Control Number: 51830

Item Number: 37

PROJECT NO. 51830

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

ORDER ADOPTING AMENDMENTS TO 16 TAC §25.43, 25.471, 25.475, 25.479, AND 25.498 AND NEW 16 TAC §25.499 AS APPROVED AT THE DECEMBER 16, 2021 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.43, §25.471, §25.475, §25.479, and §25.498. The commission also adopts new 16 TAC §25.499, relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts. The commission adopts these rules with changes to the proposed rules as published in the August 13, 2021 issue of the *Texas Register* (46 TexReg 4838). These rule amendments will implement an amendment to Public Utility Regulatory Act (PURA) §17.003(d-1)(c) and new §39.110 enacted by the 87th Texas Legislature. These rule changes also implement a number of other customer protections for retail electric customers.

Specifically, amended §25.43 simplifies the maximum Provider of Last Resort (POLR) rate formula and limits price volatility originating from ERCOT Real-Time Settlement Point Prices (RTSPPs) from adversely affecting residential, and small and medium commercial customers who are transitioned to POLR service through the addition of a 12-month RTSPP price average and year-over-year cap on price increases. Amended §25.498 restructures the maximum price cap for prepaid service to match the maximum POLR rate under amended §25.43 and removes the alternative price cap measures in the previous rule.

Amended §25.475 requires an additional notice of contract expiration and prohibits the offering of indexed and wholesale-indexed products to residential and small commercial customers. Amended §25.475 also clarifies that the price of fixed rate products does not vary with changes in ancillary service costs for residential and small commercial customers, unless the commission specifically designates a type of ancillary service charge that is beyond the REP's control.

Amended §25.479 requires electric utilities and retail electric providers to periodically provide to customers information concerning load shed, type of customers and procedure to be considered for critical care or critical load, and reducing electricity use at times when involuntary load shed events may be implemented.

New §25.499 implements SB 3's Acknowledgement of Risk (AOR) requirements for wholesale indexed products offered to large and medium commercial customers and prescribes a standard format for the AOR document. Amended §25.471 adds new §25.499 to the list of rule sections that large commercial and industrial commercials cannot waive by contract.

The commission received comments on the proposed rules from Octopus Energy, the Office of Public Utility Counsel (OPUC), Windrose Power & Gas LLC, Texas Legal Services Center and AARP Texas (TLSC), Coalition of Competitive Retail Electric Providers, Texas-New Mexico Power Company (Joint TDUs), Texas Energy Association for Marketers (TEAM), TXU Energy Retail Company LLC (TXU), Alliance for Retail Markets (ARM), Robert L. Borlick, and Joint REPs.

Question 1

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

TLSC favored a safety threshold or cap, but expressed concern over determining an appropriate cap. TLSC noted that a rate cap may have the potential to become "self-fulfilling," assuming the rate will increase annually. TLSC asserted that it was the intent of the Legislature and in the best interests of consumers to have POLR service widely available at a reasonable cost, and that the POLR rate should reflect average competitive rates.

CCR opposed a safety threshold that would prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis. CCR argued that POLR service is not meant to be a long-term service for customers, and instead is intended to be a safety net when a retail electric provider (REP) leaves the market unexpectedly and, as a result, a customer may not have time to select a different provider. CCR argued it is highly unlikely that residential and small non-residential customers who are transitioned to a POLR provider would pay the maximum rate under §25.43(m)(2)(A) and §25.43(m)(2)(B) because commission rules incentivize POLR providers to charge a competitive rate instead of the POLR rate. Specifically, §25.43(s) requires quarterly reports to be filed with the commission if an LSP charges the maximum POLR rate for a customer segment under §25.43(m)(2).

TEAM stated it does not object to a 20% year-over-year safety threshold provided "there is a corresponding safety relief that provides REPs an ability to recover its costs for power procured at the last minute on the real time market for new POLR customers." TEAM asserted that the proposed mechanism based on the prior year's average of real time prices, which are not necessarily reflective of costs, are nonetheless useful for regulatory certainty as they provide a known price cap for certain services such as pre-paid services. For pre-paid services to be viable, any alternative price adjustment mechanism for POLR must not be a justification for a starting POLR rate that is too low.

ARM opposed a safety threshold that would prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis. ARM argued an additional safety threshold in the POLR rate is not necessary because the 12-month lookback required in assessing the "LSP energy charge" under §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) sufficiently dampens price volatility. ARM argued the POLR rate is not a long-term rate, and no residential or small non-residential customer should be on it for more than 60 days. ARM argued that for the remainder of the 2021-2022 POLR term, the risk of customers being subject to the POLR rate during any further mass transitions should be low because customers will likely be transferred to VREPs, which offer market-based month-to-month products that are not priced at the POLR rate.

OPUC favored a safety threshold or cap, and further recommended that the limitation should be the lesser of the formula outcome under the proposed rule or 20% for residential customers and 25% for non-residential customers. OPUC argued that its proposal is appropriate as the current rule already contemplates a 20% increase over average RTSPPs for residential consumers and 25% for non-residential customers. OPUC asserted that consumers paying

below the average RTSPP for their area would benefit from the flat maximum cap of 20% or 25% while consumers paying over the average RTSPP will benefit from the formula approach which would yield a price below their current price.

OPUC disagreed with assertions by ARM, TEAM, and CCR that a safety threshold is not warranted. OPUC agreed with TLSC's concerns that the existence of rate cap has the potential to create a presumption that the rate will increase annually. OPUC maintained that until a better solution is put forward, a safety net is warranted basis to protect residential and small non-residential consumers from overwhelming rate shock and that such a method still permits a reasonable return to providers of POLR service.

Joint REPs opposed OPUC's recommendations for a 20% and 25% rate cap for residential and small non-residential customers, respectively. Joint REPs argued that the POLR rate is short-term, and no customer should remain on it from year to year, decreasing the likelihood of rate shock. Joint REPs cited §25.43(j)(4) which requires LSPs (Large Service Provider) to move residential and small non-residential customers that have been dropped to POLR to a month-to-month market-based product after 60 days. Joint REPs subsequently recommended deferring changes to the POLR rate until a later rulemaking or adopt ARM's alternative proposal to maintain the current minimum and maximum POLR rate structure with modifications to bypass the direct pass-through of RTSPPs for residential and small non-residential customer classes. If the commission institutes a POLR cap, Joint REPs recommends the cap be set after considering the final POLR calculation determined by this rulemaking. Joint REPs contended that the cap must account for whether the final formula is set as only a multiplier of past rates, set to an arbitrarily low rate, or developed to lessen the long-term risk that the POLR rate does not recover costs. Joint REPs claimed such a review is necessary

because a low cap with a low formula with a following year where prices rebound could risk insufficient cost recovery for POLR providers and indicated that Oncor service territories have seen yearly variances that exceed 20% in three out of five years.

Commission Response

The commission agrees with OPUC and TLSC that a safety threshold is necessary for the POLR rate. POLR service serves as an emergency back-up for customers, so it is essential that an outlier year such as 2021 not be allowed to dictate extremely high rates for the next year. Accordingly, the commission sets the "LSP energy charge" variable of the maximum POLR rate formula for residential customers at the lesser of the formula outcome under the adopted rule or 120%. For small and medium non-residential customers the "LSP energy charge" is the lesser of the formula outcome under the adopted rule or 125%.

The commission disagrees with CCR and Joint REPs that a safety threshold is unnecessary because POLR is a short-term solution that customers are unlikely to remain on for an extended period. The commission further disagrees with ARM's contention that the 12-month lookback sufficiently dampens price volatility. While dampening price volatility, the 12-month lookback would also serve to lock in a high maximum POLR rate for an entire year, making the safety threshold even more necessary. It is against the public interest to require customers shifted to POLR service to pay extraordinarily high prices associated with RTSPPs, which as shown by Winter Storm Uri, can increase dramatically enough to even increase the annual average of RTSPPs. Therefore, along with amendments setting the average RTSPPs to be over a 12-

month period in the LSP energy charge variable, an additional cap is required to ensure high RTSPPs in one year do not render POLR service unaffordable in the next.

The commission also disagrees with TEAM's contention that the commission needs to include a cost recovery mechanism to ensure that REPs can recover their costs of serving POLR customers. This decision is consistent with the commission's other determinations in this rulemaking that market entities, not customers, should bear the risk of unpredictable price fluctuations beyond reasonable market expectations for electric service. The commission also notes that a POLR cost recovery mechanism has not been adequately noticed or developed to include in this rulemaking. However, if TEAM believes this proposal merits further consideration, the commission recommends that TEAM file comments in Project No. 52757, *Review of Chapter 25 – Rules Applicable to Electric Service Providers.*

Question 2

The first part of Question 2 states:

Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges?

TEAM, ARM, and CCR argued that the proposed AOR (Acknowledgement of Risk) requirements under §25.475(c)(3)(G) and §25.475(j) do provide adequate protections for residential and small commercial customers. CCR stated that the proposed AOR requirements

ensure a customer that enrolls in an indexed product or a product that includes ancillary service charges understands the pricing volatility risk associated with such products.

TEAM and ARM asserted that proposed §25.475(c)(3)(G) and §25.475(j) adequately protect consumers and suggested that the AOR should appear in the EFL (Electricity Facts Label) with clear language indicating that the language applies only to indexed products subject to volatility. TEAM and ARM elaborated that the EFL already contains customer protections for price disclosure under §25.475(g)(2)(B) relating to disclosure of a total average price, and under §25.475(g)(2)(F) relating to contact information for current price data. ARM contended that AORs for pass-throughs of ancillary service prices are unnecessary because under current rules, such costs cannot be passed through on fixed rate products. TEAM pointed out that most competitive market commodity indices such as NYMEX do not carry the same type of volatility that was experienced in Winter Storm Uri, unlike the ERCOT (Electric Reliability Council of Texas) RTSPP that was fixed by regulatory action.

TLSC and OPUC stated that proposed §25.475(c)(3)(G) and §25.475(j) do not adequately protect residential customers from market risk. OPUC maintained that the "waiver" in the proposed rules is insufficient to protect residential and small commercial customers from the risks associated with indexed products. In TLSC's view, the AOR in §24.475(i) indicates customers may not fully understand the terms and conditions of a retail electric plan marketed to them. OPUC argued that waivers are so ubiquitous in everyday life that consumers do not read them and, if they do, the language may be difficult to understand. OPUC specifically noted that ancillary service charges also require a waiver and that ancillary service prices were higher during Winter Storm Uri than the actual price for energy which was capped at $9,000. Therefore, according to TLSC and OPUC, a prohibition of all indexed products and products

that pass through ancillary service charges for residential and small commercial consumers is warranted.

The second part of Question 2 states:

If not, should these products be prohibited for residential and small commercial customers?

TLSC and OPUC supported the prohibition of all indexed retail products for residential and small commercial customers. TLSC generally opposed the proposals provided by the retail electric industry and the general proposition of residential customers taking on the risk of indexed rates and paying directly for ancillary service via pass-through of cost. TLSC maintained that "few residential consumers possess the knowledge or the resources to monitor pricing in the ERCOT market" and therefore the risk of high prices should be carried by REPs, not consumers. TLSC further argued that indexed rates and the pass-through of costly ancillary service charges are contrary to the basic market concepts codified in PURA §39.101(e) and the intent of the Legislature in passing HB (House Bill) 16. TLSC stressed that even small price increases can have profound negative consequences for low- and fixed-income families and that the prohibition of plans that expose customers to sudden price increases is the best way to protect consumers. OPUC noted that while some indices may not vary significantly, others do and that consumers should not be exposed to such price fluctuations.

