
18 Each registering entity must file its registration application form with the  
19 commission's filing clerk in accordance with the commission's procedural rules, 16  
20 TAC §§ 22.71 – 22.73.

21 (2) The registering entity may identify certain information or documents submitted that  
22 it believes to contain proprietary or confidential information. Registering entities  
23 may not designate the entire registration application as confidential. Information

1 designated as proprietary or confidential will be treated in accordance with the  
2 confidentiality requirements in the Public Utility Regulatory Act (PURA) and the  
3 commission's rules. If a public information act request is received for information  
4 designated as confidential, the registering entity has the burden to establish that the  
5 requested information is proprietary or confidential.

6 (3) The registering entity must immediately inform the commission of any material  
7 change in the information provided in the registration application while the  
8 application is pending.

9 (4) An application will be processed as follows:

10 (A) The commission staff will review the submitted form for completeness. Within  
11 20 business days of receipt of an application, the commission staff will notify  
12 the registering entity in writing of any deficiencies in the request. The  
13 registering entity will have ten business days from the issuance of the  
14 notification to cure the deficiencies. If the deficiencies are not cured within ten  
15 business days, the staff will notify the registering entity that the registration  
16 request is rejected without prejudice.

17 (B) Any name under which the applicant proposes to do business will be reviewed  
18 for compliance with subsection (b)(1) of this section. If the commission staff  
19 determines that any requested name does not meet the requirements of  
20 subsection (b)(1) of this section, the commission staff will notify the applicant.  
21 The applicant will have the opportunity to amend its application to provide one  
22 or more names that meet the requirements of subsection (b)(1) of this section. If  
23 the applicant does not amend the application, commission staff will reject the

1 registration application. The applicant may contest commission staff's rejection  
2 of the application in accordance with the procedure in paragraph (D) of this  
3 subsection.

4 (C) Commission staff will determine whether to accept or recommend rejection of  
5 the registration or renewal request within 60 days of the receipt of a complete  
6 application.

7 (D) An applicant may contest commission staff's rejection of its application by filing  
8 a petition for formal review of the registration application in accordance with 16  
9 TAC §§22.71 – 22.73. The registering entity has the burden of proof to establish  
10 that its application meets the requirements of PURA and the commission's rules.

11 (d) **Registration Renewal.** A broker registration expires three years after the date of  
12 acceptance. Each registrant must renew its registration with the commission not less than  
13 90 days prior to the expiration date of the current registration by submitting the required  
14 form in the manner established by the commission. A registration that is not timely  
15 renewed is no longer valid and the entity will be removed from the broker list on the  
16 commission's website.

17 (e) **Post-registration requirements.**

18 (1) A broker may not refuse to provide brokerage services or otherwise discriminate in  
19 the provision of brokerage services to any customer because of race, creed, color,  
20 national origin, ancestry, sex, marital status, source or level of income, disability, or  
21 familial status; or refuse to provide brokerage services to a customer because the  
22 customer is located in an economically distressed geographic area or qualifies for

1           low-income affordability or energy efficiency services; or otherwise unreasonably  
2           discriminate on the basis of the geographic location of a customer.

3           (2) A broker must comply with the commission's education, disclosure, and marketing  
4           guidelines and rules. A broker may not release proprietary customer information to  
5           any person unless the customer authorizes the release in a manner approved by the  
6           commission.

7           (3) A broker must amend its registration to reflect any changes to the information  
8           previously submitted, including business name, address, or telephone number within  
9           ten business days from the date of the change.

10          (f) **Suspension and revocation of registration and administrative penalty.** The  
11          commission may suspend or revoke a broker's registration if the commission finds that the  
12          registrant is in violation of PURA or commission rules. The commission may also impose  
13          an administrative penalty for a significant violation. Significant violations include, but are  
14          not limited to, the following:

15          (1) providing false or misleading information to the commission;

16          (2) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

17          (3) failure to meet the requirements of PURA, commission rules, or orders;

18          (4) failure to respond to commission inquiries or customer complaints in a timely  
19          fashion;

20          (5) switching or causing to be switched the REP of a customer without first obtaining the  
21          customer's authorization; or

- 1        (6) billing an unauthorized charge, or causing an unauthorized charge to be billed to a
- 2        customer's retail electric service bill.



**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter A. GENERAL PROVISIONS.**

**§25.5. Definitions.**

The following words and terms, when used in this chapter, ~~shall~~ have the following meanings, unless the context ~~clearly~~ indicates otherwise:

(1) – (10) (No change.)

(11) Broker – A person that provides brokerage services.

(12) Brokerage Services – providing advice or procurement services to, or acting on behalf of, a retail electric customer regarding the selection of a retail electric provider, or a product or service offered by a retail electric provider, including brokerage services offered online. Enrolling a retail electric customer as an agent for a retail electric provider is not a brokerage service.

~~(11)~~(13) **Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP)** -- A municipally owned utility/electric cooperative that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

~~(12)~~(14) **Calendar year** -- January 1 through December 31.

~~(13)~~(15) **Commission** -- The Public Utility Commission of Texas.

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(14)~~(16)        **Competition transition charge (CTC)** -- Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and ~~must~~shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

~~(15)~~(17)        **Competitive affiliate** -- An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

~~(16)~~(18)        **Competitive energy efficiency services** -- Energy efficiency services that are defined as competitive energy services pursuant to §25.341 of this title (relating to Definitions).

~~(17)~~(19)        **Competitive retailer** -- A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.

~~(18)~~(20)      **Congestion zone** -- An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

~~(19)~~(21)      **Control area** -- An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A)    match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B)    maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C)    maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D)    obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

~~(20)~~(22)      **Corporation** -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

1 privileges of a corporation not possessed by an individual or partnership. The term  
2 does not include a municipal corporation or electric cooperative, except as  
3 expressly provided by the Public Utility Regulatory Act.

4 ~~(21)~~(23) **Critical loads** -- Loads for which electric service is considered crucial for  
5 the protection or maintenance of public health and safety; including but not limited  
6 to hospitals, police stations, fire stations, critical water and wastewater facilities,  
7 and customers with special in-house life-sustaining equipment.

8 ~~(22)~~(24) **Customer choice** -- The freedom of a retail customer to purchase electric  
9 services, either individually or through voluntary aggregation with other retail  
10 customers, from the provider or providers of the customer's choice and to choose  
11 among various fuel types, energy efficiency programs, and renewable power  
12 suppliers.

13 ~~(23)~~(25) **Customer class** -- A group of customers with similar electric service  
14 characteristics (e.g., residential, commercial, industrial, sales for resale) taking  
15 service under one or more rate schedules. Qualified businesses as defined by the  
16 Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may  
17 be considered to be a separate customer class of electric utilities.

18 ~~(24)~~(26) **Day-ahead** -- The day preceding the operating day.

19 ~~(25)~~(27) **Deemed savings** -- A pre-determined, validated estimate of energy and  
20 peak demand savings attributable to an energy efficiency measure in a particular  
21 type of application that a utility may use instead of energy and peak demand savings  
22 determined through measurement and verification activities.

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(26)~~(28)      **Demand** -- The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

~~(27)~~(29)      **Demand savings** -- A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

~~(28)~~(30)      **Demand-side management (DSM)** -- Activities that affect the magnitude or timing of customer electrical usage, or both.

~~(29)~~(31)      **Demand-side resource or demand-side management** -- Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

~~(30)~~(32)      **Disconnection of service** -- Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.

~~(31)~~(33)      **Distribution line** -- A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

~~(32)~~(34)      **Distributed resource** -- A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(33)~~(35)       **Distribution service provider (DSP)** -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers, as defined in this section, including retail customers served at transmission voltage levels.

~~(34)~~(36)       **Economically distressed geographic area** -- Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.

~~(35)~~(37)       **Electric cooperative** --

(A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

~~(36)~~(38)       **Electric generating facility** -- A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(37)~~(39)      **Electricity Facts Label** -- Information in a standardized format, as described in §25.475(f) of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that summarizes the price, contract terms, fuel sources, and environmental impact associated with an electricity product.

~~(38)~~(40)      **Electricity product** -- A specific type of retail electricity service developed and identified by a REP, the specific terms and conditions of which are summarized in an Electricity Facts Label that is specific to that electricity product.

~~(39)~~(41)      **Electric Reliability Council of Texas (ERCOT)** -- Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

~~(40)~~(42)      **Electric service identifier (ESI ID)** -- The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by the Electric Reliability Council of Texas (ERCOT) or another independent organization.

~~(41)~~(43)      **Electric utility** -- Except as otherwise provided in this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter A. GENERAL PROVISIONS.**

Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

- (A) a municipal corporation;
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) the state of Texas or an agency of the state; or
- (J) a person not otherwise an electric utility who:
  - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
  - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or



## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.

~~(42)~~(44) **Energy efficiency** -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

~~(43)~~(45) **Energy efficiency measures** -- Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

~~(44)~~(46) **Energy efficiency project** -- An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

~~(45)~~(47) **Energy efficiency service provider (EESP)** -- A person who installs energy efficiency measures or performs other energy efficiency services. An

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

~~(46)~~(48)      **Energy savings** -- A quantifiable reduction in a customer's consumption of energy.

~~(47)~~(49)      **ERCOT protocols** -- Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants. The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission.

~~(48)~~(50)      **ERCOT region** -- The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.

~~(49)~~(51)      **Exempt wholesale generator** -- A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.109 of this title (Registration of Power Generation Companies and Self-Generators).

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(50)~~(52)      **Existing purchased power contract** -- A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

~~(51)~~(53)      **Facilities** -- All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

~~(52)~~(54)      **Financing order** -- An order of the commission adopted under the Public Utility Regulatory Act §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

~~(53)~~(55)      **Freeze period** -- The period beginning on January 1, 1999, and ending on December 31, 2001.

~~(54)~~(56)      **Generation assets** -- All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

~~(55)~~(57)      **Generation service** -- The production and purchase of electricity for retail customers and the production, purchase and sale of electricity in the wholesale power market.