TLSC argued that comments from ARM, CCR, TEAM and Robert Borlick collectively supported shifting financial risk of the wholesale market from the REP to the consumer. TLSC stated that a REP could manage its financial risk through voluntary customer programs to reduce load and costs that compensate customers for participating in such programs. Additionally, TLSC argued that customers can manage their financial risk by choosing a fixed

rate product. TLSC specifically agreed with OPUC that a customer signing a waiver cannot be expected to predict or comprehend the possibility of rate increases in the future.

OPUC disagreed with Octopus Energy, TEAM and CCR that indexed plans and plans with ancillary service pass through charges should be allowed for residential and small commercial customers. OPUC concurred with TLSC that few customers understand how to monitor indexed pricing and what it could mean for their electricity bills. OPUC further agreed with TLSC that many customers have difficulty understanding ancillary services and the contents of a contract with pass-through charges.

CCR, TEAM, ARM, and Octopus Energy opposed prohibiting all indexed retail products for residential and small commercial customers.

CCR argued that PURA §39.001(c) specifically prohibits the commission from regulating competitive electric services or prices except as authorized by PURA, such as the specific customer protection for pricing and billing under PURA §39.101(a). CCR further argued that the selection of pass-through of ancillary service charges or an indexed plan is a competitive decision and that prohibiting REPs from including specific cost drivers in pricing is unnecessary.

TEAM argued that indexed products have existed for years and have performed to overall consumer satisfaction. TEAM further pointed out that the Legislature only banned "real time wholesale indexed products" in HB 16, not other indexed products. Many indexed products, according to TEAM, are not tied to the volatility of a commodity index, and benefit consumers. TEAM concluded that indexed products are "a necessary tool" for "development of customer-centric innovations." TEAM and ARM concluded that banning certain products stifles

competition and forecloses customer choice. Until Winter Storm Uri, ancillary service charges were not nearly as volatile, according to TEAM and ARM. ARM proposed amendments across §25.475 to have that section conform with its recommendation to move the AOR into the EFL.

Octopus Energy argued that "competition and innovation" in the ERCOT retail electric market are key reasons against such a prohibition. Specifically, such a prohibition will undermine customer choice, reduce the development of load management incentives, and subvert efforts to improve reliability in the electric markets. Octopus Energy argued that the intent of HB 16 was to prohibit the offering or enrolling of residential and small commercial customers products that pass-through prices 100% indexed to the wholesale real-time market and that a ban on all indexed products is contrary to that intent. Octopus Energy maintained that indexed products appropriately protect customers from the highest prices, provide a significant cost reduction to residential and small-commercial customers and encourage reduced usage during peak load. Specifically, Octopus Energy encouraged voluntary caps imposed by REPs to prevent customer exposure from the highest prices associated with wholesale indexed products.

Octopus Energy agreed with TEAM in opposing the prohibition of all indexed products for residential and small commercial customers. Octopus Energy also agreed with Robert Borlick that "a broad prohibition against all indexed products would reduce the development of demand response in the residential and small commercial customer classes and reduce the reliability of the ERCOT grid." Octopus Energy opposed the recommendations of OPUC and TLSC to prohibit all indexed products for residential and small commercial customers. Octopus Energy specifically argued that contrary to the arguments of OPUC, and to a lesser

extent TLSC, that customers do understand the benefits and risks of a wholesale indexed product that they sign up for.

Joint REPs opposed prohibiting all indexed retail products for residential and small commercial customers. Joint REPs categorically opposed OPUC and TLSC's proposals to prohibit wholesale indexed products and products containing ancillary service pass-through charges as unsupported by law and restricting competitive innovation.

Commission Response

The commission finds that having "indexed products" as a separate category of products is unnecessary and confusing for residential and small commercial customers and prohibits the offering of indexed products to these customer classes.

The commission disagrees with CCR that PURA prohibits the commission from banning the sale of indexed products to residential and small commercial customers. Under PURA §39.001(c), cited by CCR, the commission "may not make rules...restricting or conditioning competition except as authorized in this title." PURA clearly authorizes the commission to prohibit practices when necessary to provide adequate customer protection. Under PURA §39.101(b), a customer is entitled to "receive sufficient information to make an informed choice of service provider," and "to be protected from unfair, misleading, or deceptive practices". The commission finds that indexed products—the price of which on any future date is unknown at the start of each billing period, can fluctuate unpredictably, and are indexed to metrics that are not available to the customer as part of the enrollment process—do not provide sufficient information for a residential or small commercial customer to make an informed choice of service

provider. Furthermore, the apparent stability of indexed rate plans can be misleading, because these plans have the potential to increase drastically without notice and such increases are not within the reasonable expectations for residential and small commercial customers.

The commission also disagrees with arguments made by ARM, TEAM, CCR, and Octopus Energy that prohibiting indexed products unnecessarily stifles creativity, limits competition, or reduces incentives for demand response. The only unique feature of an indexed product is that the price of an indexed product can vary within a billing cycle in a manner that is unpredictable at the time of enrollment, which is not appropriate for residential and small commercial customers. Innovative fixed or variable price products can be designed to include elements such as time-of-use, seasonal, nights and weekends, tiered rates, flat rates, credits, and others, while providing customers with the appropriately tailored protections that those product types provide, such as the price certainty of fixed rate products or the lack of early termination fees or long-term commitments of variable price products. The commission encourages REPs to continue to bring new products to market to further enrich the competitive landscape of Texas' deregulated energy market.

Replacing "shall" with "will"

The commission is implementing a general change to its rules by removing "shall" from the text of its rules and replacing it with a more specific term. Several such changes were proposed in this section.

ARM identified four instances in §25.43 in which the commission proposed replacing "shall" with "must" where ARM recommends a change to "will" or "plan to" instead.

Commission Response

The commission agrees with ARM and replaces "must" with "will" in these contexts.

§25.43 – Provider of Last Resort (POLR)

Proposed §25.43 establishes the requirements for provider of last resort ("POLR") service, which is available to any requesting retail customer and to any retail customer whose REP has exited the market.

TLSC generally opposed high POLR rates, prepaid service, and having customers bear the financial risk of the market through indexed rates and pass-through of ancillary service costs.

TLSC maintained that, consistent with PURA § 39.106, POLR should be a standard retail service package that ensures stable, reasonable rates based on average prices being paid in the competitive market to a wide range of customers.

TLSC contended that the proposals by REP commenters to increase the POLR rate places price risk on residential consumers and allows REPs to use a high POLR rate as a marketing tool to gain market share during a mass transition. TLSC asserted that POLR service should be structured to place downward pressure on electricity prices and provide more affordable firm service to prepaid customers paying prices capped at the POLR rate. TLSC argued that current commission rules incentivize POLR providers to charge an uncompetitive, high price for undesirable service. Further, they asserted, current POLR rates make the retail market less competitive by exposing consumers, rather than industry, to financial risk.

TLSC requested that the commission establish POLR service as a standard retail service package at a fixed rate for all customers and the POLR service option should be made available on the Power to Choose website maintained by the commission.

Commission Response

The commission declines to adopt TLSC's proposals to change POLR to a standard retail product for the reasons detailed in the commission's response to Question 1. Such proposals are outside the scope of this rulemaking. The adopted rule adequately addresses TLSC's concerns regarding customer protections while also providing appropriate compensation for REPs that provide POLR service.

§25.43(c)(8) – "Market-based product"

Subsection §25.43(c) contains section-specific defined words and terms. Paragraph §25.43(c)(8) is the definition for "Market-based product" which in the proposed rules is defined as "*A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.*"

Alliance for Retail Markets (ARM) proposed modifying the definition of "market-based product" in §25.43(c)(8) to allow for "consistency with other in-market products." Specifically, ARM argued that REP customer segments may not map directly to the POLR customer classes of residential, small non-residential, medium non-residential, and large non-

residential defined in §25.43(c) and therefore the proposed definition of §25.43(c)(8) may be challenging for REPs. ARM further argued that offering a rate consistent with general market rates should be sufficient for the definition rather than requiring a direct match to an existing product offered by a REP. ARM reasoned that POLR service creates unique risks and demands on REPs, such as bad debt, and that a REP should be able to calculate the high costs and risks of POLR into its market-based product pricing, rather than the "formulaic POLR rate."

Commission Response

The commission declines to adopt the recommendations proposed by ARM as the definition only requires a price match to a non-POLR customer product and the current definition excepts rates derived from using the maximum POLR formula under (m)(2) as being considered a market-based product for residential customers. Furthermore, ARM's comments regarding customer segmentation and mapping are substantively incorporated into §25.43(m)(2). The historical segmentation of residential customers and small and medium commercial customers, and large commercial customers and comments do not indicate that such categories are overly burdensome for REPs and to the extent that they could be improved the commission has adopted proposals of some commenters to do so.

§25.43(f)(1) – Customer Information

Paragraph §25.43(f)(1) provides an index of hyperlinked standard terms of POLR service for each customer class defined in §25.43(c) and specifically provides the rate to be charged, as defined in §25.43(m)(2), by a Large Service Provider (LSP).

ARM and TEAM indicated that, if the POLR rate formula is changed by the commission, the terms of service linked in §25.43(f)(1) must be updated accordingly. ARM and TEAM also pointed out that in the terms of service provided in §25.43(f)(1)(D) for Large Non-Residential Service, the term "RTSPP" should be changed to "energy charge" in (1)(iv) to be consistent with current rules: "The ~~RTSPP~~ energy charge shall have a floor of $7.25 per MWh."

Commission Response

The commission agrees with ARM and TEAM and amends the rule accordingly.

§25.43(i) – VREP List

Subsection§25.43(i) specifies the process for creating and publishing a list of Voluntary Retail Electric Providers ("VREP"). The existing rule requires REPS interested in becoming a VREP to submit a request no earlier than June 1 and no later than July 31. The proposed rule authorizes the commission's executive director to allow REPs to submit requests outside of this submission window.

TXU opposed the amendment to §25.43(i), interpreting it as allowing the executive director to designate additional VREPs (Voluntary Retail Electric Provider) at any time. TXU reasoned that the amendment should not be implemented because it would imbalance the inherent risk-reward considerations for a REP in deciding whether to be VREP. Specifically, a REP must consider the balance between a VREP competitively retaining customers assigned during a POLR event in exchange for the additional financial risk of POLR customers and the foregoing of market opportunities due to VREP obligations. TXU argued that any calculations by a VREP to retain customers after a POLR event is rendered moot if the VREP pool can be altered by executive director and may disincentivize REPs from providing POLR service or postpone

volunteering to be a VREP. Pursuant to this recommendation, TXU therefore recommended "unless otherwise determined by the executive director" be removed from proposed §25.43(i).

OPUC opposed TXU's recommendation to strike language in §25.43(i) authorizing the executive director to designate additional VREPs at any time, as such discretion by the executive director in the proposed rule would incentivize competition and thus be beneficial for providing the best possible price to consumers. OPUC noted that the final provider list for 2021 lacked any VREPs for the large non-residential service areas and that granting the executive director discretion to assign additional VREPs would permit additional coverage. However, OPUC acknowledged TXU's concerns and, in conjunction with the proposed rule, proposed a priority designation with a right of first refusal for REPs that enrolled and were certified as VREPs during period specified in the rule (i.e., June 1 to July 31 of each even-numbered year), rather than through executive director designation. This approach, in OPUC's view, "appropriately balances the desire for more participating VREPs with the reward for risks taken by VREPs who choose to participate through the regular VREP certification process."

Commission Response

The commission disagrees with TXU. The rule as proposed strikes an appropriate balance between the concerns described by TXU and allowing flexibility for the executive director to act in response to unforeseen circumstances. OPUC's proposed "right of first refusal" is unnecessarily complex. Therefore, the commission adopts the language as proposed.

§25.43(l)(1)(E) – Mass transition of customers to POLR providers

Under §25.43(l)(1)(E), ERCOT is required to assign ESI (Electric Service Identifier) IDs to VREPs in proportion to the number of ESI IDs that each REP indicated it was willing to serve.

ARM argued that the allocation of customers detailed in current §25.43(l)(1)(E) is inefficient and discriminatory as a VREP could indicate it was willing to serve a very large number of customers which would dilute the proportion assignable to other VREPs. ARM reiterated that the benefit for REPs in becoming a VREP in exchange for the inherent risks is the potential to competitively retain customers assigned to it through a POLR event. ARM contended that basing the customer allocation on the ratio of a VREPs willingness-to-serve count relative to the total count for all VREPs diminishes that benefit. ARM hypothesized that a VREP could volunteer to serve a large number of customers for its willingness-to-serve maximum and therefore dilute the number of customers assigned to other VREPs. Instead, ARM proposed allocating customers shifted to POLR be equally divided between VREPs, up to the VREP's self-indicated maximum, and offered draft language in line with its recommendation:

> Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP must be assigned ~~a proportionate~~ an equal number of ESI IDs, ~~as calculated by dividing~~ up to the number that each VREP indicated it was willing to serve ~~by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number~~ for a given class and POLR area.

Commission Response

The commission agrees with ARM that allocating POLR customers evenly among VREPs is a more equitable approach that reduces the risk of a REP inflating its willingness-to-

serve count in order to be assigned a larger share of the available POLR customers. The commission adopts ARM's proposed language.

§25.43(m) – Rates Applicable to POLR Service

Subsection §25.43(m) details the obligations of a VREP in offering POLR service and the form and manner of such service, particularly establishing a maximum rate for POLR service charged by an LSP.

TLSC argued POLR rates should be a standardized, reasonable, and even long-term fixed rate product, reflective of competitive market rates. TLSC maintained that the POLR rate should not be punitive or designed primarily to provide temporary service in the event of financial default by a REP. TLSC expressed its preference for POLR service as a viable option for customers subject to switch-hold and customers on prepaid service. TLSC argued that a standard retail service package should be developed by all REPs and the pricing for such a package should be used for POLR customers across load zones.

Joint REPs opposed TLSC's recommendations to change POLR service into a long-term option by making it a standard retail service package based on average prices in the market. Joint REPs noted that the commission has declined to implement the same proposals in Project Number 31416, a prior rulemaking project addressing this rule. Joint REPs maintained that TLSC's recommendations were outside the scope of this rulemaking to implement the requirements of HB 16 and SB (Senate Bill) 3 and highlighted that POLR is intended to be a short-term solution to prevent service disruptions and not act as a substitute for competitively priced products. Joint REPs referred to PURA §39.001(a) which states "electric services and

their prices should be determined by customer choices and the normal forces of competition" and that TLSC's proposals were contrary to the statutory mandate. Specifically, Joint REPS argued that to require the POLR rate be set at an average price as TLSC suggested would pressure the market towards convergence on the average price point, thus eradicating incentives to innovate or add value to retail electricity customers.

Commission Response

The commission declines to modify the rule in response to TLSC's comments. The commission agrees with Joint REPs that POLR is intended to function as a safety net to prevent service disruptions in certain situations, including mass transitions, and is not intended to act as a substitute for competitively priced products or pressure the market toward certain pricing outcomes or product types. The commission has also addressed this topic in response to comments on Question 1.

§25.43(m)(2) – Maximum Rate Formula

Paragraph §25.43(m)(2) establishes the maximum rate for POLR service charged by an LSP for each class of customer.

TEAM and ARM commented that a POLR rate that is too low will be contrary to the intent of POLR service as a short-term "last resort" and could interfere with the competitive market. Specifically, because PURA §39.107(g) caps the price for prepaid service at the POLR rate, TEAM and ARM argued that a low POLR rate may affect a REP's ability to offer prepaid pricing. TEAM further commented that POLR service must be offered even outside of mass transitions under PURA §39.106(c). Therefore, if POLR service rates are lower than market-

based offers, VREPs may lose money on POLR service which may impact the provision of other products that incorporate POLR costs and pricing structure such as prepaid products.

TEAM emphasized that the POLR rate should be high enough to mitigate the risks taken on by the VREPs for providing POLR service. TEAM asserted that if the calculations in proposed §25.43(m)(2)(A) and §25.43(m)(2)(B) were applied to 2021, then the residential rate would be five percent lower than the result generated by the existing rule, and the small and medium non-residential rate would be the same. Conversely, if the proposed formula is applied to 2022, the POLR rates would be higher because of the outlier rates caused by Winter Storm Uri. TEAM and ARM argued that the proposed formula applied past September 2022 may produce lower POLR rates that would limit a REP's capability to offer other products, such as prepaid service.

Additionally, TEAM stated that the proposed POLR rate formula does not account for ancillary service costs, which have been significantly higher due to Winter Storm Uri. TEAM argued that, if ancillary service costs continue to be volatile in the future due to similar events, the POLR rate should include ancillary service charges as a variable.

Commission Response

The commission disagrees with TEAM that the proposed POLR rate formula does not account for ancillary service costs and declines to amend the proposed rule. Ancillary service costs are accounted for in the LSP energy charge variable for each customer class.

Medium Non-residential customers

TEAM and ARM maintained that HB 16's ban on real-time wholesale indexed products does not apply to medium non-residential customers. Therefore, medium non-residential customers

should not be grouped with small non-residential customers, and the POLR rate formula for each should be structured differently. TEAM specifically proposed a separate LSP energy rate for medium non-residential customers. Under TEAM's proposal, the LSP customer charge for small non-residential customers would increase to 5¢ per kWh. The LSP customer charge for medium non-residential customers would remain at 2.5¢ per kWh.

OPUC opposed TEAM's recommendations for altering the POLR rate structure, stating that POLR service already costs more due to the inherent risk it poses. Further, OPUC argued, TEAM's proposal would increase an already high rate that likely exceeds the average market price. Finally, OPUC argued the POLR rate is generally paid by customers who, often through no fault of their own, are transitioned onto a POLR product. Therefore, OPUC requested the commission reject the proposal by TEAM to alter the POLR formula.

TLSC proposed the commission compare the results of other calculation methodologies with current or past POLR rates. TLSC referred to two alternative rate calculation methods: RTSPP Data Normalization and Weighted Average Energy Rate Charges. According to TLSC, RTSPP Data Normalization is representative of the rate year, discounts outliers and utilizes an adder to accurately reflect the retail rate. Weighted Average Energy Rate Charges, as explained by TLSC, is based on the weighted average energy rate charge in the load zone for a wholesale rate plus an adder to accurately reflect the retail rate.

Commission Response

The commission declines to implement TEAM's proposed rule language splitting small commercial customers and medium commercial customers from §25.43(m)(2)(B) into separate paragraphs. The commission has determined that the current rule adequately

segments the customer categories and that only large customer categories should be exposed to hourly RTSPPs or ancillary service charges in the POLR rate formula and ancillary service charges in wholesale indexed products.

The commission declines to implement TLSC's proposals RTSPP Data Normalization and Weighted Average Energy Rate Charges as these methods would change the POLR rate to be more like a retail product, which is not its intended purpose. The commission refers to its responses under Question 1.

§25.43(m)(2)(A)(ii) and §25.43(m)(2)(B)(iii) – "LSP customer charge"

Clauses§25.43(m)(2)(A)(ii) and §25.43(m)(2)(B)(iii) contain the definition of "LSP customer charge" which is a constant of 6¢ for residential customers and 2.5¢ for small and medium non-residential customers.

TEAM and ARM made several recommendations for altering the POLR formula. Specifically, TEAM and ARM proposed increasing the "LSP customer charge" for residential customers to 9¢ from 6¢ and, for small commercial customers only, increasing the "LSP customer charge" to 5¢ from 2.5¢. ARM further argued that the increase to the LSP customer charge is necessary to ensure that LSPs can sufficiently recover costs incurred for providing POLR service to residential and small non-residential customer categories.

TLSC expressed skepticism about the LSP customer charge of 6¢ in §25.43(m)(2)(A)(ii) and stressed the basis for these calculations and assumptions should be documented and published for comment and amendment if appropriate.

TLSC opposed TEAM and ARM's proposals to increase the customer charge for residential customers from 6¢ to 9¢ per kWh in §25.43(m)(2)(A)(ii) and to set the energy charge floor at

$7.25 per kWh. TLSC argued that, if TEAM and ARM's proposals were adopted, the lowest POLR rate possible would be 18.06¢ per kWh, which is unaffordable for most customers.

Commission Response

The commission declines to implement TEAM and ARM's proposals for "LSP customer charge" for residential and small commercial customers. The commission agrees with OPUC and TLSC that TEAM and ARM's recommendations would result in a maximum POLR rate for these customer segments that is unaffordable. The commission instead implements changes to these variables that protect customers from extreme rates and ensure cost recovery for REPS consistent the commission's responses to Question 1.

§25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) – "LSP energy charge"

Clauses §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) define "LSP energy charge" for use as a variable in the formula calculating maximum rate for POLR service charged by an LSP for residential and small and medium commercial customer segments, respectively.

Proposed §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) changes the calculation of LSP energy charge from an hourly rate to a rate that is set annually. Within the calculation of the energy charge is a multiplier of 120 percent for residential customers and 125 percent for small and medium non-residential customers. TEAM advocated for increasing the 120% LSP energy charge multiplier for residential customers to 125% and including an additional provision applicable to residential and small commercial customers. If the average of the actual RTSPPs for the applicable load zone for the 30 days preceding the transition to a POLR rate is at least twice the historical average RTSPP, the additional provision would increase the multiplier to 175% and the base LSP energy charge would be calculated according to the historical average

RTSPP multiplied by the number of kWhs the customer used. TLSC opposed TEAM's proposals to increase the multiplier from 120% to 125% for residential customers.

ARM suggested that the LSP customer charge increase be implemented with one of two proposed amendments. ARM's first proposal calculated the LSP energy charge as a rolling average of the RTSPP from the preceding 60 days with a 125% multiplier. ARM's second proposal maintained the language of the proposed rule but contained an additional trigger provision that would alter the calculation of "LSP energy charge" based on specific criteria. If the average RTSPP for the 30 days preceding the transition to POLR was twice the historical average RTSPP, then the LSP energy charge would include an additional multiplier. The multiplier would be the ratio of the preceding 30 days' average RTSPP to the historical average RTSPP.

TEAM and ARM recommended that the reference to "customer load zone" within the definition of "LSP energy charge" for residential and small commercial customers be modified to match the average charge calculation under §25.43(c)(15)(C), where the average POLR charge is determined based on the customer load zone "partially or wholly in the customer's TDU service area with highest average price." TEAM elaborated that each TDU area covers two to three load zones and that it is market standard for EFLs to be provided to customers based on the customer's TDU territory, and therefore "load zone" should be similarly specified. TEAM and ARM elaborated, arguing the current rule's method of using the highest of load zone averages is beneficial and that this change would ensure customer EFLs do not vary based on load zone within the same TDU territory and therefore be less confusing to customers as well as to REP call centers.

Commission Response

The commission agrees with TEAM and ARM that the reference to "customer load zone" within the definition of "LSP energy charge" defined in §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) be modified to "load zone partially or wholly in a service area" and adopts the recommended rule language. The commission declines to implement TEAM's and ARM's remaining proposals regarding the LSP energy charge. The commission agrees with OPUC and TLSC that TEAM's and ARM's recommendations would result in a maximum POLR rate for these customer segments that is unreasonable. The commission instead implements changes to these variables consistent with the commission's discussion of responses to Question 1.