~~(56)~~(58)      **Good utility practice** -- Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition.

Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

~~(57)~~(59)      **Hearing** -- Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

~~(58)~~(60)      **Independent organization** -- An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.

~~(59)~~(61)      **Independent system operator** -- An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

~~(60)~~(62)      **Installed generation capacity** -- All potentially marketable electric generation capacity, including the capacity of:

(A)    generating facilities that are connected with a transmission or distribution system;

(B)    generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

~~(61)~~(63) **Interconnection agreement** -- The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

~~(62)~~(64) **License** -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

~~(63)~~(65) **Licensing** -- The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

~~(64)~~(66) **Load factor** -- The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

~~(65)~~(67) **Low-income customer** -- An electric customer who receives Supplemental Nutrition Assistance Program (SNAP) from Texas Health and Human Services Commission (HHSC) or medical assistance from a state agency administering a part of the medical assistance program.

~~(66)~~(68) **Low-Income List Administrator (LILA)** -- A third-party administrator contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007.

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(67)~~(69)      **Market power mitigation plan** -- A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.

~~(68)~~(70)      **Market value** -- For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

~~(69)~~(71)      **Master meter** -- A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

~~(70)~~(72)      **Municipality** -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

~~(71)~~(73)      **Municipally-owned utility (MOU)** -- Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

~~(72)~~(74)      **Nameplate rating** -- The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

~~(73)~~(75)      **Native load customer** -- A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter A. GENERAL PROVISIONS.

~~(74)~~(76)      **Natural gas energy credit (NGEC)** -- A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by the Public Utility Regulatory Act §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

~~(75)~~(77)      **Net book value** -- The original cost of an asset less accumulated depreciation.

~~(76)~~(78)      **Net dependable capability** -- The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

~~(77)~~(79)      **New on-site generation** -- Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A)    A fully operational facility, or

(B)    A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

~~(78)~~(80)      **Off-grid renewable generation** -- The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

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~~(79)~~(81)      **Other generation sources** -- A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

~~(80)~~(82)      **Person** -- Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

~~(81)~~(83)      **Power cost recovery factor (PCRF)** -- A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

~~(82)~~(84)      **Power generation company (PGC)** -- A person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

~~(83)~~(85)      **Power marketer** -- A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a



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certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

~~(84)~~(86)      **Power region** -- A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

~~(85)~~(87)      **Pre-interconnection study** -- A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.

~~(86)~~(88)      **Premises** -- A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.

~~(87)~~(89)      **Price to beat (PTB)** -- A price for electricity, as determined pursuant to the Public Utility Regulatory Act §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.

~~(88)~~(90)      **Proceeding** -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

~~(89)~~(91)      **Proprietary customer information** -- Any information compiled by a retail electric provider, an electric utility, a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for

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Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating electric service or by a broker on a client in the course of providing brokerage services that makes possible the identification of any individual customer or client by matching such information with the customer's or client's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer or client has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer or client to whom the information relates does not constitute proprietary customer information.

~~(90)~~(92)      **Provider of last resort (POLR)** -- A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

~~(91)~~(93)      **Public retail customer** -- A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.

~~(92)~~(94)      **Public utility or utility** -- An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

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~~(93)~~(95)        **Public Utility Regulatory Act (PURA)** -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 *et. seq.*

~~(94)~~(96)        **Purchased power market value** -- The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

~~(95)~~(97)        **Qualified scheduling entity** -- A market participant that is qualified by the Electric Reliability Council of Texas (ERCOT) in accordance with Section 16, Registration and Qualification of Market Participants of ERCOT's Protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.

~~(96)~~(98)        **Qualifying cogenerator** -- The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

~~(97)~~(99)        **Qualifying facility** -- A qualifying cogenerator or qualifying small power producer.

~~(98)~~(100)       **Qualifying small power producer** -- The meaning as assigned this term by 16 U.S.C. §796(17)(D).

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~~(99)~~(101)     **Rate** -- A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

~~(100)~~(102)     **Rate class** -- A group of customers taking electric service under the same rate schedule.

~~(101)~~(103)     **Rate year** -- The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

~~(102)~~(104)     **Ratemaking proceeding** -- A proceeding in which a rate may be changed.

~~(103)~~(105)     **Registration agent** -- Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.

~~(104)~~(106)     **Regulatory authority** -- In accordance with the context where it is found, either the commission or the governing body of a municipality.

~~(105)~~(107)     **Renewable demand side management (DSM) technologies** -- Equipment that uses a renewable energy resource (renewable resource) as defined in this

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section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

~~(106)~~(108) **Renewable energy** -- Energy derived from renewable energy technologies.

~~(107)~~(109) **Renewable energy credit (REC)** -- A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the Public Utility Regulatory Act §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).

~~(108)~~(110) **Renewable energy credit account (REC account)** -- An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

~~(109)~~(111) **Renewable energy resource (renewable resource)** -- A resource that produces energy derived from renewable energy technologies.

~~(110)~~(112) **Renewable energy technology** -- Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

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~~(111)~~(113) **Repowering** -- Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

~~(112)~~(114) **Residential customer** -- Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.

~~(113)~~(115) **Retail customer** -- The separately metered end-use customer who purchases and ultimately consumes electricity.

~~(114)~~(116) **Retail electric provider (REP)** -- A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

~~(115)~~(117) **Retail stranded costs** -- That part of net stranded cost associated with the provision of retail service.

~~(116)~~(118) **Retrofit** -- The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

~~(117)~~(119) **River authority** -- A conservation and reclamation district created pursuant to the Texas Constitution, Article 16, Section 59, including any nonprofit corporation created by such a district pursuant to the Texas Water Code, Chapter 152, that is an electric utility.

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1        ~~(118)~~(120)     **Rule** -- A statement of general applicability that implements, interprets, or  
2                    prescribes law or policy, or describes the procedure or practice requirements of the  
3                    commission. The term includes the amendment or repeal of a prior rule, but does  
4                    not include statements concerning only the internal management or organization of  
5                    the commission and not affecting private rights or procedures.

6        ~~(119)~~(121)     **Separately metered** -- Metered by an individual meter that is used to  
7                    measure electric energy consumption by a retail customer and for which the  
8                    customer is directly billed by a utility, retail electric provider, electric cooperative,  
9                    or municipally owned utility.

10       ~~(120)~~(122)     **Service** -- Has its broadest and most inclusive meaning. The term includes  
11                    any act performed, anything supplied, and any facilities used or supplied by an  
12                    electric utility in the performance of its duties under the Public Utility Regulatory  
13                    Act to its patrons, employees, other public utilities or electric utilities, an electric  
14                    cooperative, and the public. The term also includes the interchange of facilities  
15                    between two or more public utilities or electric utilities.

16       ~~(121)~~(123)     **Spanish-speaking person** -- A person who speaks any dialect of the  
17                    Spanish language exclusively or as their primary language.

18       ~~(122)~~(124)     **Standard meter** -- The minimum metering device necessary to obtain the  
19                    billing determinants required by the transmission and distribution utility's tariff  
20                    schedule to determine an end-use customer's charges for transmission and  
21                    distribution service.

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~~(123)~~(125)     **Stranded cost** -- The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and must~~shall~~ include stranded costs incurred under PURA §39.263.

~~(124)~~(126)     **Submetering** -- Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

~~(125)~~(127)     **Summer net dependable capability** -- The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

~~(126)~~(128)     **Supply-side resource** -- A resource, including a storage device, that provides electricity from fuels or renewable resources.



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~~(127)~~(129)     **System emergency** -- A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

~~(128)~~(130)     **Tariff** -- The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

~~(129)~~(131)     **Termination of service** -- The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.

~~(130)~~(132)     **Tenant** -- A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

~~(131)~~(133)     **Test year** -- The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and must~~shall~~ commence with a calendar quarter or a fiscal year quarter.

~~(132)~~(134)     **Texas jurisdictional installed generation capacity** -- The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation must~~shall~~ be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the

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commission to reflect the effects of divestiture or the installation of new generation facilities.

~~(133)~~(135)     **Transition bonds** -- Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

~~(134)~~(136)     **Transition charges** -- Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that ~~must~~shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

~~(135)~~(137)     **Transmission and distribution business unit (TDBU)** -- The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under the Public Utility Regulatory Act §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is

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an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit ~~can~~shall not provide competitive energy-related activities.

~~(136)~~(138) **Transmission and distribution utility (TDU)** -- A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of “electric utility”, in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.

~~(137)~~(139) **Transmission line** -- A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

~~(138)~~(140) **Transmission service** -- Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area

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services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the Electric Reliability Council of Texas (ERCOT) region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not “transmission service”.

~~(139)~~(141) **Transmission service customer** -- A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.

~~(140)~~(142) **Transmission service provider (TSP)** -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

~~(141)~~(143) **Transmission system** -- The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

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**Subchapter A. GENERAL PROVISIONS.**

**§25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.**

- (a) (No Change.)
- (b) **Classification system.**
  - (1) **Class C violations.**
    - (A) (No Change.)
    - (B) The following violations are Class C violations:
      - (i) failure to file a report or provide information required to be submitted to the commission under this chapter within the timeline required;
      - (ii) failure by an electric utility, retail electric provider, aggregator, or broker ~~or aggregator~~ to investigate a customer complaint and appropriately report the results within the timeline required;
      - (iii) failure to update information relating to a registration or certificate by the commission within the timeline required; and
      - (iv) a violation of the Electric no-call list.
  - (2) **Class B violations.**
    - (A) (No Change.)
    - (B) All violations not specifically enumerated as a Class C or Class A violation ~~are shall be~~ considered Class B violations.

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- (3) (No Change.)
- (c) (No Change.)
- (d) **Assessment of administrative penalties.** In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties must~~shall~~ indicate the class of violation.

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### Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

#### §25.471. General Provisions of Customer Protection Rules.

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

(1) – (2) (No Change.)