Time period for LSP energy charge calculation

CCR suggested the commission consider having POLR price calculation based on the calendar year instead of what appears to be the state's fiscal year. CCR stated in both cases the "LSP energy charge" defined in §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) would be the average of the actual RTSPPs for the customer's load zone for the previous 12-month period ending December 31 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. CCR expressed that transitioning to a calendar year would simplify a customer's understanding of the rate calculations under §25.43(m)(2)(A) and §25.43(m)(2)(B), would harmonize with the requirements of §25.43(j), relating to the selection and service of REPs as LSPs, and ensure customers are provided he most up-to-date information. Joint REPs recommended that, if CCR's calendar year proposal is adopted, then EFL updates should be due on April 1 instead of December 31 in order to permit ERCOT to complete final settlement for December of the preceding year, which is 55 days after the operating day.

Commission Response

The commission disagrees with CCR's and Joint REP's recommendation to base the POLR price calculation on the calendar year. The timing of the current rule is to ensure the new POLR rate is available on January 1st to match the new POLR term every other year and therefore the commission declines to adopt CCR and Joint REP's proposed changes for "LSP energy charge" regarding the same.

For §25.43(m)(2)(A)(iii) only, Windrose recommended the LSP energy charge calculation use Intercontinental Exchange (ICE) data, specifically the ERCOT North 34KV Real-Time Peak Fixed Price Future contracts, as an index predictive of the short-term future market prices. The ICE-based variable recommended by Windrose would be a 30-day forward looking average. Windrose explained that when a REP receives customers switched through a mass transition to POLR then "the rational action a REP would take" is to acquire monthly short-term forward contracts to hedge the variable load created by the POLR-switched customers. Windrose asserts using an index predictive of future prices is better than an approach using historical prices because with a "backward looking proposal there will always be the risk that market fundamentals are different, and the historical pricing will not allow a REP to cover their costs." Further, Windrose recommended the multiplier for the LSP energy charge be 200% to more fully account for other costs and peak-hour price spikes not already accounted for in the LSP energy charge calculation.

Joint REPs agreed with Windrose's recommendations that the energy charge component of the POLR rate be based on the short-term forward market on the Intercontinental Exchange by using the average price for the next 30 days for the ICE ERCOT North 345 kV Real-Time Peak Fixed Price Future contract, the multiplier of customer usage, and the 200% adder for non-

energy costs such as losses, ancillary services, and other expenses. Joint REPs further stated if a POLR cap is adopted, Joint REPs recommended Windrose's proposed definition for §25.43(m)(2)(A)(iii) be considered for the maximum POLR cap and the minimum POLR cap be the calculation under the current version of §25.43(m)(2)(A)(iii).

Commission Response

The commission declines to adopt Windrose's proposal for "LSP energy charge." Windrose's recommendation offers no price certainty because it is based on forward prices. In implementing HB 16, the commission seeks to mitigate extreme variability in POLR rates. The commission also declines to accept Joint REPs' proposal to make Windrose's proposal the maximum POLR rate.

§25.43(m)(2)(A)(iv) and §25.43(m)(2)(B)(v) — "Number of kWhs the customer used"

Clauses §25.43(m)(2)(A)(iv) and §25.43(m)(2)(B)(v) define "Number of kWhs the customer used" for use as a variable in the formula calculating maximum rate for POLR service charged by an LSP for residential and small non-residential customer segments, respectively. Proposed §25.43(m)(2)(A)(iv) and §25.43(m)(2)(B)(v) state "'Number of kWhs the customer used' is based on interval data."

ARM proposed a definition of "Number of kWhs the customer used" that would change the basis of the definition from 'interval data' for residential and small commercial customer segments to 'usage information provided by the TDU.' ARM contended that interval data is not relevant for the POLR rate formula because the POLR rate is not directly indexed to RTSPPs due to the changes imposed by the commissions proposed rule, or ARM's alternative rule. Therefore, ARM suggested that it is more accurate to state that usage information is

provided by the TDU, not interval data, for residential and small commercial customer segments. TEAM recommended a virtually identical definition of "number of kWhs the customer used" and reorganization of §25.43(m)(2).

Commission Response

The commission agrees with ARM and TEAM that "interval data" may not necessarily be available from a non-standard meter. The commission amends the proposed rule to clarify that "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

§25.43(m)(4) – Good Cause Exception

Paragraph §25.43(m)(4) allows the LSP, for good cause, to adjust the rate applicable to a specific customer class prescribed in §25.43(m)(2) on an interim basis and after 10 business days of notice to the customer class, upon a showing by an LSP that the POLR rate as calculated is insufficient for cost recovery. Windrose recommended subsection §25.43(m)(4) be removed from the proposed rule as it prevents a future POLR rate from being truly ascertainable and effectively means that there is no known POLR rate. Windrose expanded its point with a hypothetical where the POLR rate is lower than the REP's cost to serve the customer. Specifically, Windrose stated that, to mitigate exposure to real time prices, REPs purchase forward wholesale power contracts to hedge fixed-price contracts sold to retail customers. Windrose argued that, by nature, POLR customers are "unexpected load" that a VREP has not fully accounted for. Windrose implied that the good cause exception diminishes the already limited certainty a VREP has about its allocation of POLR customers and prevents

adequate risk mitigation by a VREP through the purchase of short-term forward contracts to hedge the variable load and set variable rate pricing.

Windrose also indicated that the current rule sets the POLR rate based on the wholesale price to ensure VREPs can recover such costs. Windrose expressed concern that in an event similar to Winter Storm Uri where wholesale prices spike, VREPs would argue that "load weighted real time price" is the necessary cost to recover in applying for the good cause exception in §25.43(m)(4). Windrose articulated that this would effectively turn the subsection into a "back door" to charge customers real-time costs of power, contrary to the intention of this rulemaking and therefore should be deleted.

Joint REPs opposed Windrose's recommendation to delete §25.43(m)(4) but acknowledged the concern. Joint REPs argued that deleting the good cause exception in §25.43(m)(4) effectively requires an LSP to potentially operate at a loss by taking on a variable number of customers on short notice, at rates that do not cover the prevailing costs of providing service. Joint REPs further commented that the requirement for each LSP to seek a good cause exception under §25.43(m)(4) in situations that warrant good cause would be resource intensive for LSPs and the commission, and instead could be mitigated by designing the POLR rate to account for risk. However Joint REPs contended that the "circuit breaker" provisions within §25.43(m)(4) requiring the adjusted rate to be on an interim basis and upon good cause shown to the commission, with 10 days of notice to customers are sufficient for unanticipated events.

Commission Response

The commission declines to implement Windrose's proposal to remove the good cause exception codified under §25.43(m)(4) for the reasons cited by Joint REPs.

§25.43(p)(13) and §25.43(p)(14) – REP Obligations and Prohibitions, ERCOT Rules for Identification of Customers Transferred to POLR Service

Subsection §25.43(p) details a REP's obligations in transitioning customers to POLR service. Paragraph §25.43(p)(13) prohibits a mass transition under §25.43(p) from superseding a customer-made switch request to a new REP if the request was made before the mass transition was initiated, and further requires that a customer-requested switch post-dating the mass transition be made on the next available switch date. Paragraph §25.43(p)(14) contains ERCOT-specific rules regarding identification of mass transitioned customers for a period of 60 days, termination identification based on the later of the first completed switch or end of the 60-day period, and an implementation timetable with requirements for ERCOT regarding system changes or new transactions.

ARM proposed amendments to §25.43(p)(13) on the basis that the rule addresses concerns that have since been resolved by advanced metering systems (AMS) that permit same day switching and have diminished costs related to physical meter readings. ARM argued that §25.43(p)(13) is now harmful to the customer's REP-of-choice as the rule requires customers be switched to the customer's REP-of-choice, who may be not expecting the additional customer and may not yet be financially prepared to serve that customer, rather than allowing the customer to continue to be switched to the POLR REP and then later be switched to the customer's REP-of-choice on the agreed upon date. ARM recommended that the customer's REP-of-choice be given the opportunity to proceed with the switch date as originally scheduled or advance the switch to the customer's chosen REP instead of the customer being switched to the POLR

REP. ARM proposed draft language for §25.43(p)(13), replacing the language stating that "the switch must be made on the next available switch date" and replacing it with "the scheduled recipient REP shall be notified and given the opportunity to accelerate the switch date."

ARM also provided draft language for §25.43(p)(14) which struck the last sentence concerning the processing of the switch transaction as an "unprotected, out-of-cycle switch".

Commission Response

The commission agrees with ARM that AMS allows REPs the ability to offer same-day switches. However, the commission disagrees with ARM that REPs should have the option of allowing the customer to be transitioned to a VREP or POLR rather than honoring the customer's selection of REP. The commission adopts §25.43(p)(13) as proposed. The commission agrees with ARM's proposed amendment §25.43(p)(14) and amends the rule accordingly.

§25.43(t)(1) – ERCOT Customer Notice Requirements for POLR Transition

Subsection §25.43(t) prescribes the form, manner, and timing of notice to customers transitioned to POLR service and notice to the commission by ERCOT, the REP transitioning the customer, and the POLR provider. Paragraph §25.43(t)(1) prescribes the methods ERCOT must use to notify the customer of the customer's transition to POLR service and requires ERCOT to study the effectiveness of the prescribed notice methods used and report the results to the commission.

ARM recommended §25.43(t)(1) be amended to acknowledge that ERCOT may use different messaging for customers transitioned to a VREP during a POLR transition because these

customers are served on a market-based month to month rate, rather than the POLR rate calculated under §25.43(m)(2).

Commission Response

The commission declines to adopt ARM's proposal for §25.43(t)(1). Whether a customer is served on a market-based month-to-month rate or the maximum POLR rate has no bearing on the form of notice. While the "language and format approved by the commission" may vary based on the rate type, the current rule language allows appropriate flexibility.

§25.43(t)(3)(B) – Pricing of POLR service

Subparagraph §25.43(t)(3)(B) requires the notice to include a description of the POLR provider's rate for service and, if the pricing of subsection §25.43(m)(2) is applicable, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period must not be determined until the time the bill is prepared.

TEAM recommended removing language about the POLR rate being unpredictable and not determined until the bill is prepared or otherwise amending the language to be consistent with the final pricing formula determined in this rulemaking under §25.43(m)(2). TEAM specifically highlighted the requirement that "a statement that the price is generally higher than available competitive prices" be reviewed once the commission establishes the final pricing formula.

Commission Response

The commission agrees with TEAM that the formula in the adopted rule no longer should be described as "unpredictable" and amends the rule accordingly. The statement "a statement that the price is generally higher than available competitive prices" is an accurate description of the POLR rate and should remain in the notice.

§25.471(a) – General Provisions of Customer Protection Rules – concerning applicability

Paragraph §25.471(a)(3) applies minimum, mandatory customer protection rules to aggregators and REPs, and, where applicable, TDUs, registration agents, brokers, and power generation companies. Customers larger than 50 kW are eligible to waive a number of these rules. Proposed §25.471(a)(3) adds proposed §25.499 (relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts) to the list of rules that a customer larger than 50 kW cannot agree to waive by contract.

ARM supported the proposed changes to rules applicable to customers other than residential and small commercial customers, as the changes provide certainty and will help ensure compliance.