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

(4) – (5) (No Change.)

(b) **Purpose.** The purposes of this subchapter are to:

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1           (1)     provide minimum standards for customer protection. A REP, aggregator, or broker  
2                 ~~An aggregator or REP~~ may adopt higher standards for customer protection,  
3                 provided that the prohibition on discrimination set forth in subsection (c) of this  
4                 section is not violated;

5           (2) – (3)     (No Change.)

6           (4)     prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and  
7                 practices by REPs, aggregators, and brokers ~~aggregators and REPs~~ in the  
8                 marketing, solicitation and sale of electric service and in the administration of any  
9                 terms of service for electric service.

10          (c)     (No Change.)

11          (d)     **Definitions.** For the purposes of this subchapter the following words and terms have the  
12                 following meaning, unless the context clearly indicates otherwise:

13          (1) – (9)     (No Change.)

14          (10)     **Retail electric provider (REP)**--Any entity as defined in §25.5 of this title  
15                 (relating to Definitions). For purposes of this rule, a municipally owned utility or  
16                 an electric cooperative is only considered a REP where it sells retail electric  
17                 power and energy outside its certified service territory. An agent of the REP may  
18                 perform all or part of the REP's responsibilities under~~pursuant to~~ this subchapter.  
19                 For purposes of this subchapter, the REP is~~shall be~~ responsible for the actions of  
20                 the agent.

21          (11) – (13)     (No Change.)



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Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

§25.472. Privacy of Customer Information.

(a) ~~Mass customer lists.~~ Prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated retail electric providers (REPs) and registered aggregators.

(1) ~~A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI ID). All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act (PURA) §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.~~

(2) ~~Prior to the release of a mass customer list, an electric utility shall mail a notice to all customers who may be included on the list. The notice shall:~~

(A) ~~explain the issuance of the mass customer list;~~

(B) ~~provide the customer with the option of not being included on the list and allow the customer at least 30 days to exercise that option;~~

(C) ~~inform the customer of the availability of the no-call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and provide the customer with information on how to request placement on the list;~~

(D) ~~provide a toll-free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.~~

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(3) ~~The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.~~

(4) ~~The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.~~

(5) ~~A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.~~

#### ~~(b) Individual customer and premise information.~~

~~(a)~~ A retail electric provider (REP), aggregator, or broker ~~or aggregator must~~ shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's or applicant's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider). This prohibition ~~does~~ shall not apply to the release of such information by a REP, aggregator, or broker to: ~~or aggregator to:~~

(1A) ~~the commission; in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;~~

(2B) ~~an agent, vendor, partner, or affiliate of the REP, aggregator, or broker or aggregator engaged to perform any services for or functions on behalf of the REP, aggregator, or broker, or aggregator, including marketing of the REP's, aggregator's, or broker's or aggregator's own products or services,~~

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or products or services offered ~~under~~pursuant to joint agreements between the REP, aggregator, or broker, ~~or aggregator~~ and a third party;

(~~A~~i) All such agents, vendors, partners, or affiliates of the REP, aggregator, or broker ~~or aggregator~~ ~~must~~shall be required to sign a confidentiality agreement with the REP, aggregator, or broker ~~or aggregator~~ and agree to be held to the same confidentiality standards as the REP, aggregator, or broker ~~or aggregator~~ ~~under~~pursuant to this section; and

(~~B~~ii) In the event that a REP, aggregator, or broker shares proprietary customer or client information with a third party for the purpose of marketing such party's products or services to the REP's or aggregator's customer, or broker's client prior to the release of information to any such, agent, partner or affiliate, a REP, aggregator, or broker ~~or aggregator~~ ~~must~~shall provide the customer an opportunity to opt-out of the release of their information for such marketing purposes by either of the following methods:

(~~i~~if) send a notice to customers or clients explaining the issuance of the ~~each~~ information release and the reason for the information release and provide the customer or client with the option of not being included in the information release and allow the customer or client at least 30 days to exercise that option; or

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(~~ii~~**H**) include an opportunity for the customer or client to make a choice as to whether or not the customer or client wants to be included in all future marketing of other products and services by the REP, aggregator, or broker or its agent, partner, or affiliate. Such opportunity ~~must~~**may** be provided during the authorization and verification process detailed in §25.474 or via a separate notice and mailing to customers or clients.

(~~3~~**E**) a consumer reporting agency as defined by the Federal Trade Commission;

(~~4~~**D**) an energy assistance agency to allow a customer or an applicant to qualify for and obtain other financial assistance provided by the agency. A REP ~~can~~**may** rely on the representations of an entity claiming to provide energy assistance;

(~~5~~**E**) local, state, and federal law enforcement agencies;

(~~6~~**F**) the transmission and distribution utility (TDU) within whose geographic service territory the customer or applicant is located, ~~according~~**pursuant** to the provisions of the TDU's commission-approved Tariff for Retail Electric Delivery Service;

(~~7~~**G**) the Office of the Public Utility Counsel, upon request ~~under~~**pursuant to** PURA §39.101(d);

(~~H~~) ~~conduct activities required by subsection (a) of this section;~~

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(8F) the registration agent, another REP, a provider of last resort (POLR), or TDU as necessary to complete a required market transaction, under terms approved by the commission; or

(9F) the registration agent or a TDU in order to effectuate a customer's move-in, transfer, or switch.

(b2) ~~Under no circumstances shall a~~ REP, aggregator, or broker ~~is not permitted to or~~ aggregator sell, make available for sale, or authorize the sale of any customer-specific information or data obtained under any circumstances.

(c3) Upon receiving authorization from a customer or applicant, a REP ~~must~~shall request from the TDU the monthly usage of the customer's or applicant's premise for the previous 12 months. The TDU, upon receipt of a written request or other proof of authorization, ~~must~~shall provide the requested information to the requesting REP or to the customer or applicant no later than three business days after the request or proof of authorization is submitted.

(d4) A REP ~~must~~shall, upon the request of an energy assistance agency, provide a 12-month billing history free of charge that includes both usage data and the dollar amount of each monthly billing. If 12 months of billing data are not available from the REP, the REP ~~must~~shall estimate the amount billed using the REP's residential rate. The history ~~must~~shall also clearly designate estimated amounts. A residential billing history requested by an energy assistance agency ~~must~~shall be provided by the end of the next business day after the request is made. A residential billing history requested by a customer ~~must~~shall be provided within five business days of the customer request.

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- 1     (5)     Upon the request of a customer, a REP ~~must~~<sup>shall</sup> notify a third person chosen by the  
2             customer of any pending disconnection of electric service with respect to the  
3             customer's account.

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§25.473. Non-English Language Requirements.

(a) **Applicability.** This section applies to retail electric providers (REPs), aggregators, brokers, and the registration agent.

(b) **Retail electric providers (REPs).** A REP ~~must~~shall provide the following information to an applicant or customer in English, Spanish, or the language used in the marketing of service, as designated by the applicant or customer.

(1) (3) (No Change.)

(c) **Aggregators.** An aggregator ~~must~~shall provide the following information to a customer in English, Spanish, or the language used to market the aggregator's products and services, as designated by the customer or the applicant:

(1) (3) (No Change.)

(d) **Brokers.** A broker must provide the following information to a customer in the language used to market the broker's products and services:

(1) information required by this subchapter;

(2) access to customer service.

~~(d)~~(e) **Dual language requirement.** The following documents ~~must~~shall be provided to all customers in both English and Spanish, unless a customer has designated a language other than English or Spanish as the language in which they will receive the information described in subsection (b) of this section, in which case the documents described in

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paragraphs (1) and (3) of this subsection ~~must~~<sup>shall</sup> be provided in English and the other language designated by the customer.

(1) (No Change.)

(2) the enrollment notification notice provided by the registration agent ~~under~~<sup>pursuant</sup> to §25.474(1) of this title (relating to Selection of Retail Electric Provider); and

(3) (No Change.)

~~(e)~~<sup>(f)</sup> **Prohibition on mixed language.** Unless otherwise noted in this subchapter, if any portion of a printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure is translated into another language, then all portions ~~must~~<sup>shall</sup> be translated into that language. A single informational statement advising how to obtain the same printed advertisements, electronic advertising over the Internet, direct marketing material, billing statement, terms of service documents, or Your Rights as a Customer disclosure in a different language is permitted.



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#### §25.474. Selection of Retail Electric Provider.

(a) **Applicability.** This section applies to retail electric providers (REPs) and aggregators seeking to enroll applicants or customers for retail electric service. In addition, where specifically stated, this section applies to transmission and distribution utilities (TDUs) and the registration agent.

(b) **Purpose.** The provisions of this section establish procedures for enrollment of applicants or customers by a REP and ensure that all applicants and customers in this state are protected from an unauthorized switch from the applicant's or customer's REP of choice or an unauthorized move-in. A contested switch in providers ~~will~~shall be presumed to be unauthorized unless the REP provides proof, in accordance with the requirements of this section, of the applicant's or customer's authorization and verification.

#### (c) **Initial REP selection process.**

(1) (No Change.)

(2) Any affiliated REP assigned to serve a customer that is entitled to receive the price-to-beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:

(A) – (C) (No Change.)

(3) An electric utility whose successor affiliated REP will continue to serve customers not eligible for the price-to-beat rate, ~~underpursuant to~~ PURA §39.102(b), ~~must~~shall issue to the customer a terms of service document on a date prescribed

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by the commission. Such a document must~~shall~~ contain an explanation of the price the customer will be charged by the affiliated REP.

(d) **Enrollment via the Internet.** For enrollments of applicants via the Internet, a REP or aggregator must~~shall~~ obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.

(1) The website (or websites) must~~shall~~ clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or REP and its certification number to sell retail electric service, its address, and telephone number.

(2) The website must~~shall~~ include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the applicant or customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information.

(3) The website must~~shall~~ include an explanation that a move-in or a switch can only be made by the electric service applicant or the applicant's authorized agent.

(4) The entire enrollment process must~~shall~~ be in plain, easily understood language. The entire enrollment must~~shall~~ be the same language. Nothing in this section is meant to prohibit a REPs or an aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.

(5) **Required authorization disclosures.** Prior to requesting confirmation of the move-in or switch request, a REP or aggregator must~~shall~~ clearly and conspicuously disclose the following information:

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(A) (No Change.)

(B) the name of the specific electric service package or plan for which the applicant's assent is ~~obtained~~attained;

(C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant.

The REP or aggregator ~~must~~shall provide a means of documenting a customer's language preference;

(D) – (F) (No Change.)

(G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or provider of last resort (POLR) ~~must~~shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title (relating to Credit Requirements and Deposits);

(H) any fees to the applicant for switching to the REP ~~under~~pursuant to subsection (n) of this section;

(I) in the case of a switch request, the applicant's right, ~~under~~pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;

(J) – (K) (No Change.)

(6) The applicant ~~must~~shall be required to check a box affirming that the applicant has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.

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(7) The REP or aggregator ~~must~~shall provide access to the complete terms of service document that is being agreed to by the applicant on the website such that the applicant may review the terms of service prior to enrollment. A prompt ~~must~~shall also be provided for the applicant to print or save the terms of service document to which the applicant assents, and ~~must~~shall inform the application of the option to request that a written copy of the terms of service document be sent by regular U.S. mail by contacting the REP.

(8) The REP or aggregator ~~must~~shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the applicant's or customer's agreement. The REP or aggregator ~~must~~shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.

(9) Applicant authorizations ~~must~~shall adhere to any state and federal guidelines governing the use of electronic signatures.

(10) **Verification of authorization for Internet enrollment.** Prior to final verification by the applicant of enrollment with the REP or aggregator, the REP or aggregator ~~must~~shall:

(A) – (E) (No Change.)

(11) After enrollment, the REP or aggregator ~~must~~shall send a confirmation, by email, of the applicant's request to select the REP. The confirmation email ~~must~~shall include:

(A) in the case of a switch, a clear and conspicuous notice of the applicant's right, ~~under~~pursuant to subsection (j) of this section, to review and rescind

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the terms of service within three federal business days, after receiving the terms of service without penalty and offer the applicant the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice ~~must~~shall be accessible to the applicant without need to open an attachment or link to any other document; and

(B) the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.

(e) **Written enrollment.** For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator ~~must~~shall obtain authorization and verification of the switch or move-in request from the applicant in accordance with this subsection.

(1) All LOAs for move-in or switch orders ~~must~~shall be in plain, easily understood language. The entire enrollment ~~must~~shall be in the same language.

(2) The LOA ~~must~~shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.

(3) The LOA may contain a description of inducements associated with enrolling with the REP; however, the actual inducement itself ~~must~~shall not be either included on or as part of the LOA, or constitute the LOA by itself.

(4) The LOA ~~must~~shall be legible and ~~must~~shall contain clear and unambiguous language.

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(5) **Required authorization disclosures.** The LOA ~~must~~shall disclose the following information:

- (A) the name of the new REP;
- (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
- (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant.  
The REP ~~must~~shall provide a means of documenting an applicant's language preference;
- (D) – (F) (No Change.)
- (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or POLR ~~must~~shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;
- (H) any fees to the applicant for switching to the REP ~~underpursuant to~~underpursuant to subsection (n) of this section;
- (I) in the case of a switch, the applicant's right, ~~underpursuant to~~underpursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;

(J) – (K) (No Change.)

(6) **Verification of authorization of written enrollment.** A REP or aggregator ~~must~~shall, as part of the LOA:

(A) – (D) (No Change.)

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(E) obtain one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP ~~must~~may obtain the applicant's federal tax identification number.

(7) The following LOA form meets the requirements of this subsection if modified as appropriate for the requirements of paragraph (5)(G) of this subsection. Other versions may be used, but ~~must~~shall contain all the information and disclosures required by this subsection.

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1

2 LETTER OF AUTHORIZATION

3 REP name and license number: \_\_\_\_\_

4 Applicant billing name: \_\_\_\_\_

5 Applicant billing address: \_\_\_\_\_

6 Applicant service address: \_\_\_\_\_

7 City, state, zip code: \_\_\_\_\_

8 ESI ID, if available: \_\_\_\_\_

9

10 If applicable, name of individual legally authorized to act for customer and relationship to  
11 applicant: \_\_\_\_\_

12 Telephone number of individual authorized to act for applicant: \_\_\_\_\_

13

14 \_\_\_\_ By initialing here, I acknowledge that I have read and understand the terms of service for the  
15 product for which I am enrolling.

16

17 \_\_\_\_ By initialing here, I acknowledge that I understand that the price I am agreeing to is \_\_\_\_ cents  
18 per kWh, the term of service that I am agreeing to is \_\_\_\_\_, that I will be required  
19 to pay a deposit in the amount of \$ \_\_\_\_\_ in order to enroll, that I prefer to receive information  
20 from my REP in English/Spanish (circle one), and that there is a penalty for early cancellation of  
21 \_\_\_\_\_ as specified by the terms of service.

22



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1    \_\_\_\_ By initialing here and signing below, I am authorizing (name of new REP) to become my  
2    new retail electric provider and to act as my agent to perform the necessary tasks to establish my  
3    electric service account with (name of new REP). This authorization to establish or switch my  
4    provider of electric service extends to the following locations (list each service address):

5    \_\_\_\_\_  
6    \_\_\_\_\_

7  
8    **I have read and understand this Letter of Authorization and the terms of service that**  
9    **describe the service I will be receiving. I am at least eighteen years of age and legally**  
10    **authorized to select or change retail electric providers for the service address(s) listed above.**

11  
12    Signed: \_\_\_\_\_ Date: \_\_\_\_\_

13  
14    **You have the right to review and, in the case of a switch request, rescind the terms of service**  
15    **within three federal business days, after receiving the terms of service, without penalty. You**  
16    **will receive a written copy of the terms of service document that will explain all the terms of**  
17    **the agreement and how to exercise the right of rescission before your electric service is**  
18    **switched to the REP.**

19  
20        (8)    Before obtaining a signature from a customer, a REP must~~shall~~:

21                (A) –(B)        (No Change.)

22        (9)    Upon obtaining the applicant's signature, a REP or aggregator must~~shall~~  
23                immediately provide the applicant a legible copy of the signed LOA, and must~~shall~~

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1 distribute or mail the terms of service document, Electricity Facts Label, PDS, if  
2 applicable, and Your Rights as a Customer disclosure. If a written solicitation by  
3 a REP contains the terms of service document, any tear-off portion that is submitted  
4 by the applicant to the REP to obtain electric service must~~shall~~ allow the applicant  
5 to retain the terms of service document.

6 (10) The applicant's signature on the LOA will~~shall~~ constitute an authorization of the  
7 move-in or switch request if the LOA complies with the provisions of this section  
8 and the terms of service comply with the requirements of §25.475(d) of this title  
9 (relating to General Retail Electric Provider Requirements and Information  
10 Disclosures to Residential and Small Commercial Customers).

11 (f) **Enrollment via door-to-door sales.** A REP or aggregator that engages in door-to-door  
12 marketing at an applicant's or customer's residence must~~shall~~ comply with the following  
13 requirements:

14 (1) **Solicitation requirements.** A REP or aggregator that engages in door-to-door  
15 marketing at an applicant's residence must~~shall~~ comply with the following  
16 requirements:

17 (A) The REP or aggregator must~~shall~~ provide the disclosures required by this  
18 section and the three-day right of rescission required by the Federal Trade  
19 Commission's Trade Regulation Rule Concerning Cooling Off Period for  
20 Sales Made at Homes or at Certain Other Locations (16 C.F.R. Part 429).

21 (B) The individual who represents the REP or aggregator must~~shall~~ wear a clear  
22 and conspicuous identification of the REP or aggregator on the front of the  
23 individual's outer clothing or on an identification badge worn by the

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individual. In addition, the individual ~~must~~shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed ~~must~~shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.

(C) The REP or aggregator ~~must~~shall affirmatively state that it is not a representative of the applicant's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation ~~must~~shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.

(D) The REP or aggregator ~~must~~shall not represent that an applicant or customer is required to switch service in order to continue to receive power.

(E) Door-to-door representatives ~~must~~shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.

(2) **Use of a portable electronic device (PED) in door-to-door sales.** A REP or aggregator may use a PED to conduct door-to-door sales at an applicant's or customer's residence. For the purpose of this section, a PED is defined as a nonstationary light-weight, electrically-powered device that is capable of

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communications, data storage and processing, and accessing, directly or indirectly, the REP or aggregator network. Examples of PEDs include, but are not limited to: laptop computers, tablets, tablet computers, personal digital assistants, and smart phones.

(A) The REP or aggregator is responsible for ensuring that the PED complies with the requirements of this section.

(B) The PED ~~must~~shall be owned, rented, or leased by the REP, aggregator, or third-party vendor retained by the REP or aggregator. The PED ~~must~~shall not be owned by an individual employee of the REP, aggregator, or vendor that has been retained by the REP or aggregator.

(C) The entire enrollment process ~~must~~shall be in plain, easily understood language, and be consistent with the requirements of §25.473 of this title (relating to Non-English Language Requirements.) The entire solicitation and enrollment process ~~must~~shall be conducted in the same language. The REP or aggregator ~~must~~shall provide a means of documenting the applicant's language preference.

(D) (No Change.)

(E) The PED ~~must~~shall:

(i) – (ii) (No Change.)

(iii) have enabled mobile locating and tracking capabilities that allows the REP or aggregator to track the time and location of each customer enrollment, subject to the availability of industry standard

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communications signals such as cellular or Wi-Fi at the specific time of enrollment.