TLSC alleged that some REPs adopt contract provisions that are contrary to PURA and commission rules. TLSC recommended amending §25.471(a)(4) to require that REPs "notify the commission of all offerings and certify that each published document is fully in compliance with statutory and regulatory requirements."

Commission Response

The commission declines to adopt TLSC's recommendation to amend §25.471(a)(4) require a REP to notify the commission of all offerings and certify that published REP documents comply with all statutory and regulatory requirements, because this would be overly

burdensome for both REPs and commission staff. All products offered by a REP must already meet specific, minimum customer protection requirements detailed under Chapter 25, Subchapter B of this title as required by PURA §39.101, regardless of whether the REP has certified compliance. Further, requiring a REP to notify the commission of each new product would impose a cost on REPs without providing any additional customer protection. If, on its own initiative or in response to a complaint by a customer, commission staff desires to review a document produced by a REP, it can request that document under §25.485 (relating to Customer Access and Complaint Handling).

§25.475(a) – Applicability of Customer Protection Rules

Section §25.475 prescribes customer protection rules applicable to REPs and general requirements and information disclosures applicable to residential and small commercial customers. Specifically, §25.475 lists notice and information disclosure requirements for contracts with residential and small commercial customers for fixed rate products and non-fixed rate products.

Proposed §25.475(a) details the requirements applying to REPs and aggregators in marketing and providing service to residential and small commercial customers, and further specifies that the section applies to brokers, aggregators, and TDUs only when specifically stated. Additionally, the proposed version indicates that the section is effective for contracts entered into on or after September 1, 2021, and that contracts entered into prior must comply with the version of §25.475 effective at the time of execution.

TLSC opposed the proposed changes to §25.475(a) requiring compliance for brokers and aggregators only when specified. TLSC contended that, like REPS, the §25.475 rules should universally apply to brokers and aggregators.

Commission Response

The commission declines to apply the entirety of §25.475 to brokers and aggregators as recommended by TLSC as such a sweeping change of the rule's applicability is beyond the scope of this rulemaking project. Further, the commission notes that each of these entities plays different roles in the market, requiring different customer protection rules. Brokerage service customer protection rules, for example, are codified separately under §25.486 (relating to Customer Protections for Brokerage Services).

Effective date

TEAM recommended that §25.475(a) clarify that PURA §39.112, via Section 3 of HB 16, only applies to new enrollments or re-enrollments on or after September 1, 2021, not existing customers and provided rule language consistent with its proposal. Accordingly, TEAM expressed concern that the rule will apply to pre-existing contracts and maintained that expiration dates in the proposed rule should not affect existing customer contracts. TEAM maintained that requiring REPs to craft an expiration notice system, no matter where the customer is in their existing contract, would be onerous. TEAM emphasized that any rule exceeding the scope of HB16 should only be effective on or after the effective rule date and further argued that any changes related to SB 3 should not be applied until the effective date of the rulemaking, and instead should be effective no later than December 1, 2021.

TEAM proposed language for §25.475(a) that would make the rule apply only to brokers and aggregators when specifically indicated and would be effective for new contracts beginning after the rule is effective, with a three-month window for implementation. Additionally, TEAM and ARM recommended that any contracts created prior to the effective rule date would adhere to current rule requirements. ARM specified that the applicability in wholesale indexed product ban for residential and small commercial customers under §25.475(c)(2)(F), acknowledgment of wholesale pricing risk for larger customers under §25.499, and increased contract notice expiration requirements for residential term contracts under §25.475(c)(2)(D) and (E) and §25.475(e) should track HB 16 to be effective only for contracts entered into, on or after September 1, 2021.

ARM additionally recommended that, for rule requirements under §25.475 and §25.499 beyond the scope of HB 16, be effective 120 days after this rulemaking to provide REPs time to implement. ARM's recommended language was also included in redlines provided by Joint REPs.

Commission Response

The commission agrees with Joint REPs that REPs need time to implement modifications to the rule that were adopted at the discretion of the commission that effect contract documents. However, the commission disagrees that requirements mandated by statute merit a delayed effective date. Further, the clarifications that the commission made to the definitions of fixed price products and price are effective immediately.

The commission adds language clarifying that the "requirements for an additional notice to residential customers of contract expiration is effective for contracts entered into on

or after September 1, 2021. REPs must comply with the requirements set forth in §25.475(e)(2)(B)(ii), (e)(2)(C)(iii), (v), (vi), (vii), (h)(4), (h)(6)(C), and the requirements set forth under §25.475(e)(1) for contracts entered into with small commercial customers by April 1, 2022. Contracts entered into prior to the effective date of these provisions must comply with the provisions of this section in effect at the time the contracts were executed."

The commission also notes that the ban on offering wholesale indexed products to residential and small commercial customers under §25.475(c)(3)(F) was effective via statute on September 1, 2021, and the ban on offering indexed products under that subparagraph is effective on February 1, 2022. The commission, however, addresses the deadlines by adding language to §25.475(c)(3)(F).

The commission does not provide a delayed effective date for §25.475(c)(3)(G) or (j) as these provisions were removed from the rule.

§25.475(b)(1)-(2) – Contract and Contract Documents

Paragraph §25.475(b)(2) defines the term "Contract" as inclusive of the terms of service, EFL, and YRAC. Proposed §25.475(b)(2) adds the AOR to the definition. Proposed §25.475(b)(2) defines the term "Contract Documents" as the terms of service, EFL, YRAC, and, if applicable, the AOR.

ARM and TEAM opposed requiring AORs under §25.475(j) for residential and small commercial customers who purchase a product with a separate assessment of ancillary service charges and instead recommended inclusion of the AOR in the EFL. ARM and TEAM

therefore requested the removal of AOR references under §25.475(b)(1) and included a proposed revision to the definition removing the AOR reference.

CCR and Joint REPs proposed inclusion of a reference to the Prepaid Disclosure Statement (PDS) in the definitions of both contract and contract documents and provided recommended language.

Commission Response

The commission removes the reference to AOR in both the definitions of contract and contract documents because the commission is prohibiting each of the products requiring an AOR under the proposed rule. The commission agrees with CCR and Joint REPs that PDS should be included in both definitions and adopts Joint Reps recommended language.

§25.475(b)(5) and (8) – Definitions of Fixed Rate Product & Price

Paragraphs §25.475(b)(5) and §25.475(b)(8) respectively provide the definitions of "fixed rate product" and "price." Under existing §25.475(b)(5), a fixed rate product is a "retail electric product…for which the price (including all recurring charges) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU charges, changes to [ERCOT administrative fees] or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control." Under existing §25.475(b)(8), price is defined as the "cost for a retail electric product that includes all recurring charges [and excluding applicable taxes]." Proposed §25.475(b)(5) and (8) clarify that ancillary services are included in both the definition of price and again, in "price" as it is used in the definition of fixed rate product. The commission's proposed changes to the

definitions of "price" and "fixed rate product" were intended to ensure that REPs are prohibited from passing through the cost of ancillary services to customers enrolled in fixed rate products. TEAM, ARM, CCR, Octopus Energy, and Joint REPs opposed the commission's proposed changes, but differed in whether they objected to the prohibition on the pass through of existing ancillary service charges or new or modified ancillary service charges.

Existing Ancillary Service Charges

CCR argued the existing definition of "fixed rate product" allows REPs to pass through costs "beyond the REP's control" such as ERCOT charges and that conversely, the proposed rule forces REPs to "bundle" ERCOT charges into its generation costs. CCR maintained that, if the commission requires REPs to offer a "fixed price" inclusive of ancillary service charges without permitting REPs to pass through such costs to customers, REPs will likely cease offering fixed rate products.

CCR argued that the amount of ancillary service costs a REP will be responsible for is unknown because ERCOT allocates each load serving entity a load share of the total ancillary services it procures and that only once ERCOT has procured all ancillary services, which may vary daily, can a REP have certainty about the amount and type of ancillary services ERCOT will charge the REP. As such, under the proposed rule it is difficult for a REP to design a fixed rate product that adequately accounts for a REP's ancillary service charges and therefore, a REP cannot include ancillary service charges as part of the "price" for a fixed rate product on the EFL or otherwise recoup that cost. CCR opined that the current rules allow charges that are not within the REP's control to be passed through to the customer and in contrast, the proposed rule prohibits the pass through of ancillary service charges for fixed rate products, which in turn will result in a REP absorbing as a loss any increase in costs not covered by the fixed

amount prescribed on the EFL at the outset of the contract. Therefore, in CCR's view, components of an ASC that are not within a REP's control should be eligible to be passed through to customers and that conversely, the proposed rule erroneously concludes that ancillary service charges are a generation expense within the control of the REP and not part of the ERCOT fee charged to loads.

CCR suggested amending the definition of "fixed rate product" to disclose what is "fixed" depending on whether a REP discloses the total price ("bundled") or itemizes all or some of cost components of the price ("unbundled") on the EFL. If a REP offers a "bundle" then the rate is inclusive of generation charges, TDU charges, and ERCOT charges and pass-through of any increases to these costs would be prohibited. However, if an "unbundled" product is offered, the EFL will include a "fixed" generation portion, while other line item costs are eligible to be passed through to customers.

OPUC, ARM, and TEAM each filed comments reflecting a different understanding of current law than that espoused by CCR with regards to whether REPs are currently permitted to pass through changes in existing ancillary service charges to residential and small commercial customers enrolled in a fixed rate product.

OPUC expressed indifference to the proposed definition because, in OPUC's view, ancillary service charges are already not permitted to be passed through to customers, and the proposed definitional changes to "fixed rate product" and "price" will have no effect on what has already been established by the commission.

ARM and TEAM drew a distinction between variations in existing ancillary service prices, and changes to the process ERCOT uses for determining the quantity of ancillary services

acquired or the creation of new ancillary service products. These commenters argue that existing ancillary services have historically been treated as recurring charges that are properly included in the price of a fixed indexed product but that changes to the quantity of ancillary services acquired or the creation of new ancillary service products qualify as regulatory actions that would permit a variation in price charged to the customer. OPUC agreed that ancillary service charges were recurring charges.

TEAM also argued that the proposed rule creates ambiguity as to what quantity or type of ancillary service charges must be carried by load service entities and REPs.

Joint REPs opposed CCR's proposed amendments for the definition of "fixed rate product" to provide for separate descriptions and pass-through criteria for "bundled" and "unbundled" plans, because it will cause confusion among customers and current rules already require disclosure by REPs as to which terms of a product can and cannot change in the EFLs.

Commission Response

The commission declines to modify the definition of fixed rate product to provide for separate descriptions and pass-through criteria for bundled and unbundled plans, as requested by CCR, as such a delineation would be superfluous. The price of a fixed rate product is not permitted to vary based on any changes in ancillary service charges, unless determined by the commission, regardless of whether they are presented in a bundled or unbundled manner. The commission also agrees with Joint REPs that this proposal would cause confusion among customers regarding which aspects of their rates were fixed.

The commission disagrees with CCR's depiction of ancillary service charges as part of an ERCOT administrative fee that can be passed through to customers. In Project Number 35768, *Rulemaking Relating to Retail Electric Provider Disclosures to Customers*, the commission specifically "clarifie[d] that for the fixed rate product, ERCOT fees include fees approved by the commission and charged to loads, such as the ERCOT administrative fee... [and under] this definition, ERCOT fees would not include ancillary services...". The commission agrees with TEAM, ARM, and OPUC that ancillary service charges should be treated as recurring charges that are fixed in the context of a fixed rate product.