(F) Any applicant or customer specific information entered into the PED ~~must~~shall be transferred within one business day to the REP or aggregator's systems using Secure Socket Layer or similar encryption standard to ensure privacy of applicant or customer information. Once the transfer of data has been verified, any such applicant or customer specific information retained on the PED ~~must~~shall be removed.

(G) The REP or aggregator is responsible for the protection of all applicant or customer information.

(3) **Required authorization disclosures.** Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator ~~must~~shall comply with all of the authorization disclosure requirements in either subsections (e)(5) or (h)(1) - (4) of this section.

(A) A REP or aggregator may provide the disclosures required by subsection (e)(5) of this section using a PED; however, if an applicant expresses an inability to read or understand the disclosure information on the PED, the REP or aggregator ~~must~~shall either provide the required disclosures ~~underpursuant to~~ subsection (e)(5) of this section in paper format, provide the disclosures ~~underpursuant to~~ subsection (h)(1) – (4) of this section, or advise the applicant that they will not be able to complete enrollment.

(B) If a REP or aggregator provides the disclosures using a PED, the REP or aggregator ~~must~~shall:

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(i) – (iv) (No Change.)

(4) **Verification of authorization for door-to-door enrollment.** A REP, or an independent third party retained by the REP, ~~must~~shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph, unless verification is obtained using a PED as specified in paragraph (5) of this subsection. If verification is obtained using a PED as specified in paragraph (5) of this subsection, the REP or aggregator has the option, with applicant consent, to complete the verification of authorization requirement utilizing the process defined in paragraph (5) of this subsection.

(A) Electronically record on audiotape, a wave sound file, or other recording device the entirety of an applicant's verification. The verification call ~~must~~shall comply with the requirements in subsection (h)(5) of this section.

(B) (No Change.)

(C) Verification ~~must~~shall be conducted in the same language as that used in the sales transaction and authorization.

(D) Automated systems ~~must~~shall provide the applicant with the option of exiting the system and nullifying the enrollment at any time during the call.

(E) A REP or its sales representative initiating a three-way call or a call through an automated verification system ~~must~~shall not participate in the verification process.

(F) The REP ~~must~~shall not submit a move-in or switch request until it has obtained a recorded telephonic verification of the enrollment.

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#### (5) Verification of authorization for door-to-door enrollments using a PED.

(A) The REP or aggregator ~~must~~shall obtain affirmation from the applicant that the applicant is authorized to perform the enrollment and consents to the enrollment being verified using a PED. If the applicant does not consent to the enrollment being verified using a PED or expresses an inability to read or understand the verification of authorization information on the PED at any time, the representative ~~must~~shall verify authorization of enrollment ~~underpursuant to~~ paragraph (4) of this subsection or advise the applicant that they will not be able to complete enrollment.

(B) If the applicant consents to verification being conducted using a PED, the REP or aggregator ~~must~~shall:

(i) – (iii) (No Change.)

(iv) obtain applicant's electronic signature that adheres to Texas and federal guidelines or, alternatively, require unassisted direct entry of a uniquely identifiable input by the applicant matching the input obtained ~~underpursuant to~~ paragraph (3) of this subsection affirming that the customer or applicant is authorized to select or change REPs for the service address and authorizes the new REP to perform necessary tasks to complete a switch or move-in for the customer's or applicant's service with the new REP.

(C) The REP ~~must~~shall not submit a move-in or switch request until it has obtained the applicant's verification of the enrollment.

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(D) After enrollment, the REP or aggregator ~~must~~shall send a confirmation by first class mail, email, or other agreed upon means of communication to the applicant of the applicant's request to select the REP. The REP or aggregator may assume that any delivery of the confirmation deposited first class within the United States Postal service will be received within three federal business days. The confirmation ~~must~~shall include:

(i) a clear and conspicuous notice in the body of the confirmation of the customer's three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or Certain Other Locations (16 C.F.R. Part 429). The notice ~~must~~shall state that the customer may exercise their right to rescission within three federal business days after receiving the terms of service without penalty and offer the customer the option of exercising this right by toll-free number, email, Internet website, facsimile transmission, or regular mail. If conveyed electronically, the notice ~~must~~shall be accessible to the applicant without need to open an attachment or link to any other document; and

(ii) (No Change.)

(6) (No Change.)

(g) **Personal solicitations other than door-to-door marketing.** A REP or aggregator that engages in personal solicitation at a location other than a customer's residence (such as malls, fairs, or places of business) ~~must~~shall comply with all requirements for written



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enrollments and LOA requirements detailed in subsection (e) of this section. In addition, the REP or aggregator must~~shall~~ comply with the following additional requirements:

(1) For transactions occurring at a place other than the REP or aggregator's place of business, the REP or aggregator must~~shall~~ provide the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 C.F.R. Part 429).

(2) For solicitations of residential customers, the individual who represents the REP or aggregator must~~shall~~ wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. The company name displayed must~~shall~~ conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.

(3) The individual who represents the REP or aggregator must~~shall~~ not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation must~~shall~~ be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.

(4) The REP or aggregator must~~shall~~ not represent that an applicant is required to switch service in order to continue to receive power.

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1 (h) **Telephonic enrollment.** For enrollments of applicants via telephone solicitation, a REP  
2 or aggregator ~~must~~shall obtain authorization and verification of the move-in or switch  
3 request from the applicant in accordance with this subsection.

4 (1) A REP or aggregator ~~must~~shall electronically record on audio tape, a wave sound  
5 file, or other recording device the entirety of an applicant's authorization and  
6 verification. Automated systems ~~must~~shall provide the customers with either the  
7 option of speaking to a live person at any time during the call, or the option to exit  
8 the call and cancel the enrollment.

9 (2) The REP or aggregator ~~must~~shall inform the customer that the authorization and  
10 verification portions of the call are being recorded.

11 (3) Authorizations and verifications ~~must~~shall be conducted in the same language as  
12 that used in the sales transaction.

13 (4) Required authorization disclosures. Prior to requesting verification of the move-in  
14 or switch request, a REP or aggregator ~~must~~shall clearly and conspicuously disclose  
15 the following information:

16 (A) – (E) (No Change.)

17 (F) any requirement to pay a deposit and the estimated amount of that deposit,  
18 or the method in which the deposit will be calculated or the method in which  
19 the deposit will be calculated. An affiliated REP or POLR ~~must~~shall also  
20 notify the applicant of the right to post a letter of guarantee in lieu of a  
21 deposit in accordance with §25.478(i) of this title;

22 (G) any fees to the applicant for switching to the REP ~~underpursuant to~~  
23 subsection (n) of this section;

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(H) in the case of a switch, the applicant's right, ~~under~~<sup>pursuant to</sup> subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;

(I) – (J) (No Change.)

#### (5) Verification of authorization of telephonic enrollment.

(A) A REP or aggregator ~~must~~<sup>shall</sup> electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's verification of the authorization. The REP or aggregator ~~must~~<sup>shall</sup> inform the applicant that the verification call is being recorded.

(B) Prior to final confirmation by the applicant that they wish to enroll with the REP, the REP ~~must~~<sup>shall</sup>, at a minimum:

(i) –(iv) (No Change.)

(v) ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the applicant)?" The REP ~~must~~<sup>shall</sup> provide a means of documenting the applicant's language preference; and

(vi) (No Change.)

(C) In the event the applicant does not consent to or does not provide any of the information listed in subparagraph (B) of this paragraph, the enrollment ~~will~~<sup>shall</sup> be deemed invalid and the REP ~~must~~<sup>shall</sup> not submit a switch or move-in request for the applicant's service.

(D) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that

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the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP ~~must~~shall not submit a move-in or switch request until it has received the prepayment from the customer.

#### (i) **Record retention.**

(1) A REP or aggregator ~~must~~shall maintain non-public records of each applicant's authorization and verification of enrollment for 24 months from the date of the REP's initial enrollment of the applicant and ~~must~~shall provide such records to the applicant, customer, or commission staff, upon request.

(2) A REP or an aggregator ~~must~~shall submit copies of its sales script, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff upon request. In the event commission staff request documents under this subsection, the requested records must be delivered to the commission staff within 15 days of the written request, unless otherwise agreed to by commission staff.

(3) In the event an applicant or customer disputes an enrollment or switch, the REP ~~must~~shall provide to the applicant or customer proof of the applicant's or customer's authorization within five business days of the request.

#### (j) **Right of rescission.** A REP ~~must~~shall promptly provide the applicant with the terms of service document after the applicant has authorized the REP to provide service to the applicant and the authorization has been verified. For switch requests, the REP ~~must~~shall

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offer the applicant a right to rescind the terms of service without penalty or fee of any kind for a period of three federal business days after the applicant's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three federal business days. Any REP receiving an untimely notice of rescission from the applicant ~~must~~shall inform the applicant that the applicant has a right to select another REP and may do so by contacting that REP. The REP ~~must~~shall also inform the applicant that the applicant will be responsible for charges from the REP for service provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.

(k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP ~~must~~shall submit a move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the TDU, municipally owned utility, or electric cooperative. A REP ~~must~~shall submit an applicant's switch request to the registration agent as a standard switch. In the alternative, the REP ~~must~~shall submit an applicant's switch request as a self-selected switch if the applicant requests a specific date for a switch, consistent with the applicable transmission and distribution tariff. A REP may submit an applicant's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section, provided that if the customer makes a timely request to cancel service the REP ~~must~~shall take action to ensure that the switch is canceled or the customer is promptly returned to its chosen REP without inconvenience or additional cost to the customer. The applicant ~~must~~shall be informed of the approximate

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1 scheduled date that the applicant will begin receiving electric service from the REP, and of  
2 any delays in meeting that date, if known by the REP.

#### 3 (l) **Duty of the registration agent.**

4 (1) When the registration agent receives a move-in or switch request from a REP, the  
5 registration agent ~~must~~shall process that request in accordance with this section and  
6 its protocols, to the extent that the protocols are consistent with this section. The  
7 registration agent ~~must~~shall send a switch notification notice to the applicant that  
8 ~~will~~shall:

9 (A) – (C) (No Change.)

10 (2) The registration agent ~~must~~shall direct the TDU to implement any switch, move-  
11 in, or transfer to the REP or the POLR in accordance with this section and its  
12 protocols.

13 (m) **Exemptions for certain transfers.** The provisions of this section relating to authorization  
14 and right of rescission are not applicable when the applicant's or customer's electric service  
15 is:

16 (1) transferred to the POLR ~~underpursuant to~~ §25.43 of this title (relating to Provider  
17 of Last Resort (POLR)) when the customer's REP of record defaults or otherwise  
18 ceases to provide service. Nothing in this subsection implies that the customer is  
19 accepting a contract with the POLR for a specific term;

20 (2) transferred to the competitive affiliate of the POLR ~~underpursuant to~~ §25.43(o) of  
21 this title;

22 (3) – (4) (No Change.)

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(n) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, ~~must~~shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless an applicant without a Provisioned Advanced Meter requests an out-of-cycle meter read for the purpose of a self-selected switch. The registration agent ~~must~~shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The TDU ~~must~~shall not charge a fee for a review or adjustment described in subsection (p)(2) of this section. To the extent that the TDU assesses a REP a properly tariffed charge for connection of service, out-of-cycle meter read for self-selected switch requests, service order cancellations, or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP. A TDU ~~must~~shall not assess to a REP or an applicant any costs associated with a switch cancellation, including inadvertent gain fees, that results from the applicant's exercise of the three-day right of rescission. The TDU ~~must~~shall include such costs in the cost recovery mechanism described in subsection (o) of this section.

(o) **TDU cost recovery.** The TDU may recover the reasonable costs associated with performing meter reads for purposes of a standard switch through one of the following two options at the TDU's discretion:

- (1) TDU costs associated with performing standard meter reads for the purpose of switches, to the extent not reflected in base rates, ~~will~~shall be considered costs incurred in deploying advanced metering functionality and are to be considered in setting a surcharge established under PURA §39.107 (h) and §25.130 of this title (relating to Advanced Metering). The costs ~~must~~shall be included in the annual reports filed ~~under~~pursuant to §25.130(k)(5) of this title as actual costs spent to date

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in the deployment of Advanced Metering Systems (AMS) and ~~will~~shall be considered in setting, reconciling and or updating the AMS surcharge ~~underpursuant to~~ §25.130(k) of this title; or,

- (2) a TDU ~~must~~shall create a regulatory asset for the expenses associated with performing standard meter reads for the purpose of switches ~~underpursuant to~~ this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such a regulatory asset, including carrying charges, ~~will~~shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.

#### (p) **Meter reads for the purpose of a standard switch.**

- (1) Beginning December 1, 2009, a TDU ~~must~~shall perform actual, as opposed to estimated, meter reads for at least 80% of meter reads for the purpose of a standard switch in any given month, and at least 95% of meter reads for the purpose of a standard switch in any calendar year, exclusive of remote meter reads using advanced meters. Until December 1, 2009, a TDU may perform estimated meter reads for standard switch requests only for residential customers, exclusive of customers with meters that have remote read capability. A TDU ~~must~~shall use best efforts to perform as many actual reads as possible for standard switches.

- (2) Notwithstanding §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), an estimated meter read for the purpose of a standard switch is not subject to adjustment, except as provided in subparagraph (A) or (B) of this paragraph. A customer is obligated to pay a bill based upon an estimated meter read for the



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purpose of a switch, including any adjustment made ~~underpursuant to~~ subparagraph (A) or (B) of this paragraph.

(A) The TDU ~~must~~shall adjust the estimated meter read if the losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made.

(B) Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU to review the estimate. In reviewing the estimate, the TDU ~~must~~shall promptly calculate the average actual kWh usage per day for the time period from the actual meter reading occurring prior to the estimated reading to the actual meter reading occurring after the estimated reading. The TDU ~~must~~shall determine whether the usage per day for the estimated period prior to the switch is at least 25% greater than, or 25% less than, the average actual kWh usage per day. If so, the TDU ~~must~~shall promptly adjust the estimated meter read. The TDU may adjust an estimate that does not meet this 25% threshold, on a non-discriminatory basis.

(C) The TDU ~~must~~shall apply a reasonable methodology in making adjustments ~~underpursuant to~~ subparagraphs (A) and (B) of this paragraph and ~~must~~shall make the methodology available to REPs. Consistent with any meter read adjustments, the TDU ~~must~~shall adjust its invoices to the affected REP or REPs.

(3) A TDU ~~must~~shall file performance reports with the commission as part of the information filed under §25.88 of this title (relating to Retail Market Performance

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1                   Measure Reporting). These reports ~~must~~shall show by month the number and  
2                   percentages of actual and estimated meter reads for the purpose of switches, and  
3                   whether that month's performance was in compliance with paragraph (1) of this  
4                   subsection.

5 (q)   **Scheduled switch date.** Once a TDU notifies the REPs of a scheduled switch date, the  
6                   TDU ~~must~~shall perform an actual or estimated read of the customer's meter for that date.

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

(a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and aggregators, ~~when specifically stated,~~ in connection with the provision of service and marketing to residential and small commercial customers. The requirements of this section also apply to aggregators and brokers when specifically stated. ~~This section is effective April 1, 2010. REPs are not required to modify contract documents related to contracts entered into before this date, but shall provide notice of expiration as required by subsection (e) of this section.~~

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

(1) Contract -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation of enrollment ~~under~~pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider).

(2) (No Change.)

(3) Contract expiration -- The time when the initial term contract is completed. A new contract is initiated when the customer begins receiving service ~~under~~pursuant to the new EFL.

(4) – (11) (No Change.)

(c) **General Retail Electric Provider requirements.**

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#### (1) General Disclosure Requirements.

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs and YRACs distributed by a REP, aggregator or broker ~~or aggregator~~ must~~shall~~ be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

(i) (No Change.)

(ii) Suggesting, implying, or otherwise leading a person~~someone~~ to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.

(iii) (No Change.)

(iv) Falsely suggesting, implying or otherwise leading a person~~someone~~ to believe that a person is a representative of a TDU or any REP, aggregator or broker~~or aggregator~~.

(v) (No Change.)

(B) Written and electronic communications must~~shall~~ not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, must~~shall~~ include the REP's certified name or commission authorized business name, or the aggregator's registered name, and the number of the certification or registration.

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(C) The TOS, EFL, and YRAC ~~must~~shall be provided to each customer upon enrollment. Each document ~~must~~shall be provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.

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

#### (2) General contracting requirements.

(A) A TOS, EFL, and YRAC ~~must~~shall be complete, ~~must~~shall be written in language that is clear, plain and easily understood, and ~~must~~shall be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents ~~must~~shall include a link or internet address to the full text of the law.

(B) All contract documents ~~must~~shall be available to the commission to post on its customer education website (if the REP chooses to post offers to the website).

(C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving. There ~~must~~shall be no early termination fee assessed to the customer as a result of the customer's relocation if the customer provides a forwarding address and, if

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required, reasonable evidence that the customer no longer occupies the location specified in the contract.

(D) A TOS and EFL ~~must~~shall disclose the type of product being described, using one of the following terms: fixed rate product, indexed product or a variable price product.

(E) A REP ~~must~~shall not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.

(F) (No Change.)

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

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

#### (3) **Specific contract requirements.**

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

(B) The start and end dates of the contract ~~must~~shall be available to the customer upon request. If the REP cannot determine the start date, the REP may

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estimate the start date. After the start date is known, the REP ~~must~~shall

specify the end date of the contract by:

(i) – (ii) (No Change.)

(C)

#### (4) Website requirements.

(A) Each REP that offers residential retail electric products for enrollment on its website ~~must~~shall prominently display the EFL for any products offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information ~~may~~shall not be required.

(B) The EFL for each product ~~must~~shall be printable in no more than a two page format. The EFL, TOS, and YRAC for any products offered for enrollment on the website ~~must~~shall be available for viewing or downloading.

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

(1) Contract changes other than price.

(A) – (B) (No Change.)

(2) Price changes.

(A) (No Change.)

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

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

(3) (No Change.)

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

(A) – (D) (No Change.)

(E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty ~~may~~shall apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and

(F) (No Change.)

(e) **Contract expiration and renewal offers.** The REP ~~must~~shall send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP ~~must~~shall send the notice by mail to a residential customer or ~~must~~shall send the required



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

#### (1) **Contract Expiration.**

(A) If a customer takes no action in response to a notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP ~~must~~shall serve the customer ~~under~~pursuant to a default renewal product that is a month-to-month product.

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

(i) If notice is provided with a residential customer's bill, the notice ~~must~~shall be printed on a separate page. A statement ~~must~~shall be included on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."

(ii) (No Change.)

(iii) If notice is provided in a separate document, a statement ~~must~~shall be included on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by

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e-mail) that states, “Contract Expiration Notice. See Enclosed.” for residential customers or for small commercial customers, “Contract Expiration Notice” or “Contract Expiration Notice. See Enclosed.”

(C) A written notice of contract expiration (whether with the bill or in a separate envelope) ~~must~~shall set out the following:

(i) (No Change.)

(ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination penalty ~~will~~shall apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer’s fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.

(iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty ~~will~~shall apply to residential customers after receipt of the contract expiration notice, or that no termination penalty ~~will~~shall apply to small commercial customers for 14 days prior to the contract end

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date. No such statement is required if the original contract did not contain a termination fee.

(iv) – (v) (No Change.)

(vi) A statement that if the customer takes no action, service to the customer will continue ~~accordingpursuant~~ to the EFL for the default renewal product that ~~mustshall~~ be included as part of the notice of contract expiration. The TOS for the default renewal product ~~mustshall~~ be included as part of the notice, unless the TOS applicable to the customer's existing service also applies to the default renewal product.