The commission agrees with TEAM that the proposed rule does not clearly delineate between which ancillary service charges are not permitted to cause the price of a fixed rate product to vary from the disclosed amount. To clarify that, unless determined by the commission, REPs are not permitted to pass through any variations in ancillary service charges, the commission adds language to paragraph (b)(5): "The price may not vary from the disclosed amount to reflect changes in ancillary service charges unless the Commission expressly designates a specific type of ancillary service product as incurring charges beyond the REP's control for a customer's existing contract."

New or Modified Ancillary Service Charges

TEAM, ARM, and CCR each argued REPs should be permitted to modify the price of fixed rate products when ERCOT or the commission introduce modified or new ancillary service products. ARM noted that "there is an important distinction between variations in ancillary services prices and variations in the quantity of ancillary services obtained (or suite of ancillary services procured)." ARM elaborated, stating that "variations in the price of ancillary service

charges [may not be passed through to customers], but changes to ERCOT's process for determining the *quantity* of ancillary services to be obtained or the creation of new ancillary service products that result in charges assessed to load serving entities (such as REPs) arguably qualify as regulatory actions that would permit a price change under to §25.475(d)(2)(B). Further, ARM characterized ERCOT's procurement of a dramatically increased quantity of ancillary services as regulatory action that should be eligible for pass-through under §25.475(d)(2)(B).

In the alternative, ARM recommended clarifying the reference to ancillary service charges in the proposed definitions to distinguish which ancillary service costs that a REP can and cannot reasonably control. ARM stated that REPs should not "unilaterally bear policy-driven risks that are beyond their control."

TEAM argued that changing the definition of "fixed rate product" will only cause confusion as the proposed rule differs from the statutory definition of "fixed rate product" under PURA §39.112(a), which was not changed by HB 16. Additionally, TEAM stated the meaning of "ancillary services" has been in flux at the commission in terms of quantity or type of ancillary service costs LSEs (Load Serving Entities) and REPs are responsible for. Specifically, TEAM argued that ancillary services were "historically designed to cover unanticipated forecast error in the amount of load on the system and short-term risk of the sudden loss of a generation unit" but recent action by ERCOT using ancillary services as a "reserve substitute" has changed the meaning of ancillary services in practice. TEAM concluded that if ERCOT creates a new cost or fee beyond REP's control, and labels it an ancillary service charge, REPs should not be prohibited from passing through that cost.

TLSC opposed ARM, TEAM, and CCR's recommendations to remove ancillary service charges from the proposed definitions of "fixed rate product" and thus permit ancillary service charges to be passed through to customers. TLSC argued that this would mean REPs would be able to charge fees additional to the "fixed" price. TLSC maintained that consumers may be misled by a rate that passes through ancillary service charges as being lower than it actually is. Accordingly, TLSC reasoned that REPs, not the consumer, should bear "financial risk in the market" by hedging wholesale prices.

Commission Response

As previously stated, the commission modifies the definition of fixed rate product to clarify that "[t]he price may not vary from the disclosed amount to reflect changes in ancillary service charges unless the commission expressly designates a specific type of ancillary service product as incurring charges beyond the REP's control for a customer's existing contract." The commission declines to adopt ARM's recommendation for distinguishing between ancillary service costs that a REP can and cannot reasonably control in the proposed definition of "fixed rate product" and "price" or to draw a distinction between existing and new or modified ancillary service charges. Such distinctions would not effectuate the commission's customer protection goal of insulating customers from hazardous price increases as whatever portion of ancillary service charges that may not be known is the portion most subject to volatility due to outlier events. The added language to the definition of "fixed rate product" specifies that the commission, in its discretion, may review whether costs outside of a REPs control incurred for ancillary service products may be passed through in the price for a fixed rate product in existing customer contracts. The commission will review costs associated

with ancillary service products for pass through eligibility to balance customer protection interests and the risk concerns of REPs.

Ancillary service charges are a necessary cost that is required to maintain the safety and reliability of the electric grid, and while the commission recognizes that these costs may be challenging for REPs to predict with accuracy, REPs are in a significantly better position to do so than residential or small commercial customers and have access to a much wider array of financial tools to manage those risks. The review process implemented by the commission for ancillary service products substantially addresses the commenters' concerns by ensuring that, prior to implementation, charges associated with new ancillary service product are eligible for review by the commission on a case-by-case basis to determine if they are appropriate for pass through. The commission understands that forward-looking certainty is important for REPs to obtain financing and develop forward-looking business models. As a result, the commission has determined that such an ancillary service review process is necessary in order to determine the effect that upcoming market design changes will have on the REP community and consumers. The commission emphasizes that it will be thoughtful about the assignment of any extraordinary costs but also require the REP community to demonstrate the necessity of pass through eligibility for each ancillary service product. The commission wants to account for, on a case-by-case basis, whether pass through is warranted, and, if so, whether full or partial pass through is necessary.

The commission also disagrees with TEAM that not allowing the price of fixed rate products to vary due to changes in ancillary service costs is inconsistent with statute. The commission acknowledges that the statutory definition for fixed rate product in PURA

§39.112(a) aligns with the existing definition in the commission's rules, but PURA §39.112(k) specifically states that "[n]o provision in this section shall be construed to prohibit the commission from adopting rules that would provide a greater degree of customer protection." Moreover, under PURA §39.101(a)(1) "the commission shall ensure that retail electric customers are established that entitle a customer to... safe, reliable, and reasonably priced electricity" and under PURA §39.101(b)(5) and (6) a customer is entitled "to receive sufficient information to make an informed choice of service provider" and "to be protected from unfair, misleading, or deceptive practices."

Similar to its analysis for prohibiting indexed rate products under Question 2 above, the commission finds that allowing REPs to modify the price of a fixed rate product based on changes in costs associated with ancillary service charges does not ensure that customers are entitled to reliable and reasonably priced electricity, nor – by the REPs' own admission – do customers have sufficient information to make an informed choice of provider if individual REPs may elect to pass these costs through to customers directly. Lastly, while the commission recognizes that REPs are not misleading or deceptive in attempting to pass through ancillary service charges or modify the rate of fixed rate products in response to changes in ancillary service costs, it is fundamentally unfair for customers to bear an unexpected, unknown cost that could be exponentially higher than what is expected upon signing of a contract for a fixed rate product. Including ancillary service charges in the definitions of "fixed rate product" and "price," and thus preventing ancillary service charges from being passed through to customers, is neither a ban on REPs offering fixed rate products nor an unreasonable restraint on cost recovery by REPs. The commission finds that these proposed definitional changes and resulting

effects on fixed rate products are "both practical and limited so as to impose the least impact on competition" as required by PURA § 39.001(d).

§25.475(c) – General Retail Electric Provider requirements

Subsection §25.475(c) concerns the general and specific contract requirements and general information disclosure requirements a REP must provide customers in their communications with said customers. Subsection §25.475(c) also contains website requirements for REPs, concerning specific information that must be available on REP websites.

CCR recommended simplifying language referring to documents such as terms of service, YRAC, EFL, the AOR to "contract documents" because the proposed language excludes the PDS.

Commission Response

The commission declines to simplify references to the terms of service, YRAC, EFL, and AOR to "contract documents." Additionally, distinction among the documents is necessary for specific requirements for each document within §25.475 and reference elsewhere in the rules. The commission has adopted CCR's and Joint REP's proposal to include the PDS in the definition of "Contract documents" under §25.475(b)(2). The commission adds references to PDS as appropriate throughout this subsection.

§25.475(c)(2)(A) – General Contracting Requirements

Subparagraph §25.475(c)(2)(A) concerns required contract documents and their formatting.

TEAM and ARM suggested removing references to AORs from the proposed language. ARM recommended requiring AOR within EFLs and removing references to AOR in

§25.475(c)(2)(A) since they would no longer be needed with their recommendation. TEAM recommended the removal of AOR language from §25.475 entirely and alternatively also recommended modifying the proposed rule to require an AOR in the EFL.

Commission Response

The commission removes all references to AOR in 25.475, consistent with its decisions to prohibit the offering of indexed products to residential and small commercial customers and prohibit the pass through of ancillary service charges to these customers.

§25.475(c)(3)(F) and §25.475(c)(3)(G) – Specific Contracting Requirements

Proposed §25.475(c)(3)(F) concerns a REP, aggregator, or broker's ability to enroll a residential or small commercial customer in a wholesale indexed product.

Proposed §25.475(c)(3)(G) concerns a REP, aggregator, or broker's ability to enroll a customer that is not a residential or small commercial customer in a wholesale indexed product.

TLSC recommended the proposed subparagraph §25.475(c)(3)(F) prohibit all indexed products as well as all products that pass through ancillary service charges. Octopus Energy, TEAM and CCR oppose the prohibition of indexed plans and plans with ancillary service pass through charges for residential and small commercial customers. CCR, TEAM, and TLSC recommended deleting some or all of proposed §25.475(c)(3)(G) and Octopus agreed in reply. CCR and TEAM recommended striking the subparagraph in its entirety. CCR argued that the proposed subparagraph is beyond the scope of HB 16. OPUC disagreed with CCR, replying that placing restrictions or eliminating indexed products is well within the commission's authority. Octopus recommended "appropriate safeguards" for an indexed product rather than a complete ban. Robert Borlick commented "that a ban of all indexed products would reduce

demand response and reliability of the ERCOT grid" and Octopus agreed in reply. TLSC commented that most customers lack the knowledge or the resources to monitor ERCOT market pricing or ancillary service charges. OPUC agreed. OPUC disagreed with CCR, TEAM and Octopus Energy's opposition to prohibition of indexed plans and plans with ancillary service pass through charges for residential and small commercial customers.

TLSC recommended the deletion of the subsection "concerning the customer's acknowledgement of risk." ARM and TEAM suggested modifying the proposed subparagraph to permit the placement of the AOR in the EFL. TEAM made this suggestion in the alternative, if the commission did not strike the language.

Commission Response

The commission agrees with TLSC's and OPUC's recommendation and adopts language consistent with a comprehensive ban on wholesale indexed products and products that pass-through ancillary service charges to residential or small non-residential customers. The commission disagrees with Octopus Energy, TEAM, and CCR and declines to adopt its proposals for the rule. The comprehensive discussion of this decision is found under the commission response to comments on Question 2.

The commission also adds language clarifying when these prohibitions take effect, as discussed under §25.475(a) above.

Proposed §25.475(e)(1) – Notice Timeline for Expiration of a Non-Fixed Rate Product

Proposed §25.475(e) encompasses contract expiration and renewal offers. The rule dictates what information a REP is required to provide a customer, under which circumstances and when such information needs to be sent to customers. Proposed §25.475(e)(1) addresses the

notice a REP must provide a customer regarding the expiration of a non-fixed rate product and a REP's obligation should they fail to provide such notice.

TEAM opposed the application of fixed rate product expiration notice requirements under proposed §25.475(e)(1) to small commercial customers because doing so would be outside the scope of HB 16.

ARM and TEAM proposed clarifying proposed §25.475(e)(1) to conform to the language of HB 16. Specifically, TEAM suggested adding language to the paragraph that would allow contract expiration notices to be sent electronically as stated in proposed §25.475(e)(2)(B).

Commission Response

The commission strikes proposed paragraph (e)(1) from the adopted rule, as it is no longer necessary. All variable price products are month-to-month, and non-fixed rate term products are no longer permitted consistent with the commission's decision to eliminate indexed products for residential and small commercial customers.

Proposed §25.475(e)(2)(A); Adopted §25.475(e)(2)(A) – Notice Timeline for Fixed Rate Products

Proposed §25.475(e)(2) addresses the notice a REP must provide a customer regarding the expiration of a fixed rate product and a REP's obligation should they fail to provide such notice.

Proposed §25.475(e)(2)(A) establishes the form and manner of expiration notices to customers subscribing to fixed rate products.

TLSC supported the proposed changes to the notice timeline for fixed rate products in proposed §25.475(e)(2).

ARM opposed the application of contract expiration notice provisions to small commercial customers because it would be outside the scope of HB 16 and requested that small commercial customers not be included in the adopted rule. Alternatively, ARM suggested changing the language of subparagraph proposed §25.475(e)(2)(A) to allow REPs to send the final contract expiration notice to a small commercial customer 14 days prior to the contract expiration date.

ARM and TEAM also recommended permitting REPs to send the first contract expiration notice up to three months prior to the contract end date if the contract is for a term of 12 months or longer, as three months would encompass the last third of the contract term. Octopus Energy agreed. In the alternative, ARM suggested amending the preamble of proposed §25.475(e)(2)(A) to provide for this flexibility.

Octopus Energy recommended requiring two additional notices at two months and one month prior to the end date of the contract. If these two additional notices are required, Octopus also recommends limiting a REP's option to extend a contract to three months or less, should the REP fail to provide appropriate notice of the original contract end date.

Commission Response

The commission disagrees with ARM and TEAM that contract expiration notice provisions should not apply to small commercial customers. As detailed in commission responses to Question 1, Question 2, §25.43(m)(2), and §25.475(b)(5), the commission, in its discretion, has gone beyond the mandatory minimum requirements of H.B. 16 and S.B. 3 pursuant to its statutory authority as the agency charged with regulation of the

electric market. However, the commission acknowledges the prudence expressed in commenters' recommendations and adopts ARM's proposal permitting a REP to send the final contract expiration notice to a small commercial customer 14 days prior to the contract expiration date. The commission further adopts ARM and TEAM's proposal, supported by Octopus Energy, to send the first contract expiration notice up to three months prior to the contract end date if the contract is for a term of 12 months or longer and amends §25.475(e)(1)(A) accordingly. The commission declines to adopt Octopus Energy's recommendations for two additional notice requirements for two months and one month prior to the end date of the contract as ARM and TEAM's proposal substantively addresses this concern with a 12-month threshold.

Proposed §25.475(e)(2)(C); Adopted §25.475(e)(2)(C) – Additional Means of Providing Notice

Proposed §25.475(e)(2)(C) dictates a REP's obligation if the notice timeline for expiration of a fixed rate product is not met and the customer does not select another retail electric product before the expiration of the fixed rate contract term.

ARM commented that proposed §25.475(e)(2)(C) should be deleted as it is duplicative of proposed §25.475(e)(3)(E). TEAM suggested clarifying proposed §25.475(e)(2)(C) to conform to proposed §25.475(e)(3)(E) to specify that "sufficient expiration notice' means the final [contract expiration notice] and not that all three [contract expiration notices] must first be sent" ARM also suggested this in the alternative to deleting proposed §25.475(e)(2)(C).

Octopus Energy strongly supported the changes to the notice REPs must provide customers regarding the termination of a fixed rate product. Octopus proposed clarifying proposed

§25.475(e)(2)(C) concerning how long a REP must continue serve to a customer under the pricing terms of a fixed rate product if a REP makes an error providing the expiration notice during the last third of the customer's fixed rate contract period.

Joint REPs opposed Octopus Energy's recommendation for contract expiration notice, arguing it may be harmful in practice. Joint REPs recommend including an explanation in the preamble to clarify that the requirement in proposed §25.475(e)(2)(C) is not intended to allow for REPs to avoid sending the contract expiration notice to a customer by continuing to serve such a customer on a fixed rate product.

Commission Response

The commission adopts ARM's and TEAM's proposal for clarifying "sufficient expiration notice" in §25.475(e)(1)(C) to specify the final contract expiration notice and not that all three contract expiration notices must first be sent in order to conform with §25.475(e)(2)(E).

The commission declines to adopt Octopus Energy's proposal for §25.475(e)(1)(C). The proposed rule appropriately balances the obligation of a REP to provide required notice to a customer with the right of a customer to select another retail electric product.

The commission agrees with Joint REPs that §25.475(e)(1)(C) is not intended to permit REPs to continue to serve a customer on a fixed rate product by failing to issue contract expiration notices to customers.

The commission agrees with Octopus Energy's recommendation limiting REPs to extend a contract by a period not exceeding three months should the REP fail to provide appropriate notice of the original contract end date and amends the rule accordingly.

Proposed §25.475(e)(3)(A) and §25.475(e)(3)(C)(vi); Adopted §25.475(e)(2)(A) and §25.475(e)(2)(C)(vi) – Contract Expiration

Paragraph §25.475(e)(3) reflects REP's responsibilities to a customer when a contract is reaching its expiration date, including notice and information requirements. Proposed §25.475(e)(3)(A) details the procedure a REP must follow if a customer takes no action in response to the final notice of contract expiration. Proposed §25.475(e)(3)(B) and its subsections prescribe the requirements and form and content of a customer's contract expiration notice.

Octopus recommended clarifying proposed §25.475(e)(3)(A) to require REPs to provide monthly notice of the price applicable to a default renewal product before that product goes into effect. To do this, Octopus recommended changing proposed §25.475(e)(3)(A) to require REPs to provide notice of the price a customer will pay if they default to the renewal prices no later than 24 to 72 hours before the rate is applicable unless the customer is on a daily or hourly index. In addition, Octopus suggested making this price notice a requirement for "any variable price product sold to residential and small commercial customers, as well as customers who rolled onto such a product prior to the effective date of HB 16."

Joint REPs opposed Octopus Energy's recommendation for price disclosure because it is "unnecessary, impractical" and goes beyond the scope of HB 16. Joint REPs further commented that REPs have existing obligations to provide notice of price to customers under §25.475 and a product's price is not known until a customer's usage is known and the contract is towards its end.

ARM and TEAM commented that the removal of the word "visible" from proposed §25.475(e)(3)(B)(i) may have been in error. ARM suggested the appropriate word to remove from that subparagraph would have been "readily." If this was the case, ARM supported the change, and this support would also be applicable to the same change in proposed §25.475(e)(3)(B)(ii) and §25.475(e)(3)(B)(iii) as well. TEAM recommended including in proposed §25.475(e)(3)(C)(vi) language like that of proposed §25.475(e)(3)(C)(v) and proposed §25.475 (e)(3)(C)(vii) that clarifies the information required in the final notice.

Commission Response

The commission declines to adopt Octopus Energy's recommendations for §25.475(e)(2)(A) as it is beyond the scope of this rulemaking and agrees with Joint REPs regarding the same. The commission agrees with ARM and TEAM and adopts their proposed change for §25.475(e)(2)(B)(i), removing the word "readily" and replacing it with "visible" in conformity with §25.475(e)(2)(B)(ii) and §25.475(e)(2)(B)(iii).

The commission agrees with TEAM and adopts their proposed change to add "The final notice provided pursuant to subsection (e)(3) must include" to §25.475(e)(2)(C)(vi) for conformity with §25.475(e)(2)(C)(v) and §25.475(e)(2)(C)(vii).

Proposed §25.475(e)(4); Adopted §25.475(e)(3) – Affirmative Consent

Paragraph §25.475(e)(4) prescribes how a customer 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, and what information must be sent to a customer in doing so.

ARM and TEAM recommended removing the reference to the AOR as a separate document in proposed §25.475(e)(4)(C). In the alternative TEAM suggested including the AOR in the EFL.

Commission Response

The commission removes the reference to AORs as requested, as AORs are no longer necessary in accordance with the commission's decision to prohibit the offering of indexed products to residential and small commercial customers.

§25.475(h)(4) – TDU Load Shed Procedures

§25.475(h) dictates the specificity required in the Your Rights as a Customer (YRAC) disclosure. Proposed §25.475(h)(4) requires that a TDU develop load shed procedures on or before September 1, 2021. The YRAC document detail such procedures and identifies for customers where more detailed information on the same can be found.

TLSC requested YRACs and terms of services to be reviewed for compliance with commission rules upon being posted on Power to Choose. TEAM requested the commission assist utilities in creating a standard load shedding procedure. Additionally, TEAM requested assistance with creating conformity in particular areas, even if the commission believes each region should have different standards. Joint TDUs reported having already created a template for a "concise, standardized communication discharging the TDU's obligations under §25.475(h)(4) that each TDU will provide each REP and post on the TDU's website." Joint TDUs believed they have already fulfilled their obligation to communicate the load shed procedures, along with information required by S.B. 3. Additionally, Joint TDUs believed the omission of a formal review and approval process is inherent and proper, because TDUs are required to

communicate their own respective procedures on load shed. Joint TDUs requested a reasonable period to comply with the new rule and asserted a September 1, 2021, deadline was inappropriate in that it is retroactive. TEAM also requested an opportunity for REPs to review and comment on load shed procedures prior to the rule adoption. Joint TDUs acknowledged they would include this documentation on their respective websites but doing so would only be beneficial for customers who have consistent computer access.

TLSC requested the commission not assist TDUs with creating a document because it would alleviate legal liability for providing reliable power. TLSC requested transparency of the process and additional information that provides information of load shedding priorities for each address. TLSC believed this information is important for critical care and chronically conditioned customers.

TLSC listed certain types of information they would like to see included in the periodic notice of load shed procedures: notification of critical care and chronic condition customers twice yearly, how involuntary load shedding affects these individual's power supply, and safety nets created by REPs and utilities alike, along with a phone number to communicate with a knowledgeable individual in case of an unplanned outage. TLSC believed the current TDU draft plan is insufficient.

Commission Response

The commission disagrees with TLSC's recommendation for the commission to review YRACs and terms of service documents simultaneously after being posted on the Power to Choose website for similar reasons as stated under heading §25.471(a). Imposing a

requirement for the commission to review the YRACs and terms of service documents upon posting to the Power to Choose website is out of scope of this rulemaking.

The commission finds that TEAM's proposal for the commission to assist utilities in creating a standard load shedding procedure is beyond the scope of this rulemaking.

The commission agrees with Joint TDUs and TEAM that a September 1, 2021 effective date for compliance with §25.475(h)(4) is inappropriate. However, the commission notes TDUs are required to comply with §17.003(d-1) to the extent possible or practicable as of September 1, 2021.

§25.479 – Issuance and Format of Bills

Section §25.479 concerns the required contents of bills and the frequency and delivery of such bills. Subparagraph §25.479(c)(1)(S) requires a bill to a residential customer list the Power to Choose website in 12-point font or larger on the first page of the bill. Proposed §25.479(d) requires a REP to provide public service notices to its customers, including load shed procedures, a list of critical customers and applications for the same, and recommendations to customers to reduce electricity use during load shed.

TLSC expressed concern for residential customers who lack internet access being able to reach the Power to Choose website as specified in §25.479(c)(1)(S). Due to this concern TLSC recommended adding the Power to Choose phone number to the §25.479 (c)(1)(S) required information for residential customers.

ARM and TEAM expressed concerns about the timeline for public service notices in §25.479 (d)(1)-(4). Because of hurricane messaging requirements in May to November, ARM and

TEAM proposed changing the public service notice requirements to April and December with an allowance for electronic communication.

ARM also commented that service notice requirements in §25.479(d) are similar to the requirements that §25.479(h)(4) would add to the YRAC documents. Therefore, ARM recommended changing §25.479(d)(2) to allow REPs to direct customers to a website maintained for purposes of §25.479(h)(4).

Commission Response

The commission disagrees with TLSC's recommendation for §25.479(c)(1)(S) to change the rule language to include the Power to Choose phone number. The required language is specified in PURA §39.116.