(vii) A statement that the default service is month-to month and may be cancelled at any time with no fee.

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

(A) – (G) (No Change.)

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

(1) – (2) (No Change.)

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

(A) – (C) (No Change.)

(D) an explanation of the conditions under which a customer may establish satisfactory credit ~~underpursuant to~~ §25.478 of this title (relating to Credit Requirements and Deposits); and

(E) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit ~~underpursuant to~~ §25.478(i) of this title.

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

(A) In a conspicuous and separate paragraph or box:

(i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, ~~underpursuant to~~ §25.474 of this title; and

(ii) (No Change.)

(B) – (C) (No Change.)

(D) If the REP has disconnection authority, ~~underpursuant to~~ §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.

(5) – (6) (No Change.)

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(7) **Contract expiration notice.** For a term contract, the TOS ~~must~~shall contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The TOS ~~must~~shall also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically ~~according to~~pursuant to a default renewal product, which ~~must~~shall be a month-to-month product.

(8) (No Change.)

(9) **Version number.** A REP ~~must~~shall assign an identification number to each version of its TOS, and ~~must~~shall publish the number on the terms of service document.

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

(1) (No Change.)

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

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

(B) For an indexed product, the EFL ~~must~~shall provide sample prices for electric service reflecting all recurring charges, excluding state and local

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sales taxes, and reimbursement for the state miscellaneous gross receipts tax, resulting from a reasonable range of values for the inputs to the pre-defined pricing formula.

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

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

(i) – (ii) (No Change.)

(E) If a REP combines the charges for retail electric service with charges for any other product, the REP ~~must~~shall:

(i) – (ii) (No Change.)

(F) The following ~~must~~shall be included on the EFL for specific product types:

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(i) (No Change.)

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

(iii) For all other variable price products, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months

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at the sole discretion of {insert REP name}. In the disclosure chart, the box describing whether the price can change during the contract period ~~must~~shall include the following statement: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.” For residential customers, the following additional statement is required: “Please review the historical price of this product available at {insert specific website address and toll-free telephone number}.”

#### (3) Fee Disclosures.

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

(B) (No Change.)

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



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

(6) **Format of Electricity Facts Label.** REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL ~~must~~shall be printed in type no smaller than ten points in size, unless a different size is specified in this section, and ~~must~~shall be formatted as shown in this paragraph:

#### **Electricity Facts Label (EFL)**

{Name of REP}, {Name of Product}, {Service area *(if applicable)*},  
{Date}

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Average Monthly Use	500kWh	1,000kWh	2,000kWh
Average price per kWh	{x.x}¢	{x.x}¢	{x.x}¢
For POLR use: Minimum price per kilowatt- hour.	{x.x}¢	{x.x}¢	{x.x}¢

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

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

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

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

variable that does not change within a defined percentage} Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of

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{insert REP name}. {If residential} Please review the historical price of this product available at {insert website address and toll-free number}.

variable that changes within a defined percentage}

at for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month. {If residential} Please review the historical price of this product available at {insert website address and toll-free number}.

1

*See Terms of Service statement for a full listing of fees, deposit policy, and other terms.*

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Type of Product	(fixed rate indexed or variable)
Contract Term	(number of months)
Do I have a termination fee or any fees associated with terminating service?	(yes/no) (if yes, how much)
Can my price change during contract period?	(yes/no)
If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change)  In addition if the REP chooses to pass through regulatory changes the following <u>must</u> <del>shall</del> be required:  “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to

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	loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.”
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)
Does the REP purchase excess distributed renewable generation?	(yes/no)
Renewable Content	(This product is x% renewable)
The statewide average for renewable content is	(% of statewide average for renewable content)
Contact info, certification number, version number <i>Additional information may be added below.</i>	

1

2 Type used in this format

3 Title: 12 point

4 Headings: 12 point boldface

5 Body: 10 point

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

(h) **Your Rights as a Customer disclosure.** The information set out in this section ~~must~~shall be included in a REP's "Your Rights as a Customer" document, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

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

(2) The YRAC document ~~must~~shall inform the customer of the REP's complaint resolution policy ~~underpursuant to~~ §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies ~~underpursuant to~~ §25.480 of this title (relating to Bill Payment and Adjustments).

(3) The YRAC document ~~must~~shall inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.

(4) The YRAC document ~~must~~shall inform the customer of the customer's right to have the meter tested ~~underpursuant to~~ §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.

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(5) The YRAC document ~~must~~shall inform the customer of the availability of:

(A) Financial and energy assistance programs for residential customers;

(B) – (D) (No Change.)

(6) The YRAC document ~~must~~shall inform the customer of the following customer rights and protections:

(A) – (B) (No Change.)

(C) Protections relating to disconnection of service ~~under~~pursuant to §25.483 of this title;

(D) Non-English language requirements ~~under~~pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(E) Availability of a Do Not Call List ~~under~~pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and

(F) (No Change.)

(7) **Identity and contact information.** The REP's certified name and business name (dba), certification number, mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.

(i) **Advertising claims.** If a REP, aggregator, or broker ~~or aggregator~~ advertises or markets the specific benefits of a particular electric product, the REP, aggregator, or broker ~~or aggregator~~ shall provide the name of the electric product offered in the advertising or marketing materials to the commission or its staff, upon request. All advertisements and

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marketing materials distributed by or on behalf of a REP, aggregator, or broker ~~or aggregator~~ shall comply with this section. REPs, aggregators, and brokers ~~and aggregators~~ are responsible for representations to customers and prospective customers by employees or other agents of the REP concerning retail electric service that are made through advertising, marketing or other means.

(1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement shall be provided: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. Upon request, a REP must~~shall~~ provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(2) **Television, radio, and internet advertisements.** A REP must~~shall~~ include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the



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1 REP).” If the REPs phone number or website address is included on the  
2 advertisement, such phone number or website address is not required in the  
3 disclaimer statement. This statement is not required for general statements  
4 regarding savings or environmental quality, but must~~shall~~ be provided if a specific  
5 price is included in the advertisement, or if a specific statement about savings or  
6 environmental quality compared to another REP is made. Upon request, a REP  
7 must~~shall~~ provide to the commission the contract documents relating to a product  
8 being advertised and any information used to develop or substantiate comparisons  
9 made in the advertisement.

10 (3) **Outdoor advertisements.** A REP must~~shall~~ include, in a font size and format that  
11 is legible to the intended audience, its certified name or commission authorized  
12 business name, certification number, telephone number and Internet address (if  
13 available).

14 (4) **Renewable energy claims.** A REP must~~shall~~ authenticate its sales of renewable  
15 energy in accordance with §25.476 of this title (relating to Renewable and Green  
16 Energy Verification). If a REP relies on supply contracts to authenticate its sales  
17 of renewable energy, it must~~shall~~ file a report with the commission, not later than  
18 March 15 of each year demonstrating its compliance with this paragraph and  
19 §25.476 of this title.

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#### §25.482. Prompt Payment Act.

(a) **Application.** This section applies to billing by a retail electric provider (REP), aggregator,  
or broker ~~an aggregator or a retail electric provider (REP)~~ to a “governmental entity” as  
defined in Tex. Gov’t Code, Chapter 2251, the Prompt Payment Act (PPA). This section  
controls over other sections of this chapter to the extent that they conflict.

(b) (No Change.)

(c) **Disputed bills.** If there is a billing dispute between a governmental entity and a REP,  
aggregator, or broker ~~an aggregator or a REP~~ about any bill for electric service or brokerage  
services, aggregator or REP service, the dispute ~~shall~~must be resolved as provided in the  
PPA.

(d) (No Change.)

(e) **Notice.** ~~A REP, aggregator, or broker~~An aggregator or REP shall~~must~~ provide written  
notice to all of its non-residential customers of the applicability of the PPA to the REP’s,  
aggregator’s, or broker’s ~~aggregator’s or REP’s~~ service to governmental entities. ~~—This~~  
~~notice shall be completed within six months of the effective date of this section for existing~~  
~~non-residential customers and, within three months of the effective date of this section,~~  
~~shall be provided to a new customer at or before the time that the terms of service are~~  
~~provided to the customer.~~ A REP’s, aggregator’s, or broker’s ~~An aggregator’s or REP’s~~  
failure to provide this notice does not give rise to any independent claim under the PPA,  
nor does this notice initiate or terminate any party’s rights or obligations under the PPA.

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- 1           (1)    The failure of a REP, aggregator, or broker ~~an aggregator or REP~~ to provide written  
2                    notice in accordance with this subsection may be considered in a PPA billing  
3                    complaint.
- 4           (2)    The failure of a governmental entity to inform the REP, aggregator, or broker  
5                    ~~aggregator or REP~~ of its status as a governmental entity may be considered in a  
6                    PPA billing complaint.

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**§25.485. Customer Access and Complaint Handling.**

(a) The purpose of this section is to ensure that a retail electric customers ~~has~~have the opportunity for impartial and prompt resolution of disputes with a retail electric provider (REPs), aggregator, or broker. ~~or aggregators.~~

**(b) Customer access.**

(1) Each ~~retail electric provider (REP), aggregator, or broker~~ or aggregator ~~must~~shall ensure that customers and clients have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's or client's bills, terminate competitive service, and transact any other pertinent business.

(2) Each REP must provide toll-free ~~Telephone access~~ shall be toll-free and must~~shall~~ afford customers a prompt answer during normal business hours.

(3) Each REP must~~shall~~ provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.

(4) Each REP, aggregator, and broker ~~and aggregator~~ must~~shall~~ employ 24-hour capability for accepting a customer's or client's rescission of the terms of service by telephone, according~~pursuant~~ to rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).

(c) **Complaint handling.** A residential or small commercial customer has the right to make an inquiry or a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. A REP, aggregator, or broker ~~or aggregator~~ must~~shall~~

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not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.

(d) **Complaints to REPs, aggregators, or brokers. ~~REPs or aggregators.~~** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a REP, aggregators, or brokers. ~~or aggregator.~~ The REP, aggregator, or broker ~~or aggregator~~ must~~shall~~ promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's, aggregator's, or broker's ~~or aggregator's~~ review must~~shall~~ be informed of the right to file a complaint with the REP's, aggregator's, or broker's ~~or aggregator's~~ supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP, aggregator, or broker ~~or aggregator~~ must~~shall~~ result in a decision communicated to the complainant within ten business days of the request. If the REP, aggregator, or broker ~~or aggregator~~ does not respond to the customer's complaint in writing, the REP, aggregator,

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1        ~~or broker or aggregator must~~ shall orally inform the customer of the ability to obtain the  
2        REP's, ~~aggregator's or broker's or aggregator's~~ response in writing upon request.

3        (e)     **Complaints to the commission.**

4            (1)     **Informal complaints.**

5            (A)     If a complainant is dissatisfied with the results of a REP's, ~~aggregator's, or~~  
6            ~~broker's or aggregator's~~ complaint investigation or supervisory review, the  
7            REP, ~~aggregator, or broker or aggregator must~~ shall advise the complainant  
8            of the commission's informal complaint resolution process and the  
9            following contact information for the commission: Public Utility  
10           Commission of Texas, Customer Protection Division, P.O. Box 13326,  
11           Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-  
12           782-8477, fax (512) 936-7003, e-mail address: [customer@puc.texas.gov](mailto:customer@puc.texas.gov)  
13           ~~customer@puc.state.tx.us~~, Internet website address:  
14           [www.puc.texas.gov](http://www.puc.texas.gov) ~~www.puc.state.tx.us~~, TTY (512)936-7136, and Relay  
15           Texas (toll-free) 1-800-735-2989.

16           (B)     Complainants should include sufficient information in a complaint to  
17           identify the complainant and the company for which the complaint is made  
18           and describe the issue specifically. The following information should be  
19           included in the complaint:

20           (i)     (No Change.)

21           (ii)    The name of the REP, ~~aggregator, or broker or aggregator~~;

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(iii) – (vi) (No Change.)

(C) All REPs, aggregators, and brokers ~~and aggregators must~~ shall provide the commission an email address to receive notification of customer complaints from the commission.

(D) The REP, aggregator, or broker ~~or aggregator must~~ shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP, aggregator, or broker. ~~or aggregator.~~

(E) The commission must ~~shall~~ review the complaint information and the REP, aggregator, or broker's ~~or aggregator's~~ response and notify the complainant of the results of the commission's investigation.

(2) While an informal complaint process is pending:

(A) The REP, aggregator, or broker ~~or aggregator must~~ shall not initiate collection activities, including disconnection of service or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(B) A customer must ~~shall~~ be obligated to pay any undisputed portion of the bill and the REP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice.

(3) The REP, aggregator, or broker ~~or aggregator must~~ shall keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record must ~~shall~~ show the name and address of the complainant,

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- 1                   the date, nature and adjustment or disposition of the complaint. Protests regarding  
2                   commission-approved rates or rates and charges that are not regulated by the  
3                   commission, but which are disclosed to the customer in the terms of service  
4                   disclosures, need not be recorded.  
5           (4)    (No Change.)



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§25.486 Customer Protections for Brokerage Services

(a) **Applicability.** This section applies to all brokers. In addition, where specifically stated, these rules apply to retail electric providers (REPs).

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

(1) **Agent** means a broker who has the legal right and authority to act on behalf of a client regarding the selection of, or enrollment with, a REP for a product or service offered by a REP, including electricity service.

(2) **Client** means a retail electric customer or applicant who receives or solicits brokerage services from a broker.

(c) **General Requirements.** (1) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, and billing statements produced by a broker must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

(A) Stating, suggesting, implying or otherwise leading a client to believe that receiving brokerage services will provide a customer with better quality service from a REP or TDU;

(B) Falsely suggesting, implying or otherwise leading a client to believe that a person is a representative of a TDU, or any REP, aggregator, or broker; and

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1           (C) Falsely suggesting, implying, or otherwise leading a client to believe that a  
2                     contract has benefits for a period of time longer than the initial contract  
3                     term.

4           (2) All printed advertisements, electronic advertising over the Internet, and websites  
5                     must include the broker's registered name or commission authorized business name  
6                     and the broker's registration number.

7   (d) **Required Disclosures.** All brokers must inform clients of the following prior to the  
8   initiation of brokerage services:

9           (1) The broker's legal name and address;

10          (2) The broker's commission registration number;

11          (3) A clear description of the services the broker will provide for the client;

12          (4) The duration of the agreement to provide brokerage services;

13          (5) How the broker will be compensated for providing brokerage services, who will  
14                     provide the compensation, and the amount or method of calculation of the  
15                     compensation;

16          (6) The names and commission certificate numbers for any REPs with which the broker  
17                     has an agreement to recommend that REP to clients;

18          (7) How the client can terminate the brokerage services agreement;

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(8) Whether there is a financial penalty for terminating the brokerage services agreement, and if there is, the amount of the penalty; and

(9) The commission's telephone number and email address for complaints and inquiries.

(e) **Agency Relationships.**

(1) An agreement between a broker and a client that authorizes the broker to act as the client's agent must be in writing.

(2) In addition to the requirements of subsection (d) of this section, a broker that enters into an agreement with a client to act as the client's agent must inform the client of the following:

(A) A clear description of the actions the broker is authorized to take on the client's behalf;

(B) The duration of the agency relationship;

(C) How the client can terminate the agency agreement;

(D) Whether there is a financial penalty for terminating the agency agreement, and if there is, the amount of the penalty; and

(E) How the client's customer data and account access information will be retained by the broker and disposed of at the conclusion of the agency relationship.

(3) A broker that is authorized to act as the agent of a client must:

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1           (A) if asked by an enrolling REP or commission staff, acknowledge the  
2                   existence of the agency relationship; and

3           (B) provide evidence of that authority upon request of commission staff or a  
4                   REP with which the broker seeks to enroll the client.

5 (f) **Customer Enrollments by Brokers.**

6           (1) A REP is permitted to enter an agreement with a broker to complete enrollment of  
7                   a retail electric customer or applicant on behalf of the REP.

8           (2) A REP that authorizes a broker to complete retail electric customer or applicant  
9                   enrollments is responsible for compliance with applicable laws and commission  
10                  rules for all activities conducted on the REP's behalf by a broker.

11          (3) A broker that is authorized by a REP to complete online customer or applicant  
12                  enrollments must prominently display the EFL for any products offered without a  
13                  person having to enter any personal information other than zip code and  
14                  information that allows determination of the type of offer the consumer wishes to  
15                  review. Person-specific information must not be required. The EFL for each  
16                  product must be printable in no more than a two page format. The EFL, TOS, and  
17                  YRAC for any products offered for enrollment on the website must be available for  
18                  viewing or downloading.

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- 1 (g) **Enforcement.** Nothing in this section limits the ability of the commission to bring an  
2 enforcement action against a broker for violations of PURA or commission rules, whether  
3 the broker is acting on behalf of a REP, a client, or itself.

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**§25.491. Record Retention and Reporting Requirements.**

(a) (No Change.)

(b) **Record retention.**

(1) Each REP, aggregator, and broker ~~and aggregator must~~ shall establish and maintain records and data that are sufficient to:

(A) – (B) (No Change.)

(2) All records required by this subchapter must ~~shall~~ be retained for no less than two years, unless otherwise specified.

(3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter must ~~shall~~ be provided to the commission within 15 calendar days of its request.

(c) **Annual reports.** In its annual report, a REP must ~~shall~~ report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) to the commission and the Office of Public Utility Counsel (OPUC) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

(1) – (4) (No Change.)

(5) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:



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(E) Accuracy of billing services, which ~~must~~shall encompass all complaints pertaining to the implementation of §25.479 of this title (relating to Issuance and Format of Bills); and

(F) Collection and service termination, and disconnection, which ~~must~~shall encompass all complaints pertaining to the implementation of §25.480 of this title, and §25.483 of this title (relating to Disconnection of Service).

(6) In reporting the number of informal complaints received ~~according~~pursuant to paragraph (4) of this subsection, a REP may identify the number of complaints in which it has disputed categorization or assignment ~~according~~pursuant to the provisions set forth in §25.485 of this title (relating to Customer Access and Complaint Handling).

(d) **Information regarding payment options and payment assistance programs.** With its annual report, a REP ~~must~~shall include a statement containing the information described in §25.480(n) of this title to the extent such information is not included in the form approved by the commission ~~according~~pursuant to subsection (c) of this section.

(e) **Additional information.** Upon written request by the commission, a REP, aggregator, or broker ~~or aggregator~~ ~~must~~shall provide within 15 days any information, including but not limited to marketing information, necessary for the commission to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).



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25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.

(a) **Noncompliance.** ~~A retail electric provider (REP), aggregator, or broker~~ An aggregator or  
~~retail electric provider (REP)~~ that fails to comply with the Public Utility Regulatory Act  
(PURA) or commission order may, after notice and opportunity for hearing, be subject to  
any and all of the following available under the law, including, but not limited to:

(1) – (4) (No Change.)

(b) **Commission investigation.** The commission may initiate a compliance or other  
enforcement proceeding upon its own initiative, after an incident has occurred, or a  
complaint has been filed, or a staff notice of probable noncompliance has been served. The  
commission ~~must~~shall coordinate this investigation with any investigation that may be or  
has been undertaken by the Office of the Attorney General.

(c) **Suspension and revocation of certification.** The commission may initiate a proceeding  
to seek either suspension or revocation of a REP's certification consistent with §25.107(j)  
of this title (relating to Certification of Retail Electric Providers), or an aggregators  
registration consistent with §25.111(j) of this title (relating to the Registration of  
Aggregators), or a brokers registration consistent with §25.112 of this title (relating to the  
Registration of Brokers).