The commission disagrees with ARM's and TEAM's recommendation to change §25.479(d)(1)-(4) to require REPs to provide information to customers in April and December as opposed to April and October. The commission's selection of April and October is intended to allow customers sufficient time in advance of the summer and winter seasons to apply for critical care status or make other necessary arrangements. This goal supersedes ARM's and TEAM's goal to make the messaging cycle more convenient for their implementation. The commission agrees with ARM that §25.479(d)(2) should reference the YRAC documents detailing critical customers under §25.479(h)(4) and amends the rule accordingly.

§25.485(c) – Regarding Complaint Handling

Subsection §25.485(c) addresses a customer's ability to make a formal or informal complaint and a REPs ability to require alternative dispute resolution in the terms of service.

TLSC expressed concerns over terms of service agreements violating §25.485(c) and that they are written in language costumers cannot comprehend. TLSC recommended that the commission needs to be more proactive in this regard as the customers most vulnerable are poor, elderly, or those with disabilities. TLSC suggested "regular compliance reviews of the documents, providing standard language for all or portions of the document, and issuing fines when violations are found" or a recurring procedure for document review that define the business relationship between a REP and customer.

Commission Response

The commission declines to adopt the recommendations of TLSC for reviewing terms of service agreements as outside the scope of this rulemaking.

§25.498 – Prepaid service

Section §25.498 governs the applicability and relevant definitions for prepaid service in addition to the requirements and obligations of a REP in offering prepaid service.

TLSC opposed general prepaid service, arguing that it is targeted to low-income customers, has subpar consumer protection standards resulting in multiple disconnections in a single month, and is high priced. TLSC suggested that instead of prepaid service, reasonably priced fixed-rate POLR service offered as a standard retail service package be available to transition prepaid customers to post-paid service. TLSC urged the commission to be proactive in monitoring for compliance with prepaid service rules and take corrective action where required.

Commission Response

The commission declines to adopt the recommendations of TLSC for banning prepaid service products as this proposal is beyond the scope of this rulemaking. The commission also declines to adopt the recommendations of TLSC to transform POLR service into a retail service product. As discussed in the commission's response to Question 1 above, the commission opts to use a year-over-year safety threshold to ensure that POLR rates remain at a reasonable level.

§25.498(c)(15) – Price Cap for Prepaid Service

Paragraph §25.498(c)(15) prohibits a REP providing prepaid service to a residential customer from charging higher than the POLR rate in the applicable TDU service territory. Specifically, the calculation under §25.475(g)(2)(A) – §25.475(g)(2)(E) for prepaid service must be equal to or lower than at least one of the tests described in subparagraph §25.498(c)(15)(A) – §25.498(c)(15)(C) which consist of the minimum, maximum, and average POLR rates. §25.498(c)(15)(D) requires the same test for a prepaid fixed rate product. Windrose offered draft language modifying §25.498(c)(15) as follows:

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

Windrose proposed the amendment because it interpreted the commission's intent for the rule to be to ensure the average price charged does not exceed the POLR threshold and that the average is calculated over the billing cycle or a typical billing period. Windrose noted that some REPs offer free energy and TDU charges overnight in exchange for a higher rate during

peak hours and that such a REP could charge a higher rate during peak hours so long as the average rate is below the POLR threshold. In calculating the average, Windrose notes a timeframe is necessary and proposes the timeframe be "a calendar month or TDU billing cycle." ARM noted if the commission's proposed changes to §25.43(m)(2)(A) and §25.43(m)(2)(B) are implemented, amendments may be required for §25.498(c)(15) to determine whether a prepaid product is compliant with the requirement that it be priced no greater than the POLR rate. Specifically, some of the changes to the existing rule in proposed §25.43(m)(2)(A) and §25.43(m)(2)(B) may render the tests envisioned in §25.498(c)(15) impractical and would warrant revision. However, ARM stated that if its alternative proposal for §25.43(m)(2)(A) and §25.43(m)(2)(B) is adopted, the tests in §25.498(c)(15) could likely remain as-is.

Commission Response

The commission disagrees with Windrose that §25.498(c)(15) should use the "average price" in determining if the REP is offering a rate that exceeds the POLR threshold.

The commission agrees with ARM that the final POLR rate formula under §25.43(m)(2) affects the prepaid service price cap tests under §25.498(c)(15). Accordingly, the commission modifies §25.498(c)(15) and removes references to the average POLR rate test and the minimum POLR rate test.

§25.499 – Acknowledgement of Risk Requirements for Certain Commercial Contracts

Proposed §25.499 establishes requirements related to AOR documents for wholesale indexed products or products that include a separate assessment of ancillary services costs offered to a customer other than a residential or small commercial customer.

ARM endorsed proposed new §25.499 which, in ARM's view, improved amended §25.471's enumeration of customer protection rules as §25.499 separately addresses requirements for customers other than residential or small commercial entities and thus makes the applicability of customer protection rules clearer.

TEAM argued that HB 16 does not impose an AOR requirement for any products other than wholesale indexed products and if an AOR requirement is imposed it should be included within the EFL. TEAM provided draft language removing the requirements for an AOR for products with a separate assessment of ancillary services costs located in subsections (a) and (d) of this section.

Joint REPs, which included TEAM, provided a redline of this rule in its reply that did not include TEAM's recommended language.

Commission Response

The commission declines to adopt TEAM's recommendation to not require an AOR for products containing a separate assessment of ancillary service costs. A customer that enrolls in a product with a separate assessment of ancillary service costs needs to understand the inherent risk of a large, unexpected increase in cost associated with this type of product. While not explicitly required by HB 16, the commission finds that these products present a similar risk as wholesale indexed products, and therefore, merit similar treatment under commission rules.

The commission also declines to adopt TEAM's recommendation that the AOR disclosure should be solely provided as a part of an EFL. To ensure that a customer

***acknowledges* the risks, the commission requires affirmative action on the part of the customer.**

§25.499(b) – Effective Date

Proposed §25.499(b) specifies that this section is effective for enrollments or re-enrollments entered into on or after September 1, 2021.

ARM recommended that the requirements imposed by the proposed rule that exceed the requirements of HB 16 should be effective 120 days after adoption to provide REPs time to modify systems and implement the requirements.

Commission Response

The commission agrees with ARM that REPs require time to implement the changes required by this subsection. The commission specifies that the AOR requirements for product types other than wholesale indexed products are effective for enrollments or reenrollments entered into on or after April 1, 2021.

§25.499(d) – Acknowledgement of Risk Requirements

Proposed §24.499(d) requires an aggregator, broker, or REP, prior to enrolling a customer in a wholesale indexed product or a product containing a separate assessment of ancillary service charges, to obtain an AOR signed by the customer verifying that the customer accepts the potential price risks associated with the product. Paragraph (d)(2) of this subsection contains specific language that must be included in an AOR for products that contain a separate assessment of ancillary service charges.

CCR recommended that the proposed language in §25.499(d) be modified to allow for other methods for obtaining customer consent, beyond a signature. Specifically, CCR recommended that a REP be permitted to obtain an AOR by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider).

Joint REPs opposed CCR's recommendations that the AOR requirement be modified to allow for alternative means of obtaining customer consent by cross-referencing an authorized method in §25.474. Joint REPs opposed this recommendation as large commercial customers can waive §25.474 via §25.471(a)(3). Additionally, Joint REPs stated that HB 16, via PURA §39.110(c), requires a customer-signed acknowledgement as a prerequisite to enrollment.

Commission Response

The commission declines to allow a REP to obtain an AOR through one of the methods for enrollment under §25.474 as requested by CCR. The commission agrees with Joint REPs that the language of HB 16 requires a *signed* AOR. However, the commission notes that it does not specify that the AOR must contain a physical signature, and that other forms of signatures authorized by law, such as electronic signatures, also fulfill this requirement.

CCR and TEAM argued that the commission exceeded the requirements of H.B. 16 by expanding the use of the AOR beyond wholesale indexed products to also include products containing a separate assessment of ancillary services costs. TEAM recommended removal of the reference to ancillary service costs from (d) and both commenters recommended deletion of (d)(2).

Commission Response

The commission declines to omit products containing a separate assessment of ancillary service costs from the AOR requirements under §25.499(d) for reasons discussed in its reply to comments filed on §25.499.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

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

POLR, §39.110, which prohibits the offering of wholesale indexed products to residential or small commercial customers and placed conditions on the enrollment of other customers in wholesale indexed products; §39.112, which requires a REP to provide certain information to a residential customer who has a fixed rate product.

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

§25.43. Provider of Last Resort (POLR).

(a) **Purpose.** This section establishes the requirements for Provider of Last Resort (POLR) service and ensures that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.

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

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

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

(2) **Basic firm service** -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) **POLR service.**

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

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

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

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

(A) Basic firm service; and

(B) Call center facilities available for customer inquiries.

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

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section must contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice must also include contact information for the LSP, and the Power to Choose website, and must include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that

more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) **Standards of service.**

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

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

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

(f) **Customer information.**

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

(A) Standard Terms of Service, POLR Provider Residential Service: Figure: 16 TAC §25.43(f)(1)(A)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service: Figure: 16 TAC §25.43(f)(1)(B)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service: Figure: 16 TAC §25.43(f)(1)(C)

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

Figure: 16 TAC §25.43(f)(1)(D)

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

Requirements and Information Disclosures to Residential and Small Commercial Customers).

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

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

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

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

(1) Each REP must provide information to the commission necessary to establish its eligibility to serve as a POLR provider for the next term. A REP must file, by July 10th of each even-numbered year, by service area, information on the

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

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

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Commission staff will make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business

days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff will reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

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

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs will be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

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

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

(2) In each POLR area, for each customer class, the commission will designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon

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

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must note that such information is REP-specific.

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

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be

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

(B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP must move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP must inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

(5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP must continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee

will, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

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

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

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

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

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it will request that the LSP affiliate demonstrate that it has the capability. The commission staff will review the LSP affiliate's filing

and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP must immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

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

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

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

(8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP must provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

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

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

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

(A) Sort ESI IDs by POLR area;

(B) Sort ESI IDs by customer class;

(C) Sort ESI IDs numerically;

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

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP must be assigned an equal number of ESI IDs, up to the number that

each VREP indicated it was willing to serve for a given class and POLR area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where:

(i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service

territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

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

(iii) LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the applicable load zone for the previous 12-month period ending September 1 of the preceding year (the historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 120%. In no instance may the LSP energy charge exceed 120% of the previous year's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(iv) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

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

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

Where:

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

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

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

(iv) LSP energy charge must be the average of the actual RTSPPs for the applicable load zone for the previous 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. In no instance may the LSP energy charge exceed 125% of the previous year's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with

the highest average under the historical average RTSPP calculation.

(v) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

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

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

Where:

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

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

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

(iv) LSP energy charge must be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied

by 125%, multiplied by the level of kilowatt-hours used. The energy charge must have a floor of $7.25 per MWh.

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

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

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

(n) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider must use the ERCOT market variance resolution tool to challenge a customer

class assignment with the TDU. The TDU must make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer must then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

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

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

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

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

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is

designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.

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

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

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

(6) ERCOT must create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, must be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT must be tested on a periodic

basis. Each REP must submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT must notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section must be treated as confidential and must only be used for mass transition related purposes.

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

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection

request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider must begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider must not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it must determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider must not request a deposit from the residential customer.

(A) At the time of a mass transition, the executive director or staff designated by the executive director will distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds must first be used to provide deposit payment assistance for that REP's transitioned low-

income customers. The Executive Director or staff designee will, at the time of a transition event, determine the reasonable deposit amount up to $400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above $400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, must satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds must be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference