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PUBLIC UTILITY COMMISSION
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PROJECT NO. 52796

REVIEW OF MARKET PARTICIPANT QUALIFICATIONS AND REPORTING REQUIREMENTS	§ § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENTS TO §25.30, REPEAL OF §§25.105, 25.107, AND 25.109, NEW §§25.105, 25.107, 25.109 AND AMENDMENTS TO §25.485 AND §25.495 AS APPROVED AT THE APRIL 6, 2023 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.30, repeals §§25.105, 25.107, and 25.109 and replaces with new §§25.105, 25.107 and 25.109. Amendments to §25.485 and §25.495 are also adopted. The commission adopts the repeals with no changes and the new rules and amendments with changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6718). The new and amended rules will be republished.

Amended §§25.30, 25.485, and 25.495 change the time period for entities to respond to complaints from 21 days to 15 days. New §§25.105, 25.107, and 25.109 ensure the commission has necessary and current information on power marketers, REPs, and power generation companies (PGCs). New §25.105 and §25.109 respectively create annual registration requirements for power marketers and biennial registration requirements for PGCs. New §25.107 and §25.109 clarify the requirements and associated processes for certification as a REP or registration as a PGC with the commission. Specifically, new §25.107 clarifies which persons are prohibited from serving as a principal of a REP or controlling the REP, updates the financial requirements to obtain a REP certificate, clarifies the processes for suspension of a REP certificate and suspension of a REP's ability to acquire new customers. It also expands the commission's authority for drawing on financial instruments that are required for certification. The commission also adopts amended

certification and registration forms and other documents associated with the §§25.105, 25.107, and 25.109. Further, the commission also adopts implementation deadlines for power marketers, REPs, and PGCs to come into compliance with the amended rules, including a compliance update form specifically for REPs certified with the commission at the time new §25.107 is adopted. The commission makes other changes to the proposed rules and associated forms to clarify its intent.

The commission received comments on the proposed rule from the Alliance for Retail Markets (ARM) and the Texas Energy Association for Marketers (TEAM), individually and collectively (the REP Coalition); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); the Coalition of Competitive Retail Electric Providers (CCR); the Electric Reliability Council of Texas, Inc. (ERCOT); Enel North America, Inc. (Enel); Entergy Texas, Inc. (ETI) and Southwestern Public Service Company (SPS), individually and collectively (Joint Utilities); Good Company Associates (Good Company); Octopus Energy (Octopus); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company LLC (Oncor); South Texas Electric Cooperative, Inc. (STEC); Southwestern Electric Power Company (SWEPCO); Texas Competitive Power Advocates (TCPA); and Texas Industrial Energy Consumers (TIEC).

§§25.30, 25.485, and 25.495 – Customer Complaints

Section 25.30, relating to Complaints, enumerates the rights of a customer to file a complaint with the customer's electric utility and with the commission. Section 25.485, relating to Customer Access and Complaint Handling, establishes customer access and complaint handling standards for REPs and aggregators and delineates the commission's customer complaint process. Section 25.495, relating to Unauthorized Change of Retail Electric Provider, establishes the procedure,

including the customer complaint process, that a REP, the registration agent, and a transmission and distribution utility (TDU) must follow if a REP serves a customer without proper authorization in accordance with the requirements of §25.474, relating to Selection of Retail Electric Provider.

Emergency Complaints

OPUC recommended the commission distinguish between "emergency" and "non-emergency" complaints in §§25.30, 25.485, and 25.495. OPUC indicated that certain complaints related to electrical outages for any customer, billing issues for low-income customers, and billing and service issues for critical care consumers should be classified as "emergency" complaints and placed on an expedited timeline.

Joint Utilities, SWEPCO, CCR, and the REP Coalition opposed OPUC's recommendation as burdensome and unnecessary. Joint Utilities, SWEPCO, and CCR commented that such a distinction would lead to inconsistent application by the commission and cause confusion as to what constitutes an emergency complaint. Joint Utilities and CCR explained that the current process used by the commission's Customer Protection Division (CPD) to prioritize certain complaints is preferable, because it permits proactive cooperation among all parties and is less confusing to customers. SWEPCO noted that existing commission rules offer additional protection for customers who submit complaints, such as continuation of service during complaint processing under §22.242(h), relating to Complaints, and supervisory review of the complaint under §25.30(b)(2). The REP Coalition commented that all complaints are important and that artificially distinguishing among complaints based on OPUC's proposed classification system may inefficiently allocate resources and impede the timely resolution of disputes. The REP Coalition

emphasized that each complaint received by a REP is fact-dependent and CPD should retain discretion to prioritize complaints accordingly.

Commission Response

The commission declines to establish "emergency" and "non-emergency" complaint categories by rule. This distinction is unnecessary and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Deadline to respond to a customer complaint

Amended §§25.30, 25.485, and 25.495 revise the deadline for electric utilities, retail electric providers, and aggregators to respond to CPD regarding a customer complaint from 21 to 15 days.

OPUC expressed support for the reduction of customer complaint response deadlines, while the REP Coalition, CenterPoint, Octopus, ETI, Oncor, SPS, CCR, and Joint Utilities opposed the proposed change.

The REP Coalition indicated that a 15-day response deadline is insufficient to adequately respond to a "significant percentage" of customer complaints. Specifically, the REP Coalition explained that due to the extensive internal and external processes a REP undertakes when processing a customer complaint, the proposed change would negatively impact REPs by increasing complaint-related staffing costs or customers due to reductions in complaint response quality.

CCR commented that no basis or justification has been provided for the reduction in complaint response times by REPs. CCR also commented that, if the deadlines are reduced as proposed, then the commission should similarly reduce the amount of time commission staff takes to process those complaints. CCR asserted that complaint time periods are dependent on commission staff rather than REPs. CCR included a table of response times demonstrating that the average time for a REP to respond has remained at or below 15 days for calendar years 2017-2021, and that calendar year 2022 is trending in the same manner. CCR commented that the provided data supports its claim that REPs respond quickly when possible, but when more time is required, REPs utilize that time to ensure the complaint response is thorough.

Commission Response

The commission declines to change the proposed deadline of 15 days for response to a customer complaint submitted to the commission. Changing the response deadline from 21 to 15 days will assist commission staff in expediting complaint resolution for electricity consumers, and consistency across complaint deadlines will increase the efficiency of CPD's processing of customer complaints. This will provide a clear benefit to customers. Further, CPD's own data, as well as the data provided in CCR's comments, indicates that complaint responses are, in fact, submitted within an average of 15 days, supporting the viability of this response timeline.

The REP Coalition and ETI recommended the commission delay implementation of the reduction of complaint response deadlines from 21 to 15 days due to the burden it would place on respondents. The REP Coalition stated that reducing the deadline for a REP to respond to a

customer complaint would cause the REP to incur significant costs, such as those associated with hiring additional investigators. The REP Coalition concluded that without investments by REPs to increase staffing, customers would experience a reduction in quality responses to their complaints. The REP Coalition emphasized this outcome "could in turn lead to a higher volume of subsequent [informal] complaints to the REP and to the Commission" and could even lead to an increased number of informal complaints being escalated to formal complaints. The REP Coalition accordingly requested that the rule amendments become effective six months after the rule's adoption so that REPs can hire additional staff and alter internal systems and processes to conform to the new standard. Similar to the REP Coalition, ETI commented that reducing the amount of time an electric utility has to respond to a complaint would result in rushed or prematurely closed investigations on customer complaints. ETI noted that such an outcome is contrary to the intention behind the change, which is to expedite the resolution of customer complaints.

Commission Response

The commission acknowledges that the change in complaint response deadlines from 21 to 15 days will require changes to internal processes and systems maintained by REPs, aggregators, and electric utilities. Therefore, the adopted rules set the effective date of the 15-day deadline as September 1, 2023. This date is the first day of fiscal year 2024 for the State of Texas, which will assist with data continuity reviews in the future (i.e., all of fiscal year 2023 had the 21-day deadline and for all of fiscal year 2024 and subsequent years, the 15-day deadline will be in effect). The September implementation also allows REPs and

electric utilities more than five months to make any necessary adjustments to internal processes.

The REP Coalition recommended that, for informal complaints regarding usage, CPD should be required to contact both the TDU and the REP serving the customer. The REP Coalition explained that the transmission and distribution utility (TDU) may not respond in time for the REP to meet the revised 15-day deadline.

Commission Response

As a matter of process, CPD typically contacts a TDU for customer complaints related to electricity usage. However, the commission declines to codify this informal process as a rule requirement. Such a requirement is unnecessary and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Calendar days vs. working days

CenterPoint, SPS, and Octopus Energy requested the commission clarify that the proposed 15-day deadline for respondents to respond to a customer's complaint in §§25.30, 25.485, and 25.495 refers to "business days" and not "calendar days."

Commission Response

The usage of "day" in the rules is intentional and reflects the definition of "day" as provided by §22.2(18), relating to Definitions. Under §22.2(18), "day" is defined as "[c]alendar days,

not working days, *unless otherwise specified* by this chapter or the commission's substantive rules." Therefore, no clarification is necessary.

"Complex" complaints

CCR, Oncor, CenterPoint, the REP Coalition, and SPS noted that some customer complaint investigations are more complex than others and will necessarily take longer than 15 days. However, Oncor acknowledged that in most cases, complaint investigations by electric utilities can be completed within 15 days.

Oncor and CenterPoint proposed an alternative response deadline to account for complex complaints that may take longer to investigate than 15 days. CenterPoint recommended that if an investigation is unable to be completed within a "15 business day" period, the responding party must, within that period, advise the complainant of that fact and indicate a reasonable deadline for conclusion of the investigation. Oncor's proposal mirrored CenterPoint's with the exception that Oncor additionally recommended that the initial response also include all substantive progress made on the complaint up to the date of the initial response and did not reference "business" days.

The REP Coalition generally agreed with Oncor's and CenterPoint's recommendations for alternative response deadlines for complex complaints. However, the REP Coalition indicated a preference for CenterPoint's proposed version on the basis that providing even a preliminary substantive response before an investigation is completed could frustrate the complainant if, after the full investigation is completed, the results are not exactly in line with the information provided in the initial response. The REP Coalition emphasized that in such a situation, the inclusion of

substantive information in an initial response places an additional burden on the responding party to explain why the initial response differed from the final result of the investigation.

Commission Response

The commission declines to implement a "two-step" process for complaints as proposed by CenterPoint and Oncor. The commission acknowledges that some complaints require more investment of time and resources by respondents to investigate or that follow up communications between the respondent and CPD may be necessary. This is addressed by CPD on a complaint-by-complaint basis. A change in the response deadline will not change that process. Formally bifurcating the process by rule unnecessarily introduces delay into the complaint process because respondents would be required to draft an "initial" response in addition to the "final" response. As noted by the REP Coalition, the contents of the "initial" response may be different from the final response, which may introduce confusion. Furthermore, implementation of this proposal would require the commission to unnecessarily expend additional resources establishing a procedure for reviewing "initial" and "final" responses to customer complaints. This is ultimately not conducive to the resolution of the complaint itself. Finally, regarding CenterPoint's reference to "15 business day" deadline, the commission notes that the deadline is to be calculated using *calendar* days.

Extension of response time for complaints

Joint Utilities recommended that if the commission retains the 15-day deadline for electric utilities to respond to complaints in §25.30, then the rule should also provide an electric utility the option to administratively request an extension from the commission to adequately investigate and resolve

the complaint. SPS similarly requested §25.30(b)(2) be revised to include a formal method for an electric utility to request, from the commission, an extension of 10 business days for any complaint that requires the electric utility to physically visit the site. SPS explained that customer complaints that most frequently need additional time to resolve are those that require physical site visits by SPS personnel because SPS's service area is so extensive.

Commission Response

The commission declines to implement Joint Utilities' recommended change to permit extension of response time for complaints. This proposal has the same effect as distinguishing between "complex" and "non-complex" complaints, discussed above. Such a requirement is inappropriate for the reasons discussed previously and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Presentation of informal complaint to respondent

In conjunction with its recommendations to retain the 21-day deadline, the REP Coalition recommended, and Octopus Energy agreed, that §25.485(e)(1)(A)(i) and §25.495(b)(2) be amended to require a customer to submit a complaint to the respondent before filing an informal complaint with the commission. The REP Coalition emphasized that complaints may require more than 15 days to perform an investigation and prepare a written response. The REP Coalition noted this is particularly true when responding to an informal complaint that was not presented to the REP before being submitted to the commission, or when the complaint includes questions about the amount of usage billed. The REP Coalition provided draft language consistent with its recommendations.

Commission Response

The commission acknowledges that a customer's complaint may be most efficiently resolved by direct interaction between the customer and the REP. CPD routinely suggests that customers contact their service provider before filing a complaint with the commission. The same recommendation is also made on the commission's online complaint form. Despite such options being presented, many customers elect to file an informal complaint with the commission rather than their service provider. Customers are not regulated entities and there are a number of reasons why a customer may prefer to file directly with the commission. Accordingly, the commission establishes a standard for sufficiency of information a customer must submit that is necessary for a respondent to investigate a complaint but does not impose further requirements on customers. Accordingly, the revision proposed by the REP Coalition and Octopus is inappropriate.

The REP Coalition recommended that, if the commission implements the reduction of complaint deadlines as proposed, the 15-day deadline only apply to informal complaints filed with the commission. Specifically, the REP Coalition recommended the preservation of the existing 21-day deadline for a REP to respond to customer complaints filed with the REP under proposed §25.485(e)(1)(A)(iii) and proposed §25.495(b)(2)(A). The REP Coalition also recommended that 15-day response deadline, if adopted, apply only to complaints for which the customer has first submitted a complaint directly to the REP. Octopus agreed with the REP Coalition's alternative proposal for §25.485(e)(1)(A)(i) and §25.495(b)(2)(A) and further recommended §25.485(c) be revised on the same basis, to which the REP Coalition agreed. The REP Coalition and Octopus provided draft language consistent with their recommendation.

Commission Response

As previously stated, the commission acknowledges that a customer's complaint may be most efficiently resolved by direct interaction between the customer and the respondent. It is therefore appropriate to retain the existing 21-day deadline for complaints submitted directly to respondents. Doing so will likely also support a more expeditious resolution of any such complaint that is subsequently submitted to the commission. The commission revises §25.30(a) and §25.485(d) accordingly.

However, the commission declines to modify the proposed rule to also extend the deadline to 21 days for complaints that are submitted to the commission without being previously submitted to the respondent as requested by the REP Coalition and Octopus. As noted previously, consistency across complaints will assist CPD in efficiently processing customer complaints. Bifurcating the complaint process based on whether a complaint is first submitted to a REP will have the same effect as distinguishing between complex and non-complex complaints, and is unnecessary, because it would limit CPD's flexibility in addressing complaints on a fact-specific basis.

§25.107. Certification and Obligations of Retail Electric Providers (REPs).

Proposed §25.107 details the requirements, processes, and ongoing obligations associated with certification and maintenance of a REP certificate with the commission.

"External storage for digital media"

Proposed §25.107(d)(2)(E)(i)-(iii), (e)(2)(A), and (i)(3)(D)-(F) each specify certain information that a REP must include as part of its application or annual and semi-annual reports be provided to the commission via "external storage for digital media."

The REP Coalition and Octopus opposed the requirements to submit certain information "via external storage for digital media," such as a physical USB, because it is contrary to the commission's initiative to transition to digital filings. The REP Coalition commented that digital filings are significantly simpler and less resource intensive for both market participants and the commission. The REP Coalition also noted that, because the commission Interchange is capable of receiving Microsoft Excel file types via zip files, such a requirement is unnecessary and should be deleted from the rule. The REP Coalition provided draft language consistent with its recommendation.

Commission response

The commission agrees with the recommendation to delete the phrase "via external storage for digital media." Such a requirement is unnecessary given that the commission Interchange is capable of accepting Microsoft Excel file types and storing them in a compressed format.

For the specific provisions in §25.107 that require certain documentation to be in Microsoft Excel format, such documents *must* be filed in their native format, such as .xls, .xlsx, or .xlsm,

and be capable of basic functions, such as permitting the copying and pasting of data. The commission adds new §25.107(c)(6) to reflect the above requirements.

Proposed §25.107(a)(1)(A) – Applicability; REP certificate required

Proposed §25.107(a)(1)(A) requires a person to obtain a REP certificate under §25.107 before purchasing, taking title to, or reselling electricity to provide retail electric service. Proposed §25.107(a)(1)(A) further requires certification to be maintained on an ongoing basis by timely reporting and updating the certification information.

The commission revises §25.107(a)(1)(A) to conform with the REP Registration Form published with the proposed rule. Specifically, the revised provision clarifies that a person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under §25.107 and adds specific cross-references to the reporting and update provisions under §25.107(i) and (h).

Proposed §25.107(a)(1)(C) – Applicability; electric-vehicle charging station

Proposed §25.107(a)(1)(C) states that a person operating an electric vehicle charging station is not, for that reason, required to be certified as a REP.

The REP Coalition commented that the term "electric-vehicle" as used in §25.107(a)(1)(C) likely refers to the definition of "alternatively fueled vehicle" under Texas Transportation Code §502.004, as referenced by [the exception to] the definition of "retail electric provider" under §25.5(114), relating to Definitions, and PURA §31.002(17). The REP Coalition requested the

commission clarify in its responses to comments that the term "electric-vehicle" means "alternatively fueled vehicle" as defined by Texas Transportation Code to substantively align with the exemption.

Commission Response

The commission agrees with the REP Coalition's interpretation of the term "electric-vehicle" in §25.107(a)(1)(C). The commission revises §25.107(a)(1)(C) to align with the definition of retail electric provider under §25.5(114), which excludes a person who is not otherwise a REP and who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004 from being considered a REP. The commission modifies §25.107(a)(1)(C) to clarify that such a person is also not required to register as a REP.

Proposed §25.107(a)(3) and §25.107(a)(3)(A) and (B) – Applicability; Certified Option 1 REPs compliance update form

Proposed §25.107(a)(3) requires all Option 1 REPs to use the commission's approved compliance update form to submit up-to-date information related to key contacts, affiliates, financial instruments and other information used to comply with the requirements of the adopted rule. Proposed §25.107(a)(3)(A) establishes a compliance deadline of on or before August 15, 2023, and proposed §25.107(a)(3)(B) describes penalties for not complying with the proposed rule.

The REP Coalition recommended the commission clarify in proposed §25.107(a)(3) that REPs already registered with the commission are not required to file and obtain approval of an

amendment to its REP certificate to come into compliance. The REP Coalition requested that REPs only be required to submit a semi-annual report or the compliance update form to demonstrate compliance with the requirements of the amended rule.

Commission Response

A REP certified by the commission before the effective date of the rule must submit the compliance update form prescribed by the commission and is not required to amend its REP certificate to come into compliance. Submission of the compliance update form is procedurally less burdensome than amending a REP's certificate. The commission disagrees with the REP Coalition's proposal that the compliance update form should be a substitute for the REP's semi-annual report. However, the commission acknowledges that already certificated REPs may need more time to implement the changes under the proposed rule. Accordingly, the commission extends the deadline to submit the compliance update form to March 5, 2024. In response to the REP Coalition's original recommendation, the commission notes that the information required by the compliance update form is broader than the information covered in either the annual or semi-annual report. Further, exempting a certified REP from filing its annual or semi-annual report would create a gap in the commission's documented information.

Proposed §25.107(b)(13) – Definition of "Principal"

Proposed §25.107(b)(13)(A)-(E) lists the individuals who are considered principals for purposes of the rule, such as a shareholder with over ten percent equity of the REP or an executive of a company. Proposed §25.107(b)(13)(F) specifically defines "principal" as a person that has

apparent or actual authority to exercise control over the REP or exercises control over a principal. A consultant or third-party provider is also considered a principal if they exercise control over the REP or its principals.

The REP Coalition opposed the reference to "consultant" in proposed §25.107(b)(13)(F), which states that consultants can be principals if they have "apparent or actual authority." The REP Coalition explained that consultants should "not have control over entities for whom they are consulting" and if a consultant were to have control over a REP or principal, then the consultant would qualify as one of the other forms of principal listed under §25.107(b)(13). The REP Coalition also commented that the concept of "apparent or actual authority" introduces ambiguity to the definition of "principal" and recommended the phrase be omitted for clarity. The REP Coalition provided draft language consistent with its comments.

OPUC recommended the commission further refine the definition of "principal" under §25.107(b)(13) to ensure that reporting requirements are not overly burdensome and properly tailored to the issues at hand.

Commission Response

The commission disagrees with the REP Coalition's recommendations that references to "consultants" and "apparent or actual authority" should be removed from the definition of "principal." The primary consideration governing whether an entity is a principal is whether it exercises control over the REP or another principal of the REP. However, the commission has experience with instances where this distinction needed further clarification.

The plain meaning and ordinary understanding of the word "consultant" refers to a person that does not have control over an entity for which that person is providing consulting services. However, this does not prevent an individual from adopting the title of "consultant" while actually exercising a degree of control over the REP's activities. Accordingly, the commission retains the language specifying that a consultant is a principal when it exercises such control.

Similarly, the commission retains the proposed language stating that a principal's ability to exert control may be based upon "actual or apparent authority". This provision will address scenarios where it may be difficult to determine what explicit authority has been granted to an individual or entity, but the individual or entity is, nonetheless, exercising control over the REP or a principal of the REP. Consistent with well-established agency law, an individual has "apparent authority" when that person makes representations to third parties that the person has authority to act on behalf of or otherwise exercise control over the REP and the third party *reasonably believes* such representations. More specifically, there may be instances where a person without actual authority conducts themselves in a manner that a third party may reasonably infer that the person has authority to act on behalf of, or otherwise exercise control over, the REP or its principals. Just as, under agency law, an entity can be held liable for the actions of one of its agents that only has apparent authority, and not specifically granted actual authority, an entity that is exercising control with apparent authority – i.e., exerting direct or indirect binding authority – is considered a principal.

The modifications to the definition of §25.107(b)(13)(F) will minimize the opportunity to circumvent the rule's limitations on who is allowed to exercise control over a REP. A REP may not know at the time it is applying for certification which consultants or other entities may end up exercising control, especially through the use of apparent authority. If the REP becomes aware that a consultant or other entity is exercising apparent authority on its behalf, the REP must either take the necessary actions to prevent the entity from exercising such authority or amend its certificate to recognize that entity as a principal – particularly in instances when the restrictions of subsection (g) are implicated. This is, strictly speaking, not a material change from existing law, which already defines "a person that controls the person in question" as a principal. The commission does, however, modify the definition of principal such that a person must exercise control *and* have actual or apparent authority, so that it is clear that control remains the critical consideration.

Lastly, with regards to OPUC's request that the definition be revised for clarity, the commission notes that the term "principal" was selected to mirror ERCOT Protocol 16.1.2 *Principal of a Market Participant* and that the definitions are substantially similar. As discussed above, generally the same entities should be considered principals as were considered such under the existing rule, with the modifications intended to prevent attempts to circumvent commission requirements. The commission does, however, revise §25.107(b)(13)(B) to state "[a] partner of a partnership" to more generally encompass the different types of legal partnerships and varying capacities in which a partner may participate as a principal in the partnership. The commission also revises §25.107(b)(13)(F) to state "A consultant, third-party provider, *or fiduciary of a company such as the board of*

***directors*, can be a principal . . . " to provide more examples of potential principals and to reintroduce a direct reference to board members from the existing rule.**

Proposed §25.107(b)(16) – Definition of "third-party provider"

Proposed §25.107(b)(16) defines "third-party provider" as "an entity to which a REP outsources or plans to outsource any retail or wholesale electric functions, including a contractor, consultant, agent, or any other person not directly employed by the REP." The definition also specifies that a third-party provider can be a principal to the extent it exercises control over the REP or its principals.

Similar to its recommendations for the term "principal" under §25.107(b)(13), the REP Coalition opposed the definition of "third-party provider" under proposed §25.107(b)(16). Specifically, the REP Coalition commented that the inclusion of the term "consultant" in the definition of "third-party provider" is overbroad and may result in overly expansive reporting requirements. The REP Coalition explained that requiring a REP to report its "consultants" would be overbroad as "consultants" traditionally occupy "purely advisory" roles and are not entities to which a REP outsources functions.

Commission Response

The commission disagrees with the REP Coalition and declines to implement its proposed language. As stated previously, a person or entity can be a "consultant" in name only and yet still act in a more substantial capacity for the REP than would be expected for a "purely

advisory" role. Therefore, the inclusion of the term "consultant" in the definition of "third-party provider" is appropriate.

The REP Coalition also recommended adding the word "core" to describe the retail and wholesale functions that a person would perform that would qualify the person as a "third-party provider."

Commission Response

The commission disagrees with the REP Coalition and declines to implement its proposed language. The phrase "outsources or plans to outsource any retail or wholesale electric functions" sufficiently qualifies the intent. The insertion of the word "core" is therefore unnecessary. Furthermore, what constitutes "core" retail or wholesale electric functions introduces ambiguity as to which retail or wholesale functions are, or are not, "core" functions.

The REP Coalition recommended the phrase "[a] third party provider can be a principal to the extent it exercises control over the REP or its principals" be deleted because it is duplicative of the same phrase included in definition of "principal" under §25.107(b)(13). The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to remove the language that clarifies that a third-party provider can be a principal from the definition of third-party provider, as recommended by the REP Coalition. The commission agrees with the REP Coalition the phrase is duplicative of

language that is included in the definition of principal, but because the concepts of principal and third-party provider are not intuitively connected, the commission retains the duplicative language for clarity. The commission also modifies the definition for consistency with the definition of principal and for clarity.

Proposed §25.107(d)(1)(B) – Basic ongoing requirements; five assumed names

Proposed §25.107(d)(1)(B) prohibits a REP from using more than five assumed names.

OPUC and Octopus recommended inserting additional language that would prevent a REP from allowing its affiliates to obtain REP certificates and therefore be allowed to use additional assumed names. OPUC and Octopus commented that it is potentially misleading to consumers and does not further competition when REP affiliates utilize many assumed names. Under OPUC and Octopus' proposal, a parent company would have access to only one REP certificate, and by extension a maximum of five assumed names. Consequently, a REP affiliate would be limited to the five assumed names allowed under the parent company's certificate.

The REP Coalition opposed OPUC's and Octopus's recommendation and explained that each REP is a distinct legal entity, regardless of whether the REP has affiliates. The inclusion of a different legal entity's name among the assumed names of a REP would create confusion where none currently exists and is contrary to current corporate law practices. Specifically, the REP Coalition stated that a REP cannot conduct business under the legal or assumed name of a separate legal entity and that there is consequently no reason to list an affiliated REP under another REP's assumed names because the affiliated REP is not providing service to that other REP's customers.

The REP Coalition commented that, if the concern raised by OPUC and Octopus is related to duplicative names, the existing version of §25.107 already prohibits names that are "duplicative of a name previously approved for use by a REP certificate holder." The REP Coalition further commented that such a limitation on assumed names would limit a REP's marketing efforts because it would inhibit the REP's ability to choose the names under which it conducts business. The REP Coalition explained that for brand recognition or marketing purposes, the flexibility in choosing multiple assumed names is desirable because it permits a REP to target specific customer classes, such as industrial customers, or subgroups of a class, such as multi-family properties. The REP Coalition questioned whether OPUC's and Octopus's proposal would genuinely benefit customers, commenting that assumed names adopted by a REP generally consist of more common, recognizable, and customer-friendly names rather than the full formal name of the legal entity holding the REP certificate. The REP Coalition stated that the existing requirement in commission rules for a REP to include its certificate number on information provided to customers, such as on advertising and billing materials, is sufficient to inform the customer of all assumed names associated with the certificate.

Lastly, the REP Coalition stated that limiting the ability of REPs to use multiple names with customer-friendly branding on the sole basis that the REPs are under the same corporate umbrella will not provide additional information to customers regarding affiliated REPs. The REP Coalition explained that the limitation could instead confuse customers by preventing the use of names that are shorter and easier to remember.

Commission Response

The commission agrees with REP Coalition and declines to prohibit a REP's affiliates from seeking REP certificates. More investigation would be required to understand the benefits and harms of such a proposal, which is beyond the scope of this rulemaking project.

Proposed §25.107(d)(1)(D)(i)-(vii) – Basic applicant requirements; current and accurate contact information

Proposed §25.107(d)(1)(D)(i)-(vii) requires a REP to maintain current and accurate contact information. The commission revises §25.107(d)(1)(D)(i)-(vii) to conform with the REP Registration Form published with the proposed rule. The commission also revises the REP compliance update form, which was also published with the proposed rule, to the extent such information covered by this provision must also be disclosed.

Specifically, the revised provision requires disclosure of the title of each specified representative and a web address wherever an e-mail address is required. A requirement to include a street and mailing address was added for all representatives except for the emergency contact required under §25.107(d)(1)(D)(v). New §25.107(d)(1)(D)(ii) was added to require contact information for the authorized representative for the application or amendment itself. Lastly, new §25.107(d)(1)(D)(vi) was added to require disclosure of the contact information for an applicant's registered agent.

Proposed §25.107(d)(1)(E), and §25.107(d)(1)(E)(i) and (ii) – Basic ongoing requirements; current and accurate office information

Proposed §25.107(d)(1)(E) requires a REP to maintain certain current and accurate office information. Proposed §25.107(d)(1)(E)(i) and (ii) details the current office information that a REP must disclose which consists of a Texas office for customer service and compliance purposes, and a Texas office for receiving service of process.

The commission revises §25.107(d)(1)(E) to conform with the REP Registration Form published with the proposed rule. The commission also revises the REP compliance update form, which was also published with the proposed rule, to the extent such information covered by this provision must be disclosed. Specifically, the commission adds a requirement to provide a business web address and a mailing address, if different from the applicant's Texas office address or primary business office address.

The commission also adds requirements inadvertently omitted from the published rule, to conform with prior commission requirements and current practice. These include the requirement that the REP's Texas office be the same as the office for service of process in §25.107(d)(1)(E)(i), and that the mailing address not be a post office box in amended §25.107(d)(1)(E)(i)(III).

Finally, the commission adds the requirement that the applicant provide the applicant's state of formation or incorporation and the address of the applicant's primary business office.

Proposed §25.107(d)(1)(I) – Basic application requirements; deadline to respond to commission staff request for information

Proposed §25.107(d)(1)(I) requires a REP to respond within five working days to any commission staff request for information.

Octopus recommended that proposed §25.107(d)(1)(I) be revised to allow a REP to request an extension of time in responding to commission staff's request for information, provided that commission staff agrees to the REP's request for an extension. Octopus provided draft language consistent with its recommendation.

Commission Response

The commission revises §25.107(d)(1)(I) to require REPs to respond within five working days to any commission or commission staff request for information *unless otherwise provided by the commission, commission staff, or other applicable law.* The addition of this language will address Octopus's concerns by clarifying that the requesting party can establish deadlines other than five days for responding to the request.

Proposed §25.107(d)(2)(B) – Basic applicant requirements; Secretary of State registration

Proposed §25.107(d)(2)(B) requires an applicant seeking certification as a REP to provide the commission with a copy of the applicant's Texas Secretary of State registration. The provision also prohibits a REP from using a business name that is deceptive, misleading, vague, otherwise contrary to §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, or duplicative of a previously approved business name used by another REP certificate holder.

Octopus recommended proposed §25.107(d)(2)(B) be revised to include electricity broker names to avoid the potential for customer confusion or deceptive practices by a REP. Specifically, Octopus recommended prohibiting a REP from using the name of a broker as the primary name on a REP's certificate or as one of a REP's assumed names. Octopus provided draft language consistent with its recommendation. The REP Coalition opposed Octopus's recommendation to revise §25.107(d)(2)(B) and explained that this issue was raised by ARM in comments filed in the broker registration rulemaking for §25.112, relating to Registration of Brokers, which was undertaken in Project No. 49794, Rulemaking for Broker Registrations. The REP Coalition commented that the commission declined to implement such a provision at that time. The REP Coalition further noted that misleading branding is already prohibited under §25.486, relating to Customer Protections for Brokerage Services, therefore such a revision in §25.107 is out of scope and unnecessary. The REP Coalition recommended Octopus' proposal be inserted into §25.112 as part of a separate rulemaking, as §25.112 is more appropriate for such a provision.

Commission Response

The commission declines to modify the proposed rule to prohibit a REP from using a broker name as primary name on its certificate as recommended by Octopus, because the requirement for all communications to be "clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive" in §25.475, relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers, is sufficient to allow the commission to intervene to prevent confusion between registered REPs and brokers.

The commission also does not agree with the recommendation that §25.112 is the appropriate location for Octopus' recommended branding restriction as that rule does not address REP branding. For clarity, the commission notes that §25.112 and §25.486 both involve the regulation of electric brokers, not REPs, and that the commission did not take a stance on REP branding restrictions in Project No. 47974, the project in which those rules were adopted, as suggested by commenters.

The commission also revises §25.107(d)(2)(B)(i) and (ii) to conform with the REP Registration Form published with the proposed rule.

Proposed §25.107(d)(2)(E) – Basic applicant requirements; information on controlling persons

Proposed §25.107(d)(2)(E) requires a person seeking certification as a REP to provide information to the commission related to the applicant's controlling persons. Specifically, it requires the registrant to provide an ownership and corporate structure chart that includes the share percentage each controlling person holds and to provide a list the applicant and corporate parent's affiliates, identified by name and type of commission registration.

The REP Coalition recommended that instead of requiring share ownership percentages on the ownership and corporate structure chart, the commission should only require a REP to identify majority owners. The REP Coalition elaborated that requiring ownership percentages would necessitate frequent updates by a REP. The REP Coalition explained that such updates would be burdensome and resource-intensive for REPs to comply with, as well as for the commission to

review and approve, while not providing a commensurate benefit. The REP Coalition provided draft language consistent with its recommendation.

The REP Coalition also recommended clarifying the requirements of the list of affiliates, because it is unclear which affiliates must be disclosed. The REP Coalition explained that the phrase "type of commission registration" suggests only affiliates that are market participants registered with the [c]ommission are required to be provided. The REP Coalition accordingly requested the commission clarify whether the commission intended that result. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

A REP is only required to update its certification when there is a material change under §25.107(h)(2), not when there is a change in ownership percentage. The commission modifies §25.107(h)(2) to clarify that a change in ownership percentage is not, by itself, a material change.

The commission also modifies §25.107(d)(2)(E) to clarify the requirements of this section. Specifically, an applicant must submit a list of its subsidiaries and parent companies, up to the ultimate corporate parent. It must also report any of its sister companies – i.e., any of the subsidiaries of the ultimate corporate parent – that are registered or certified with the commission.

The applicant must also include an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed above and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

Proposed §25.107(d)(2)(F) – Basic applicant requirements; general affirmation

Proposed §25.107(d)(2)(F) requires an applicant to provide a statement affirming compliance with §25.107(d)(1)(F)-(H) and include a short summary describing how the applicant has complied with each subparagraph.

The commission revises this subparagraph to also require the applicant to affirm that it will respond within five working days to any commission staff request for information, as required by §25.107(d)(1)(I) and provide a summary of how it will comply with that requirement.

Proposed §25.107(d)(2)(I) – Basic applicant requirements for Option 2 REPs; affidavits

Proposed §25.107(d)(2)(I) requires an applicant seeking certification as an Option 2 REP to provide an affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of an applicant obtaining its Option 2 REP certificate, the REP is also required to submit signed, notarized affidavits from its customers affirming that the customers understand and accept the applicant's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

The REP Coalition commented that the 30-day post-certification requirement for signed, notarized customer affidavits should be removed from the rule. The REP Coalition explained that the 30-day deadline could result in errors such as an Option 2 REP missing the deadline for customer affidavit submissions and result in the revocation of the REP's certificate, which would harm the REP's customers. The REP Coalition explained that the timing for such affidavits being required should instead be based on the timing of ERCOT's flight test schedule and the dates the REP signs power purchase agreements.

The REP Coalition alternatively recommended that affidavits only be required prior to serving the customer and not tied to a specific time period such as the proposed 30 days. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with the REP Coalition that the 30-day deadline for Option 2 REP affidavits should be changed. Under the existing rule, Option 2 REP affidavits must be filed *with* the application, and if a REP is concerned that the 30-day deadline may result in errors, it may file its affidavits with its application. The additional 30 days is added to provide a slight buffer to allow REPs to complete executing contracts or other necessary preparatory activities prior to obtaining customer affidavits. It is not intended to allow a REP to fulfill all of its advanced obligations, such as completing ERCOT flight tests. Allowing additional time or not requiring the affidavits until the REP begins providing service, as requested by commenters, would be put a burden on staff to track and could result in commission staff being unaware of an Option 2 REP's failure to provide the necessary affidavits prior to

serving a customer. The commission revises §25.107(c)(5) to account for conditional approval of the Option 2 REP certification where a REP submits all or some of the required affidavits.

Proposed §25.107(e)(1)(A) – Technical and managerial resource requirements; combined experience of executive officers or managers

Proposed §25.107(e)(1)(A) requires an Option 1 REP to maintain one or more executive officers or employees in managerial positions whose combined experience in the competitive electric or gas industry equals or exceeds 15 years. Proposed §25.107(e)(1)(A) specifically prohibits the experience of a third-party provider from being used to meet the requirement.

The REP Coalition requested proposed §25.107(e)(1)(A) be revised to permit the experience of a registrant's principals be used to contribute to the 15-year experience requirement because the proposed requirement may "significantly increase payroll costs at a time when controlling costs is of significant importance." The REP Coalition stated that if the commission prefers to limit the ability of principals to contribute experience, then the rule should alternatively permit a REP to rely on a principal for only five of the 15 years of required experience. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission acknowledges REP Coalition's concerns and revises the provision to permit the experience from all principals, not just executive officers, to count toward the 15-year experience requirement.

Proposed §25.107(e)(1)(C) – Technical and managerial resource requirements; primary point of contact and outage reports

Proposed §25.107(e)(1)(C) requires a REP to demonstrate the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis.

The commission revises §25.107(e)(1)(C) to conform with the REP Registration Form published with the proposed rule. The revisions expand §25.107(e)(1)(C) to include all applicable ERCOT requirements a REP must comply with to provide retail electric service in the ERCOT region.

Proposed §25.107(e)(2)(D) – Technical and managerial documentation requirements; complaint history

Proposed §25.107(e)(2)(D) requires an applicant to submit to the commission any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application that involve the applicant, the applicant's affiliates, any of the applicant's corporate parent's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service, the applicant's principals, and any person that merged with any of the listed persons.

OPUC recommended the addition of broadband and internet service to the list of utility-like-services an applicant is required to report in its complaint history. The REP Coalition opposed

OPUC's recommendation and noted that such services are encompassed within the reference to "telecommunications" under proposed §25.107(e)(2)(D).

Commission Response

The commission agrees with the REP Coalition that the addition of internet and broadband to the list of utility-like services is not strictly necessary. However, to eliminate any perceived ambiguity in this requirement, the commission, modifies the list of utility-like services to include internet and broadband.

The commission also revises §25.107(e)(2)(D) to conform with the REP Registration Form published with the proposed rule. Specifically, the amended provision expands the list of persons that must be disclosed under §25.107(e)(2)(D) to include the applicant, the applicant's corporate parent, all sister companies and subsidiaries of the applicant and the applicant's corporate parent, and affiliates of the foregoing that provide utility-like services, as well as the applicant's principals and any person that merged with any of the preceding persons.

Proposed §25.107(e)(2)(E)(iv) – Technical and managerial documentation requirements; affidavit identifying relationships

Proposed §25.107(e)(2)(E)(iv) requires an applicant to submit to the commission a notarized statement indicating an applicant's relationship to specific persons that meet any of the criteria listed under proposed §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-). Under proposed §25.107(e)(2)(E)(iv)(I), such specific persons include the applicant's principals, executive officers, employees, third-party

providers, and third-party provider's employees that exercised direct or indirect control over a market participant in certain situations, such as a REP that experience a mass transition of customers.

CCR and the REP Coalition opposed the list of persons a REP must identify on the basis that it would be burdensome to comply with, because the list is overly broad, ambiguous, and that a REP will likely not be able to sufficiently provide such information. CCR explained that "only executive officers, principals, or third-party risk management consultants possess sufficient authority over a REP's operations so as to be responsible for the identified scenarios" listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-). The REP Coalition specifically opposed the requirement for an applicant to identify all third-party providers and related employees that exercised control over a market participant that meet the criteria listed under proposed §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-).

Commission Response

The commission agrees with CCR and the REP Coalition that disclosure of a third-party provider's employees would be burdensome and revises the rule accordingly. However, the disclosure of the applicant's principals, executive officers, employees, and third-party providers that have been involved in one or more of the circumstances listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-) are essential disclosures to ensure compliance with §25.107. The applicant is in the best position to know the individuals and entities that it employs and contracts with. Accordingly, it is the applicant's responsibility to be aware, and to make the commission aware, of any persons described by this section.

CCR also commented that the proposed rule does not sufficiently define "direct or indirect control" and that the inclusion of employees and consultants under §25.107(e)(2)(E)(iv)(I) as persons that must be disclosed is not appropriate. The REP Coalition commented that removing "consultant" from the definitions of "principal" and "third-party provider" and then adding "consultant" to the list of persons a REP must disclose under §25.107(e)(2)(E)(iv)(I) would address CCR's concerns.

Commission Response

The commission disagrees with CCR's contention that "direct or indirect control" is insufficiently defined. The term "control" is a defined term under §25.107(b)(4). The commission has also previously addressed comments relating to "authority" and "control" in its response to comments related to the defined term "principal" that address CCR's concerns related to ambiguity. The commission declines to implement the REP Coalition's proposed revision to omit the term "consultant" from the definitions of "principal and "third-party provider" for the reasons stated in the commission's response to comments related to those definitions.

CCR stated the listed scenarios under §25.107(e)(2)(E)(iv)(I) are vaguely defined, making disclosure impractical for applicants. CCR further commented that many applicants are unaware of the identities of market participants that have experienced the triggering scenarios because such information is not typically available publicly. CCR accordingly recommended that if §25.107(e)(2)(E)(iv) is adopted, the commission should commit to publishing information identifying which market participants have experienced one or more of the triggering events under §25.107(e)(2)(E)(iv)(I) so that applicants can disclose such information to the commission

accurately. The REP Coalition explained in response to CCR that the commission does not need to publish a list of market participants that were involved in the scenarios under §25.107(e)(2)(E)(iv)(I) because this information is already provided by ERCOT in market notices.

Commission Response

The commission disagrees with CCR and maintains that the scenarios listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-) are sufficiently detailed because each circumstance is self-contained and provides specific criteria that must be met.

The commission also declines to publish a list of which market participants have experienced one of the triggering events, as requested by CCR. It is the responsibility of each REP to inquire into and investigate its employees and contractors for compliance with this section.

With regard to the REP Coalition's comment that ERCOT publishes market notices containing the necessary information, the commission notes that ERCOT market notices do not contain all of the information listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-), such as details related to a commission order that bar participation. Accordingly, applicants should not rely exclusively on these notices to ensure compliance with this requirement.

New §25.107(e)(2)(E)(v) – Technical and managerial documentation requirements; affirmation relating to prohibited persons.

The commission adds new §25.107(e)(2)(E)(v) to conform with the REP Registration Form published with the proposed rule. The new provision requires a statement affirming that the

persons listed under §25.107(g)(1) do not control the applicant and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B).

New §25.107(e)(2)(F) – Technical and managerial documentation requirements; ERCOT requirements

The commission adds new §25.107(e)(2)(F) to conform with the REP Registration Form published with the proposed rule. The new provision specifies the information required to document compliance with the ERCOT-related requirements under §25.107(e)(1)(C) for applicants that provide or will provide retail electric service in the ERCOT region. Specifically, new §25.107(e)(2)(F)(i) requires disclosure of all relevant information related to each service agreement executed with a Qualified Scheduling Entity (QSE). New §25.107(e)(2)(F)(ii) requires an applicant to confirm it has the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis. New §25.107(e)(2)(F)(iii) requires an applicant to provide a confirmation that applicant will provide outage notifications in accordance with §25.53. Lastly, new §25.107(e)(2)(F)(iv) requires an applicant to provide a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

Proposed §25.107(f)(1)(A)(ii)(II) – Access to capital; requirements of guarantor; tangible net worth and current ratio

Proposed §25.107(f)(1)(A)(ii)(II) requires a guarantor to have a tangible net worth greater than or equal to $100 million, a minimum current ratio of 1.0, and a debt to total capitalization ratio not

greater than 0.60.

OPUC recommended amending proposed §25.107(f)(1)(A)(ii)(II) to require the "net worth ratio" be required to be maintained at a minimum of 1.0 rather than just needing it to be 1.0 at the time the REP is certified. OPUC commented that a "current net worth ratio" of 1.0 is insufficient to cover the additional risk associated with guaranteeing the amount listed in the irrevocable guaranty agreement. OPUC explained that after the guaranty agreement is executed the guarantor's liability will increase. Therefore, a guarantor's increased liability could change the outcome of the "current net worth ratio" because this calculation is based on the value of a guarantor's liability. The REP Coalition opposed OPUC's recommendation because the REP Coalition is neither aware of data indicating that the current guarantor capitalization requirements are insufficient, nor did OPUC provide such data in its comments.

Commission Response

The commission declines to implement OPUC's request regarding the "net worth ratio" because it is unnecessary. The proposed language requires a guarantor to maintain "tangible net worth" greater than and equal to $100 million and a minimum current ratio of 1.0, on an ongoing basis. Commission staff reviews the guarantor's financial statements biannually through the REP's annual and semi-annual reports to ensure guarantors continue to maintain the requirement.

Proposed §25.107(f)(1)(B) and §25.107(f)(1)(B)(i) – Access to capital; irrevocable stand-by letter of credit tiers

Proposed §25.107(f)(1)(B) permits a REP to maintain an irrevocable stand-by letter of credit with a face value based on the number of electric service identifiers (ESI IDs) it serves. The proposed subparagraph also requires a REP to maintain not less than one million dollars in shareholder's equity for the first 24 months a REP is serving load. Proposed §25.107(f)(1)(B)(i), specifies four tiers of total number of ESI IDs ranging from less than 20,000 ESI IDs to greater than and equal to 300,000 and corresponding required value of letters of credit ranging from $500,000 to $3 million.

CCR and TEAM recommended preserving the uniform letter of credit requirement of $500,000 in existing §25.107(f)(1)(B). CCR stated the commission has not provided any rationale for the proposed revisions and requested the commission disclose any data it possesses that supports the changes. CCR also speculated that the commission is increasing the value of letters of credit because of REP defaults that occurred during Winter Storm Uri. CRR noted that if this is the case and the commission is seeking to cover a REP's risk at ERCOT, then this would be a "fundamental shift in how ERCOT is reimbursed" because the market already has an established process to ensure a REP can pay its obligations at ERCOT.

CCR and TEAM commented that the commission has already implemented many changes to address the underlying issues brought about by Winter Storm Uri, rendering the proposed changes to letter of credit unnecessary. CCR and TEAM explained that other commission actions,

including weatherization and customer protection initiatives, such as those related to wholesale indexed products, render the need for higher amounts for letters of credit unnecessary.

CCR and TEAM cautioned the commission from making further changes to the ERCOT market structure that may further burden market participants financially or otherwise interfere with market prices. TEAM noted that requiring higher amounts for letters of credit would inhibit competition and create additional barriers to entry to the market as the requirement would compound with a REP's other financial regulatory obligations. Specifically, TEAM stated that the letter of credit required by the commission is additional to other obligations required by ERCOT.

The REP Coalition and TEAM individually also commented that under the proposed tiers, a REP would inadvertently disclose confidential market share information by filing a letter of credit with the commission. The REP Coalition explained that tiering the letter of credit as proposed would enable other market participants to monitor the growth of a newly certified REP based on when it files new letters of credit.

ARM commented that there is no meaningful distinction between the proposed four tiers and accordingly recommended a two-tiered structure would be more appropriate. ARM commented that it does not oppose raising the lowest tier from $500,000 to $1 million because the increase is a reasonable capital requirement for REPs that reduces risk to consumers and other market participants. ARM provided draft language consistent with its recommendation.

Octopus opposed collapsing the tiers and raising the minimum letter of credit amount to $1 million as detailed by ARM. TEAM commented that, if the commission adopts a tiered approach as proposed, then the lowest tier should remain at $500,000.

Commission Response

The commission agrees with ARM that a two-tiered structure is appropriate for letters of credit and revises §25.107(f)(1)(B) accordingly. However, in acknowledgement of the concerns raised by other commenters about barriers to entry and the financial burden represented by increasing letter of credit amounts, the commission declines to increase the lowest tier of letter of credit amount to $1 million. The commission instead revises the minimum letter of credit amount to $750,000 for REPs that have enrolled fewer than 50,000 ESI IDs. The second tier is correspondingly revised to require a minimum letter of credit amount of $1.5 million if a REP has enrolled 50,000 ESI IDs or more.

The market exits and defaults among REPs after Winter Storm Uri demonstrated that a $500,000 letter of credit is not always sufficient to cover the defaulting REP's financial obligations. A higher barrier to entry is appropriate if that barrier is required to ensure that each REP has sufficient financial resources to fulfill its financial obligations. Further, the two-tiered system will ensure that REPs that serve the largest number of customers have sufficient financial resources to meet their correspondingly greater financial obligations. obligations that correspond to the number of customers they serve.

The commission also disagrees with the REP Coalition and TEAM that a tiered structure for letters of credit would disclose a REP's market share information. Market share information would be difficult to ascertain for other REPs, because letters of credit are filed confidentially, and updates are made frequently and for many reasons other than to increase or decrease the value of a letter of credit. Also, the reduction from four to two tiers further minimizes this risk.

The REP Coalition noted that under existing §25.107(f) "REP's have the option for their guarantor to maintain the letter of credit rather than the REP itself," however the proposed version of §25.107 does not retain this language. The REP Coalition recommended the rule be revised to reinstate this option as it provides flexibility for a REP in financing its letter of credit.

Commission Response

The commission disagrees with the REP Coalition that it is necessary to state a guarantor can provide a letter of credit on behalf of a REP. The letter of credit template continues to maintain the option for a REP to procure the letter of credit or for the letter of credit to be procured by an "applicant" on behalf of the REP. Accordingly, the "applicant" in the letter of credit template can maintain a letter of credit on a REP's behalf. Using "guarantor" in the rule as recommended by the REP Coalition would require the REP and guarantor to provide an irrevocable guaranty agreement because "guarantor" is defined under §25.107(b)(7) as a person that provides an irrevocable guaranty agreement to the commission. A REP electing to maintain an irrevocable guaranty agreement under §25.107(f)(1)(A) requires the use of a guarantor, while a REP electing to maintain a stand-

by irrevocable guaranty agreement under §25.107(f)(1)(B) does not require a REP to use a guarantor to meet the REP's access to capital requirements.

Octopus recommended that the proposed tiered structure for letters of credit under §25.107(f)(1)(B) be based on MWhs for the prior year to properly allocate more financial risk to REPs that serve commercial and industrial customers. Octopus further recommended for REPs that have less than 12 months of sales history, the face value of the irrevocable standby letter of credit should be the minimum amount and adjusted later as needed.

ARM opposed Octopus' recommendation to base letter of credit amounts on the amount of MWh the REP served in the prior year because the number of ESI IDs more accurately estimates a REP's risk profile. ARM explained that MWhs served do not reasonably represent a REP's risk profile, are more complicated to track, and that both MWhs served and number ESI IDs served by a REP are commercially sensitive pieces of information that should be treated confidentially. Specifically, ARM stated that a MWh-based letter of credit framework would result in REPs that serve large commercial and industrial customers to maintain a letter of credit with a higher face value than REPs that serve residential customers, despite the different risk profiles represented by each customer class.

Commission Response

The commission declines to implement Octopus' proposal for the reasons stated by ARM. Further, implementing Octopus' proposal would be more complicated and administratively burdensome for commission staff and REPs to track.

Proposed §25.107(f)(2)(A) – Customer deposits and prepayments

Proposed §25.107(f)(2)(A) requires a REP to maintain customer deposits in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit. The proposed subparagraph also requires a REP to maintain customer prepayments in an escrow account or provide an irrevocable stand-by letter of credit.

The REP Coalition and CCR opposed the removal of "segregated cash accounts" as a method available to a REP to maintain customer prepayments and recommended the language be reinstated. The REP Coalition commented that it is not aware of any concerns with using segregated cash accounts and that using segregated cash accounts for customer prepayments provides greater flexibility to REPs. The REP Coalition provided draft language consistent with its recommendation. CCR emphasized that this change would be burdensome on a REP's operations and that the commission has not provided a justification for this change.

Commission Response

The commission agrees with the REP Coalition and CCR that it is appropriate to allow REPs to maintain customer prepayments in a segregated cash account and revises the provision accordingly. As noted by commenters, this change allows a REP multiple options for protecting customer deposits and prepayments.

Proposed §25.107(f)(4) – Financial documentation requirements

Proposed §25.107(f)(4) requires an applicant to demonstrate compliance with the financial requirements under proposed §25.107(f)(1)-(3) by providing, among other things, a summary of

any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

OPUC recommended removing the 60-calendar month time limitation on disclosure of bankruptcy or other pertinent financial disclosures included in existing §25.107(f)(4). OPUC asserted that such events are significant enough that an applicant should be required to report all history and the disclosure period should not be limited to the 60-calendar months prior to the application.

CCR opposed OPUC's recommendation and explained that bankruptcy may not always result in negative outcomes for the market and that bankruptcy is a legal protection for the entity that should not permanently bar an otherwise qualified applicant from the Texas retail electricity market. The REP Coalition generally agreed with OPUC that bankruptcy or other financial disclosures are relevant to certification but opposed eliminating the timeframe limitation altogether and instead recommended that the disclosure period could instead be increased to 120 months.

Commission Response

The commission declines to implement OPUC's recommendation to remove the 60-calendar month disclosure timeframe for the reasons stated by CCR. The 60 months, or five years, prior to the application is a sufficient amount of time to cover relevant disclosures under §25.107(f)(4).

The commission also revises §25.107(f)(4) to conform with the REP Registration Form published with the proposed rule. Specifically, the amended provision requires an applicant to provide the date of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year.

Proposed §25.107(f)(4)(B)(ii) and §25.107(f)(4)(C)(ii) – Documentation to substantiate Unaudited financial statements submitted by a guarantor and a REP respectively

Proposed §25.107(f)(4)(B)(ii) and §25.107(f)(4)(C)(ii) provide the manner in which unaudited financial statements must be substantiated by a guarantor and a REP respectively.

The commission revises §25.107(f)(4)(B)(ii) and §25.07(f)(4)(C)(ii) to conform with the REP Registration Form published with the proposed rule. Specifically, the commission revises §25.107(f)(4)(B) and (C) so that the requirement for audited or unaudited financial statements may be satisfied by either providing three consecutive months of monthly statements if quarterly statements are not available, or by providing a copy of the guarantor's most recent financial statements filed with any agency of the federal government.

Proposed §25.107(f)(4)(D) Documentation for –segregated cash accounts

Proposed §25.107(f)(4)(D) specifies that segregated cash accounts are to be documented by a current account statement and an executed agreement with a person that controls the segregated cash account. The subparagraph further provides details that must be clearly specified on the account statement and the executed agreement.

The commission revises §25.107(f)(4)(D)(i)(III) to align with amended §25.107(f)(2)(A) which permits customer prepayments, in addition to customer deposits, to be maintained in an escrow account, segregated cash account, or otherwise covered by an irrevocable stand-by letter of credit provided to the commission.

Section 25.107(f)(4)(D) and §25.107(f)(4)(D)(iii) are also revised to clarify that that a segregated cash account must be documented by the executed agreement with an unaffiliated person that controls the segregated cash account.

Proposed §25.107(f)(4)(E),– Documentation for Escrow accounts

Proposed §25.107(f)(4)(E) requires escrow accounts to be documented by a current account statement and the escrow account agreement.

The commission revises §25.107(f)(4)(E) and §25.107(f)(4)(E)(iii) to mirror the requirement for an executed agreement under amended §25.107(f)(4)(D)(iii). Additionally, new §25.107(f)(4)(E)(i)(III) is added to align with amended §25.107(f)(2)(A) which permits customer prepayments, in addition to customer deposits, to be maintained in an escrow account, segregated cash account, or otherwise covered by an irrevocable stand-by letter of credit provided to the commission.

New §25.107(f)(4)(F)(ii)(II) – Irrevocable standby letter of credit; renewal and expiration

Proposed §25.107(f)(4)(F)(ii)(II) which requires letters of credit to automatically renew and only expire if prior notice is provided to the commission at least 90 days before the expiration.

The commission revises this language to also require commission staff to sign the notice of non-renewable to acknowledge that it was received 90 days prior to the expiration, mirroring an equivalent requirement for guaranty agreements. This harmonization will ensure that the commission is fully aware of the expiration of any financial instrument before the expiration takes effect.

Proposed §25.107(f)(4)(F)(ii)(V) – Irrevocable standby letter of credit; original or photocopy

Proposed §25.107(f)(4)(F)(ii)(V) requires an irrevocable standby letter of credit filed with the commission to permit a draw to be made using the original document or a photocopy.

The REP Coalition noted that some financial institutions may not permit a draw on a letter of credit via a photocopy. Accordingly, the REP Coalition recommended the commission investigate the proposed language further before adoption.

Commission Response

The commission declines to revise §24.107(f)(4)(F)(ii)(V) and emphasizes that a letter of credit must permit a draw to be made with either the original letter of credit or a photocopy of the letter of credit. Existing §25.107(f)(4)(F) requires a REP to use the commission's standard form template which includes language stating that the commission can draw on the irrevocable standby letter of credit with an original document or a photocopy. Accordingly, this is not a new requirement and should not impose any additional compliance burden.

Proposed §25.107(f)(4)(G) and §25.107(f)(4)(G)(ii) – Irrevocable guaranty agreements

Proposed §25.107(f)(4)(G) requires irrevocable guaranty agreements to be executed on the commission approved standard form irrevocable guaranty agreement and to obligate the guarantor to meet commission demands on behalf of the applicant. Proposed §25.107(f)(4)(G)(ii) requires irrevocable guaranty agreements to not have an expiration date and prescribes the process and requirements for termination of an irrevocable guaranty agreement after 90 days advance notice to the commission.

The commission revises §25.107(f)(4)(G) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(f)(4)(G) is modified to require a copy of the irrevocable guaranty agreement executed by an applicant and the guarantor to be provided in the manner established by the commission. Section 25.107(f)(4)(G)(ii) is modified to replace the prohibition on the irrevocable guaranty agreement from having an expiration date with the requirement that the irrevocable guaranty agreement must automatically renew. The provision is also modified to provide that an irrevocable guaranty agreement can only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff acknowledges the notice.

Proposed §25.107(f)(5) – Commission draw on financial instruments

Proposed §25.107(f)(5) lists the circumstances under which a REP's financial instrument may be drawn upon. Such conditions consist of a mass transition of the REP's customers being initiated by the independent organization, a commission order revoking the REP certificate, the termination of a REP's Standard Form Market Participation Agreement (SFA) by ERCOT or similar agreement

by an applicable organization, or a finding by the commission's executive director that the REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols.

Octopus, the REP Coalition, and CCR opposed allowing a financial instrument to be drawn upon based on the termination of the REP's SFA or a determination by the executive director. The REP Coalition noted that, under the existing rule, the circumstances in which the commission may draw upon a REP's financial instruments are limited to a mass transition or the revocation of the REP's certificate. The REP Coalition explained that the new conditions are unnecessary, because a mass transition will be ordered if a REP has failed to maintain its financial obligations at ERCOT. The REP Coalition further commented that authorizing the executive director to unilaterally draw upon a customer's letter of credit could harm customers because doing so could impede the ability of a REP "to honor existing customer contracts and to address any allegations of concerns regarding financial stability."

CCR opposed the expansion of scenarios that would authorize the commission to draw upon a REP's irrevocable letter of credit on the basis that such a draw would be unjustified, such as when a REP has no customers or outstanding financial commitments. CCR also stated that the manner of draw on a letter of credit by the commission in some of the proposed scenarios would deprive a REP of due process under the Texas Administrative Procedure Act (APA), such as when ERCOT terminates a REP's SFA under §25.107(f)(5)(C), which would in turn deny a REP the ability to dispute ERCOT's action before the commission.

Commenters recommended the commission revise the provision to require a commission order finding that the REP failed to comply with PURA, commission rules, or the ERCOT Protocols, rather than a decision from the executive director. Octopus and REP Coalition provided draft language consistent with their recommendations.

Commission Response

The commission declines to remove the added triggers for a draw upon a REP's financial instrument and declines to require notice and an opportunity for a hearing before a draw is permissible. Requiring such a hearing would be impractical and contrary to the purpose of these financial instruments to serve as guarantees of immediate payment. Furthermore, because financial instruments can be cancelled with 90 days' notice from the expiration date, commission staff must have a means of quickly accessing proceeds from the instrument to make the funds available for distribution. The additional triggers for a draw upon a financial instrument are necessary customer protections, based on commission staff experience with these instruments. However, the commission revises the rule to only allow a draw based on the termination of a REP's SFA or based on a finding by the executive director when the instrument will expire within 30 days. This ensures that these added triggers are only utilized when waiting on formal commission action would risk the expiration of the instrument.

The commission disagrees with CCR that a draw upon a REP's financial instrument as proposed would deprive a REP of due process under the APA. By executing the letter of credit or guaranty agreement and filing it with the commission, the REP is aware of the

circumstances in which the commission may draw upon the letter of credit and has consented to those circumstances. The APA is not implicated by this process. Further, because the financial instrument specifically authorizes the commission to draw down in certain circumstances, there is no lack of due process. Moreover, the REP has consented to the draw in those circumstances, and the commission is not taking any action that it is not already specifically authorized to take.

The commission does not agree with CCR's concern that the commission will be authorized to draw on a financial instrument unnecessarily, such as when the REP does not have any customers or outstanding financial obligations. The commission will not arbitrarily draw on a REP's financial instrument. Given the fact that a draw upon a financial instrument is a last resort to ensure payment, a REP will have had opportunities with the commission, ERCOT, or other parties to address concerns relating to its financial solvency and ability to honor its existing commitments before such action is taken, including assessing whether there is actual need to draw upon the instrument. Importantly, if the expiration of an instrument is imminent, it may be appropriate for the commission to immediately draw upon a financial instrument to ensure these funds are available, even if it does not immediately distribute the funds. Therefore, if the commission were to draw upon funds prematurely, the proceeds would simply be returned to the REP, consistent with the provisions of this section.

To the extent CCR's due process concerns regarding §25.107(f)(5)(C) relate to ERCOT, the commission notes that the ERCOT-approved SFA provides such recourse for market participants and therefore no due process concerns exist. Section 22: Attachment A of the

ERCOT Protocols contains the ERCOT-approved SFA. The SFA exhaustively details the circumstances, procedures, and remedies related to a market participant's performance under the SFA. Termination of the SFA can either occur at the election of the market participant or due to the default of the market participant. If the termination is due to default, the SFA prescribes an opportunity to cure the default if the ERCOT Protocols specify a remedy. The commission also notes that the termination of a REP's SFA allows the commission to draw upon the REP's financial instruments, but it does not require it. If the REP is actively working to remedy a default at ERCOT or contest the decision at the commission, it may not be necessary for the commission to draw upon the instrument before the relevant proceedings have concluded. This is a situational decision that will, by necessity, be made based on the facts and circumstances surrounding the termination of the SFA.

Proposed §25.107(f)(6)(A) – Proceeds from financial instruments; order of priority

Proposed §25.107(f)(6)(A) lists the order of priority in which proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement may be used to satisfy the obligations of a REP. In the proposed rule, the first priority for use of these proceeds was to return outstanding customer deposits and prepayments if not credited by or transferred to each customer's new REP of record or otherwise returned to the customer.

The REP Coalition argued that the addition of returning customer deposits and prepayments to the first item on the list could disincentivize outgoing REPs from returning customer deposits and prepayments in a timely manner, and as a result delay the disbursement of funds. The REP

Coalition noted that such an outcome would reduce the funds available for the commission to pay Provider of Last Resort (POLR's) low-income customer's deposits.

Commission Response

In the event of a mass transition, it is important to prioritize continuity of service for all electric customers. This issue is particularly acute for low-income customers who may be unable to provide a deposit for a new provider. The commission agrees with the REP Coalition that the proposed order of priority would reduce the funds available for the commission to pay Provider of Last Resort (POLR's) low-income customer's deposits. Accordingly, the commission reverts the order of priority under §25.107(f)(6)(A) to the order established in the existing rule.

Proposed §25.107(g)(2) – Persons prohibited from exercising control; duty to report

Proposed §25.107(g)(2) requires an independent organization or TDU to alert the commission's enforcement division when it becomes aware of a person controlling a REP that is otherwise barred from exercising direct or indirect control over a REP.

ERCOT noted that it currently only collects limited information on principals submitted by QSEs and congestion revenue right account holders but indicated it can revise the ERCOT Protocols to comply with §25.107(g)(2) if the commission deems it to be necessary.

Commission Response

Adopted §25.107(g)(2) only requires ERCOT, as the independent organization, or a TDU to notify the commission upon becoming aware of a violation. Accordingly, ERCOT is not required to collect additional information to comply with the rule. The commission adds new §25.107(e)(2)(E)(v), which requires a REP to provide a statement affirming that the persons listed under §25.107(g)(1) do not control the REP and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B).

Proposed §25.107(h) and §25.107(h)(2) – Update or relinquishment of certificate; certificate amendment because of a material change

Proposed §25.107(h) requires a REP to maintain and update applicable information required by §25.107(d)-(f). Proposed §25.107(h)(2) requires a REP to apply to amend its certification within ten working days of a material change to its certification or before the material change is anticipated to occur. It also details what constitutes a material change.

The REP Coalition recommended that the documentation under proposed §25.107(e)(2) for updates related to a REP's technical and managerial capabilities under proposed §25.107(e)(1) should be provided as part of a REP's annual or semi-annual reports under proposed §25.107(i) rather than requiring an amendment application to revise the REP's certificate under proposed §25.107(h) and (h)(2). Octopus supported the REP Coalition's recommendation. The REP Coalition stated that the current proposal could be administratively burdensome for a REP and for the commission because amendment applications require more time to review and process than REP's annual and semi-annual reports. The REP Coalition explained that certain disclosures, such

as those relating to third-party providers and disclosures of executive officer experience, do not necessitate an immediate update to a REP's certificate and instead could be more periodically provided to the commission every six months via a REP's annual and semi-annual reports.

Commission Response

The commission declines to implement the REP Coalition's recommendation. Material changes must be documented through amendment applications because each material change affects a REP's ongoing compliance with the requirements of §25.107. Conversely, annual and semi-annual reports are periodic filings that allow the commission to ensure that each REP is maintaining the *ongoing* requirements of its certificate. However, the commission does revise the rule to clarify what changes in information required under §25.107(e) constitutes a material change, as detailed below.

The REP Coalition alternatively recommended that updates to a REP registration be permitted via notice filings in a master project designated for that purpose. If the commission declines the REP Coalition's alternative recommendation, the REP Coalition recommended the 10-working day deadline for material changes be extended to 20 working days to provide REPs sufficient time to prepare the amendment.

Commission Response

The commission declines to adopt the REP Coalition's alternative recommendation to create a master project for notice filings to report updates to a REP certificate for the reasons stated above. The REP Coalition's second alternative recommendation of 20 working days is an

unnecessarily long period for a REP to file because that time period could exceed a calendar month, during which the commission will remain unaware that the REP's certificate is no longer completely accurate. The commission maintains that 10 working days sufficiently balances the administrative burden on REPs to file a certificate amendment with the commission's interest in receiving updated information from REPs.

The REP Coalition also recommend out-of-state complaints involving affiliates under proposed §25.107(e)(2)(D) not be required past the initial application and therefore neither be required in either an amendment application nor the REP's annual or semi-annual reports. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with the REP Coalition's recommendation and implements the proposed change. The commission revises §25.107(h)(2)(D) to exclude the complaint disclosure requirement under §25.107(e)(2)(D) as such information is more appropriate to disclose only for an initial REP certificate application.

Proposed §25.107(h)(2)(A) and (B) – Update or relinquishment of certificate; changes in ownership and assumed name

Proposed §25.107(h)(2)(A) specifies that a change in ownership, control, corporate restructuring, or transfer of a REP certificate constitutes a material change requiring disclosure. Proposed §25.107(h)(2)(B) specifies that a name change, including an addition of assumed names, constitutes a material change requiring disclosure.

The commission revises §25.107(h)(2)(A) for clarity and §25.107(h)(2)(B) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(h)(2)(A) is amended to clarify that a change in control of the REP including a change in controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP each constitute a material change requiring disclosure and amendment of the REP certificate, but that a change in the ownership percentages of individual owners does not. Section 25.107(h)(2)(B) is revised to include deletions of assumed names as material changes requiring disclosure and amendment of the REP certificate.

Proposed §25.107(h)(2)(D) – Update or relinquishment of certificate; material changes

Proposed §25.107(h)(2)(D) specifies that, for Option 1 REPs, a change in technical or managerial qualifications constitutes a material change. Proposed §25.107(h)(2)(D)(i)-(iii) delineates instances that constitute a material change in technical and managerial qualifications and would require a REP to amend its certification. The commission revises §25.107(h)(2)(D) and §25.107(h)(2)(D)(i)-(iii) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(h)(2)(D)(i) is merged into §25.107(h)(2)(D) and the cross references to the technical and managerial requirements of §25.107(e)(1)(A) and (B) and the corresponding documentation requirements of §25.107(e)(2)(B)-(C) and §25.107(e)(2)(E)(iv) and (v) are corrected. New §25.107(h)(2)(D)(iii) is added to indicate a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under §25.107(e)(2)(E)(iv)(I), or a change in the applicant's relationship with such persons under §25.107 (e)(2)(E)(iv)(II)., if such a relationship exists, constitute material changes requiring

disclosure and amendment of the REP certificate. Lastly, new §25.107(h)(2)(D)(iv) is added that requires a REP to amend its certificate if there is a change that requires an updated statement affirming that the persons identified under §25.107(g)(1) do not control the REP and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B) constitute a material change requiring disclosure and amendment of the REP certificate.

New §25.107(h)(2)(F) – Update or relinquishment of certificate; change in type of certificate

The commission adds new §25.107(h)(2)(F) to conform with the REP Registration Form published with the proposed rule. Specifically, new §25.107(h)(2)(F) specifies that a change in a REP's type of certification as an Option 1, Option 2, or Option 3 REP is a material change requiring disclosure and amendment of a REP certification.

Proposed §25.107(h)(3) – Relinquishment of certificate; required notice

Proposed §25.107(h)(3) authorizes a REP that no longer serves customers to relinquish its certificate and requires a REP that does not serve customers for two consecutive years to relinquish its certificate. Proposed §25.107(h)(3) also lists actions a REP must take if it plans to cease operations or relinquish its certificate.

The commission revises §25.107(h)(3) to conform with the REP Registration Form published with the proposed rule. Specifically, the provision is revised by expanding the list of persons who must be notified 45 days prior to a REP's cessation of operations under §25.107(h)(3) to include the Low Income Discount Administrator. The provision is also revised for clarity to indicate that a REP relinquishing its certificate must only provide notice to the TDUs and providers of last resort

in the service territories in which a REP serves customers. Lastly, §25.107(h)(3) is revised to qualify that, as applicable, the notice to municipalities and electric cooperatives is limited to those entities in whose service territory the REP serves customers.

New §25.107(h)(4) and §25.107(h)(4)(A) and (B) – Requirements for application to amend REP certificate

The commission adds new §25.107(h)(4) and §25.107(h)(4)(A) and (B) to conform with the REP Registration Form published with the proposed rule. Proposed §25.107(h)(4) specifies additional information that must be disclosed by a REP applying to amend its certificate

Proposed §25.107(i)(3) and (4) – Reporting requirements; contents of semi-annual and annual report

Proposed §25.107(i)(3) specifies information that must be included both in a REP's annual and semi-annual report to the commission and proposed §25.107(i)(4) specifies additional information that only a REP's annual report must include.

The REP Coalition recommended combining proposed §25.107(i)(3) and (4) and adding new §25.107(i)(4) which would require disclosure only if such information differed from when the REP last updated the information. This would allow a REP to only report about principals, executive management, third-party providers, Load Serving Entity (LSE) and QSE registration information if there is a change from the last time the REP provided the information to the commission. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to revise §25.107(i)(3) and (4) in the manner recommended by the REP Coalition. If no information has changed between the annual and semi-annual report it should not be burdensome for the REP to re-submit this information. Further, requiring REPs to submit the actual information will assure REPs are reviewing this information comprehensively and allow commission staff to verify that the information has not changed.

Proposed §25.107(i)(3)(G) – Reporting requirements; contact information of REP's LSE and QSE

Proposed §25.107(i)(3)(G) requires a REP report any changes to its current LSE contact information kept on file with ERCOT and a copy of all Notices of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. Additionally, if the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, proposed §25.107(i)(3)(G) requires the REP to also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all Notices of Change of Information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.

The REP Coalition opposed the requirement that a REP disclose QSE and counter party information. The REP Coalition explained that the commission can already access this information through ERCOT and that any benefit from such disclosure is unclear. The REP Coalition further commented that whether a REP, a REP's affiliate, or REP's corporate parent is a

QSE should not affect a REP's reporting requirements. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission disagrees with the REP Coalition and maintains the requirement as proposed. Requiring REPs to attach a copy of a form the REP is also required to submit with ERCOT is not unduly burdensome. The disclosure creates greater transparency for the commission regarding the identity of the individuals who have decision-making authority over a REP's operations. The commission revises §25.107(i)(3)(G) to clarify that the requirement to disclose a REP's LSE and, as applicable, a REP's QSE and counter party contact information, only applies to REPs providing retail electric service in the ERCOT region.

New §25.107(i)(4)(C) – Reporting requirements; other disclosures required by commission rules

New §25.107(i)(4)(C) requires an annual report to disclose the information required by §25.491, relating to Record Retention and Reporting Requirements, and other commission rules, as applicable. The commission adds new §25.107(i)(4)(C) to conform with the REP Registration Form published with the proposed rule. Specifically, new §25.107(i)(4)(C) is added to reflect the required disclosures for annual and semi-annual reports under §25.491, relating to Record Retention and Reporting Requirements, which prescribes additional information that must be included in a REP's annual report to the commission, as well as any other applicable commission rules.

Proposed §25.107(l) – Suspension of a REP's ability to acquire new customers

Proposed §25.107(l) authorizes the commission or presiding officer to suspend a REP's ability to acquire new customers. A suspended REP is barred from seeking to acquire new customers. The commission can suspend a REP for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. Proposed §25.107(l) also authorizes a suspension to be limited to specific customer classes and for the commission to impose administrative penalties or other conditions on a REP in addition to the suspension. Further, proposed §25.107(l)(1)(E) authorizes the presiding officer to issue an emergency order directing ERCOT to stop processing move-in requests for the REP if the presiding officer determines such action to be in the public interest.

CCR opposed the inclusion of proposed §25.107(l) that authorizes the commission to suspend a REP from acquiring new customers because it would deprive a REP of due process. CCR noted that existing rule language already exists for a party to bring a formal complaint to suspend or revoke a REP's certificate. CCR further noted that the commission already possesses the authority to seek injunctive relief if a REP violates commission rules. CCR commented that such broad commission authority to impact a REP's business activities should not be part of what is otherwise an administrative approval process. Specifically, CCR contended that a suspension from acquiring new customers should comply with the Texas APA, and therefore a contested case proceeding is more appropriate. CCR also commented that a state of default to another market participant is an insufficient basis for the commission to suspend a REP from acquiring new customers.

CCR further contended that the dispute resolution processes maintained by TDUs and ERCOT should be required to occur prior to any action by the commission. CCR stated that the proposed suspension provision would punish a REP who avails itself of such an alternative dispute resolution process or enters into a payment plan, as such action could be a basis for suspension without due process.

The REP Coalition disagreed with CCR that proposed §25.107(l) deprives a REP of due process as it provides notice and an opportunity for a hearing to a REP via the filing of a petition by commission staff to suspend a REP's ability to acquire new customers. The REP Coalition also noted that the circumstances for an emergency suspension without a hearing are provided in the rule. To address CCR's concerns, the REP Coalition recommended new §25.107(l)(2) which would classify a suspension of a REP's ability to acquire new customers as a contested case under Tex. Gov't Code, Chapter 2001. Specifically, the new provision would authorize the commission to hold a hearing on a petition for suspension or refer the case to be heard by the State Office of Administrative Hearings. Additionally, a REP's timely submission of a request for a hearing would delay the suspension until the issuance of a commission order, except in cases where an emergency order is already issued under §25.107(l)(1)(E). Such an order must identify the violations underlying the suspension and any conditions for reinstatement. REP Coalition commented that its proposed language would clarify the intent of the subsection to afford a REP due process and ensure a REP has all information required for reinstatement, with clear deadlines for such information.

The REP Coalition also recommended that, if the intent of the rule is to allow for an immediate suspension once staff files a petition, to amend §25.107(l) to allow for an expedited hearing process similar to the process applicable to cease and desist orders under §25.54(d)(2)(C). The REP Coalition explained that such a process would require the commission to set a hearing date no later than the 10th day after the date a hearing request is received unless an agreement is reached on an alternative date and would allow for a REP to request a stay of the suspension pending the outcome of the hearing.

OPUC supported the inclusion of proposed §25.107(l).

Commission Response

The commission disagrees with CCR that §25.107(l) violates due process and declines to remove the provision. Suspending a REP is an action the commission has historically performed and is authorized to do under PURA Chapter 17. The revisions to §25.107(l) merely flesh out a process for the use of the commission's statutory authority already codified in existing §25.107 to suspend a REP from acquiring new customers. Therefore, the change is beneficial to REPs because the provision serves to provide insight into the considerations that guide the use of this authority and explains the details of the suspension process.

The commission also disagrees with CCR that a REP's certificate should not be suspended until after the completion of a formal complaint or alternative dispute resolution process at ERCOT. The commission agrees that it is often appropriate to let these processes play out

before a suspension is concerned, but this is not uniformly the case the commission will not, by rule, limit its ability to take this statutorily authorized action when necessary. The commission's enforcement division and the executive director have reasonable discretion over when to pursue such a suspension and will exercise such discretion prudently.

With regard to emergency suspensions of a REP's ability to acquire new customers, the commission agrees with REP Coalition that such a process should mirror the cease and desist order procedure specified by §25.54. Accordingly, the commission modifies the rule to remove §25.107(l)(1)(E) and replaces it with new §25.107(l)(2). This new paragraph delegates authority to the executive director to suspend a REP's ability to acquire new customers via a cease and desist order, provided the criteria for the issuance of such an order under PURA §15.104 are met. The commission also revises the rule to provide interpretive guidance for PURA §15.104 by explicitly indicating that the statutory phrase "continuous and adequate electric service" is inclusive of the definition of "continuous and reliable electric service" as defined under §25.107(b)(3). Specifically, §25.107(b)(3) defines "continuous and reliable electric service" as "retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP."

Additionally, the commission emphasizes that, to ensure due process and to align with statutory provisions on the use of cease and desist orders, the executive director may only act under §25.107(l)(2) when prior notice and an opportunity for a hearing is impracticable. To aid the executive director in making the practicability determination, the rule specifies

that the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations.

Lastly, §25.107(l)(2) is modified to specify that the procedural provisions for a cease and desist without a hearing from §25.54(d)(2) apply, which include the right to request an expedited hearing on the cease and desist order.

Proposed §25.107(l) – Implementing suspension of a REP's ability to acquire new customers; Action by independent organization

Proposed §25.107(l)(1)(D) states that, upon approval of the petition for suspension by the presiding officer, ERCOT will be directed to stop processing move-in requests for the REP.

ERCOT noted that its current systems are not set up to permit ERCOT to block individual REPs from adding customers. Due to the technical infeasibility of the proposed language, ERCOT proposed an alternative. ERCOT can produce a report similar to an inadvertent gains report and provide that report to the commission. ERCOT provided draft language consistent with its recommendation. The REP Coalition supported ERCOT's recommended language for proposed §25.107(f)(1)(D) and (E) but noted that a REP will need time to implement a commission order to cease soliciting or enrolling new customers. The REP Coalition recommended ERCOT's suggested language for proposed §25.107(l)(1)(D) be amended to allow five business days from

the date of the issued order for a REP to implement the suspension. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with ERCOT and implements its proposed language with minor revisions to account for instances where a REP must "initiate" service due to events outside the REP's control, the REP is obligated to serve the new customer, to the terms of a contract or a mass transition resulting from a POLR event. The commission also agrees with the REP Coalition and revises §25.107(l)(1)(D) to provide a REP with time to implement a suspension. However, to ensure that the suspension order is implemented efficiently, the commission provides REPs with three working days instead of the requested five.

Proposed §25.107(l)(2) – Suspension of a REP's ability to acquire new customers; lifting of suspension

Under proposed §25.107(l)(2), the presiding officer *may* lift a suspension of a REP's ability to acquire new customers if all the conditions for reinstatement are met, if the REP is in compliance with all technical, managerial, and financial requirements of this section, and commission staff recommends that the suspension be lifted.

The REP Coalition recommended revising §25.107(l)(2) to state that a REP suspension "must" be lifted by the presiding officer when all violations that led to a REP's suspension are resolved or settled. The REP Coalition opposed usage of the permissive "may" as it provides discretion to the presiding officer on whether to lift the suspension despite such resolution or settlement.

The REP Coalition further recommended proposed §25.107(l)(2)(C) be removed as it conditions the lifting of the suspension upon a recommendation by commission staff. The REP Coalition explained that, in its view, if a REP has fulfilled the conditions for reinstatement, the lifting of the suspension should be mandatory, not discretionary, regardless of whether commission staff files a recommendation. The REP Coalition noted that requiring a commission staff recommendation may delay a reinstatement and that if such a recommendation is necessary, the presiding officer has the discretion to require commission staff to file one. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to implement the REP Coalition's recommendation to automatically lift the REP's suspension from acquiring new customers when all violations that led to the suspension are resolved or settled. The resolution or settlement of violations may require verification and additional circumstances may exist that merit preserving the suspension. However, in acknowledgement of REP Coalition's concerns regarding quick resolutions and to provide maximum flexibility for lifting the suspension, the commission modifies the provision to bifurcate the reinstatement process.

Under the first option, a REP may file a petition for reinstatement that is eligible for informal resolution. In determining whether to lift the suspension, the presiding officer may consider whether the REP has resolved all violations underlying the suspension, fulfilled all conditions for reinstatement, and is in compliance with the technical, managerial, and financial requirements of §25.107. The commission also modifies the rule to clarify that the presiding

officer may consider all of the requirements of §25.107, or just a subset of those requirements, as appropriate to the situation. Additionally, the presiding officer may consider any additional grounds relevant to maintaining the suspension to prevent the need for redundant suspension proceedings. Lastly, as requested by the REP Coalition, the commission removes the requirement that commission staff must file a recommendation in support of lifting the suspension, because the presiding officer has discretion to require a recommendation from staff, if needed.

Under the second option, the commission has added a new expedited method for lifting the suspension under §25.107(l)(4) that would authorize commission staff to lift the suspension without any further action required by the commission. Under this option, the suspension order would contain specific, verifiable conditions for expedited reinstatement. However, to ensure that the REP has fulfilled each required condition as intended, the suspension order may condition expedited reinstatement upon staff approval. This strikes an appropriate balance between commenters' due process concerns and desire for expediency, because the suspended REP has the option of working with staff for expedited reinstatement, while still having the option of filing a petition for reinstatement if the REP and commission staff disagree as to whether the conditions have been met.

The commission also emphasizes that expedited reinstatement of a REP's ability to acquire new customers is only appropriate in certain circumstances. Specifically, §25.107(l)(4) provides that "[e]xpedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the

pattern of conduct giving rise to the suspension supports a general concern about the REP's ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension" Lastly, the commission authorizes the creation and use of a compliance docket for expedited reinstatements, if required.

§25.109. Registration of Power Generation Companies and Self-Generators

Intent to sell at wholesale and definition of "self-generator"

The proposed repeal and replace of §25.109 included a new definition of "self-generator" to provide clarity on the applicability of PGC and self-generator registration requirements.

The commission received comments from TIEC, Enel, Good Company, STEC, and TCPA on the proposed provisions. TIEC, Good Company, and Enel recommended the commission take up the issue of defining "self-generator" and addressing the applicability issues in a separate rulemaking.

Commission Response

The commission agrees with commenters that the definition of "self-generator" and the registration applicability issues should be considered in a separate rulemaking. Accordingly, the commission revises the proposed rule to remove language related to these changes. Specifically, the commission deletes the definition of "self-generator" under §25.109(b)(3) and revises §25.109(e) to require attestations by persons registering as self-generators affirming only that the registrant is not a power generation company and does not intend to

generate electricity intended to be sold at wholesale. Further, if the registrant is a Qualifying Facility (QF) and registering as a self-generator, then the registrant either does not sell electricity or provides electricity only to the purchaser of the facility's thermal output. The commission deletes the reference in the existing rule to electric energy storage equipment or facilities to which PURA, Chapter 35, Subchapter E applies as the definition of "power generation company" includes this reference in the definition. The commission further omits the proposed requirement that Exempt Wholesale Generators (EWGs) must register under §25.107 as a PGC. The requirement that QFs must register as PGCs has been retained in the adopted rule as that requirement is present in the existing rule. The commission also makes revisions to the rule for clarity.

§25.109(b)(2) – Definition of "principal"

Proposed §25.109(b)(2)(A)-(F) defines "principal" with specific reference to a variety of persons that traditionally exert authority or control across different legal business organizations.

Commission Response

The commission revises the definition of "principal" to conform with the same definition included in the adopted version of §25.107(b)(13) to the extent the definitions overlap, including the clarification that "a fiduciary of a company such as the board of directors, is a principal" provided they possess apparent or actual authority to exercise control over a PGC or its principals, and actually exercise such control. The commission also similarly revises §25.109(b)(2)(B) to state "a partner of a partnership."

The repeals, new, and amended rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 15.104 17.001, 17.003, 17.004, 17.052 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.30. Complaints.

(a) **Complaints to the electric utility.** A customer or applicant may file a complaint in person, by letter, or by telephone with the electric utility. The electric utility must promptly investigate and advise the complainant of the results within 21 days.

(b) **Supervisory review by the electric utility.** Any electric utility customer or applicant has the right to request a supervisory review if they are not satisfied with the electric utility's response to their complaint.

(1) If the electric utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review must be made for the earliest possible date.

(2) Service must not be disconnected before completion of the review. If the customer chooses not to participate in a review, then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §25.29 of this title (relating to Disconnection of Service).

(3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.

(4) Customers who are dissatisfied with the electric utility's supervisory review must be informed of their right to file a complaint with the commission.

(c) **Complaints to the commission.**

(1) If the complainant is dissatisfied with the results of the electric utility's complaint investigation or supervisory review, the electric utility must advise the complainant of the commission's informal complaint resolution process. The electric utility must also provide the customer the following contact information for the commission: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512)936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)936-7003, e-mail address: customer@puc.texas.gov, internet address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989.

(2) The electric utility must investigate all complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the electric utility. For complaints filed with the commission before September 1, 2023, the deadline is 21 days after the complaint is forwarded.

(3) The electric utility must keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record must show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or charges must require no further action by the electric utility need not be recorded.

§25.105. Registration by Power Marketers. (REPEAL)

§25.105. Registration by Power Marketers.

(a) **Applicability**. This section contains the registration and renewal of registration requirements for a power marketer. A person must be registered as a power marketer with the commission in order to participate in the Texas wholesale market as a power marketer. The registration of a person already registered as a power marketer as of the effective date of this section expires on January 1, 2024 unless the person files a new registration in compliance with the requirements of this section.

(b) **Registration information**. To register as a power marketer, a person must submit the following information in the manner established by the commission.

(1) The registrant's contact information, including the registrant's:

(A) physical and business mailing address;

(B) business telephone number; and

(C) business e-mail address.

(2) The name of the current regulatory contact, and the contact's e-mail address and telephone number.

(3) The addresses of any facilities used by the registrant in Texas.

(4) A description of the activities the registrant will participate in, and services provided.

(5) As applicable, copies of all information filed with the Federal Energy Regulatory Commission (FERC) relating to the registrant's FERC registration to sell electric energy at market-based rates.

(6) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant affirming that the registrant qualifies as a power marketer. The affidavit must also include the following information:

(A) the business name of any affiliated entity registered with the commission and the type of commission registration associated with each affiliated entity;

(B) whether each affiliate buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric cooperative or municipally owned utility in Texas; and

(C) the business name of any affiliated qualified scheduling entity.

(c) **Update of registration.** A power marketer must update, in a manner established by the commission, its registration within 30 days of a change to information listed under subsection (b) of this section.

(d) **Renewal of registration.** A power marketer must renew its registration on or before November 1 of each calendar year by submitting, in a manner established by the commission, the information required by subsection (b) of this section or by submitting a statement that the power marketer's registration information on file with the commission is current.

(1) Commission staff will send one notice to the regulatory contact listed for a power marketer that has not submitted its registration renewal by November 1st. Commission staff's failure to send this notice does not excuse a power marketer from complying with any of the requirements of this section.

(2) A power marketer registration that is not renewed by December 31st of each calendar year expires.

(3) Commission staff will notify Electric Reliability Council of Texas of a power marketer whose registration has expired.

(4) A person may not continue to operate as a power marketer in Texas after its registration has expired.

(5) A person whose power marketer registration is expired may apply for a new registration at any time.

(e) **Commission list of power marketers**. The commission will maintain a list of power marketers registered in Texas on the commission's website. A power marketer that fails

to renew its registration under subsection (d) of this section may be listed as "Expired" on the commission's list of power marketers.

§25.107. Certification of Retail Electric Providers (REPs) (REPEAL)

§25.107. Certification and Obligations of Retail Electric Providers (REPs).

(a) **Applicability.**

(1) This section contains the certification and reporting requirements applicable to a retail electric provider (REP).

(A) A person must obtain a REP certificate under this section before purchasing, taking title to, or reselling electricity to provide retail electric service. A person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under this section. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information in accordance with subsections (i) and (h) of this section.

(B) A person that does not purchase, take title to, or resell electricity to provide electric service to a retail customer is not a REP and must not act as a REP without obtaining a certificate under this section. A REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider.

(C) A person who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004, is not, for that reason, required to be certified as a REP.

(2) This section also applies, where specifically stated, to an independent system operator or transmission and distribution utility (TDU).

(3) A person certified as an Option 1 REP via an application submitted prior to the effective date of this section must come into compliance with the requirements of this section by March 5, 2024. Prior to March 5, 2024, a person certified as an Option 1 REP via an application submitted prior to the effective date of this section must meet the requirements of this section as it was in effect on April 1, 2023.

(A) A REP must complete and file a commission approved compliance update form that demonstrates the REP is in compliance with this section on or before March 5, 2024.

(B) A REP who does not demonstrate compliance with this section on or before March 5, 2024, may be subject to a suspension of acquiring new customers under subsection (l) of this section.

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

(1) **Affiliate** -- As defined in §25.5 of this title (relating to Definitions).

(2) **Assumed name** -- has the meaning assigned in Chapter 71 of the Texas Business and Commerce Code.

(3) **Continuous and reliable electric service** -- Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP.

(4) **Control** -- The term control (including the terms controlling, controlled by and under common control with) means the direct or indirect possession of binding authority to direct or cause the direction of the management, policies, operations, or decision-making of a person, whether through ownership of voting securities, by contract, formation documents, or otherwise. A principal is a controlling person. A third-party provider may be a controlling person.

(5) **Default --** As defined in a TDU tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement, ERCOT standard form market participant agreement (SFA), or any similar agreement with an applicable independent organization other than ERCOT.

(6) **Executive officer** -- An entity's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions. Executive officers of

subsidiaries may be deemed executive officers of the entity if they perform such policy making functions for the entity.

(7) **Guarantor** -- A person that provides an irrevocable guaranty agreement using the standard form approved by the commission under this section.

(8) **Investment-grade credit rating** -- A long-term unsecured credit rating issued by the bond credit rating companies Moody's Investors' Service (Moody's), Standard & Poor (S&P), or Fitch of at least "Baa3" from Moody's or "BBB-" from S&P or Fitch.

(9) **Option 1 REP** -- A REP that provides its service offerings to any customer class based on geographic service area.

(10) **Option 2 REP** -- A REP that limits its service offerings to specifically identified customers, each of whom contracts for one megawatt or more of capacity.

(11) **Option 3 REP** -- A REP that sells electricity exclusively to a retail customer, other than a small commercial or residential customer, from a distributed generation facility owned by a power generation company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators) located on the same geographic site as the customer.

(12) **Person** -- An individual or any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation. Person does not include an electric cooperative or a municipal corporation.

(13) **Principal** -- Includes:

(A) A sole proprietor;

(B) A partner of a partnership;

(C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);

(D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;

(E) A shareholder with more than 10% equity of the REP, if a public company; or

(F) A person who exercises control and has apparent or actual authority to exercise such control over either the REP or a principal that is otherwise described by this subsection. A consultant, third-party provider, or fiduciary of a company such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(14) **Shareholder** -- The legal or beneficial owner of any of the equity of any business entity as the context and applicable business entity requires, including, stockholders of corporations, members of limited liability companies and equity partners of partnerships.

(15) **Tangible net worth** -- Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.

(16) **Third-party provider** -- An entity to which a REP outsources or plans to outsource any retail or wholesale electric functions. A contractor, consultant, agent, or any other person not directly employed by the REP can be a third-party provider. A third-party provider isa principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(c) **Application processing.**

(1) A person can apply to certify as a REP or amend a REP certification by submitting a complete application on a form approved by the commission. Commission staff will review each application for sufficiency and submit a recommendation to the presiding officer within 20 days after the application is filed. The presiding officer will make a determination of sufficiency of the application within ten days of receipt of commission staff's recommendation. If the presiding officer finds that the application is deficient, the presiding officer must notify the applicant. The applicant will have ten days from the issuance of the notice to cure the deficiencies. If the deficiencies are not cured within ten days, the presiding officer may notify the applicant that the certification request is rejected without prejudice.

(2) While an application for certification or amendment is pending, an applicant must notify the commission of any material change to the information provided in the application within ten days of any such change in accordance with subsection (h)(2) of this section.

(3) Except where good cause exists to extend the time for review, the presiding officer will issue an order approving, rejecting, or approving with modifications, an application within 90 days of finding an application sufficient.

(4) For applications to certify as an Option 1 REP, the presiding officer will deny an application if the configuration of the proposed geographic area would unduly discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.

(5) An Option 2 REP application for certification that meets all other requirements of this section except for the provision of customer affidavits under subparagraph (d)(2)(I) may be conditionally granted by the presiding officer. If such an application is conditionally granted, the applicant must, within 30 days from the date the application is granted, file in the docket the affidavit or affidavits required by subsection (d)(2)(I). The application will be withdrawn and the application denied with respect to each customer for whom the applicant fails to timely file the required affidavit. Within 45 days after the application is conditionally granted, commission staff must file a status report indicating whether each of the required affidavits were timely filed. The presiding officer will then issue a follow-up order confirming the approval of the application as to each customer for whom the required affidavit was filed and denying the application as to each customer for whom the required affidavit was not filed.

(6) **Document format.** If a provision of this subsection specifies a certain format for a document that must be filed with or submitted to the commission, an applicant must file or submit that document in the native format specified. A document filed in its

native format must permit basic data manipulation functions, such as copying and pasting of data.

(d) **Basic requirements.**

(1) A REP must maintain its certification by complying with the following subparagraphs on an ongoing basis.

(A) Only provide retail electric service under the name or names set forth in an approved application for certification or subsequent amendment application. A REP's certificate must contain the REP's legal business name and all assumed names under which it proposes to provide service.

(B) Not use more than five assumed names in the REP's regular course of business.

(C) Maintain an active business registration with the Texas Secretary of State.

(D) Maintain current and accurate contact information including:

(i) the applicant's primary contact name and title, street and mailing address, business telephone number and toll-free number, business e-mail address, and applicant's web address;

(ii) for the pendency of the application or amendment, the authorized representative's name, title, street and mailing address, telephone number, e-mail address, and web address;

(iii) regulatory contact name, title, street and mailing address, telephone number, e-mail address and web address;

(iv) customer complaint contact name, title, street and mailing address, telephone number including a toll-free number, e-mail address and web address;

(v) emergency contact's name, title, telephone number, and e-mail address, and web address; and

(E) Maintain current and accurate office information including:

(i) An office that has street address located within Texas that is open during normal business hours for the purpose of providing customer service and making available to commission staff books and records

sufficient to establish the REP's compliance with Public Utility Regulatory Act (PURA) and commission rules; the office must have the following contact information where the REP's staff can be directly reached:

(I) a business telephone number and toll-free number,

(II) a business e-mail address and web address, and

(III) a business postal address that is not a post office box.

(ii) The applicant's state of formation or incorporation, and the address of the applicant's primary business office; and

(iii) A mailing address, if different from the applicant's Texas office address or primary business office address; and

(iv) The name and address of the applicant's registered agent for the purpose of receiving service of process.

(F) Comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other protocols established by the applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

(G) Comply with the registration and certification requirements of the applicable independent organization and its system rules and protocols, or each contract for services with a third-party provider that is required to be registered with or certified by the applicable independent organization.

(H) Maintain adequate staffing and employee training to meet all service level commitments.

(I) Respond within five working days to any commission or commission staff request for information, unless otherwise provided by the commission, commission staff, or other applicable law.

(2) An applicant must provide the following information to the commission to certify as a REP under this section.

(A) An application for certification or amendment to a certificate must be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.

(B) Information related to the applicant's status as a legal entity, including information related to its tax status and authority to do business in Texas to verify the information required under paragraphs (1)(A)-(C) of this subsection. The following information must be provided:

(i) A copy of the applicant's Texas Secretary of State registration and filing numbers associated with the registration . A business name must not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

(ii) The applicant's Texas Comptroller of Public Accounts tax identification number, and all other relevant or other applicable certification or file numbers.

(C) The applicant's current contact information required under paragraph (1)(D) of this subsection.

(D) The applicant's current office information required under paragraph (1)(E) of this subsection.

(E) Information on the applicant, including:

(i) a list of the applicant's subsidiaries and parent companies up to the ultimate corporate parent, and any sister companies that are registered or certified with the commission. Each company must be identified by name and, if applicable, type of commission registration or certification.

(ii) an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must

contain, at minimum, the entities listed under clause (i) of this subparagraph and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

(iii) a list of all principals, provided in Microsoft Excel format;

(iv) a list of all executive officers, provided in Microsoft Excel format.

(F) A statement affirming compliance with paragraphs (1)(F)-(I) of this subsection and a short summary describing how the applicant has complied, or for paragraph (1)(I) of this subsection how the applicant will comply, with each subparagraph.

(G) The control number and item number where the applicant has filed its Emergency Operations Plan as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).

(H) An applicant for an Option 1 REP certificate must designate one of the following categories as its geographic service area:

(i) The geographic area of the entire state of Texas;

(ii) A specific geographic area (indicating the zip codes applicable to that area);

(iii) The service area of one or more specific TDUs, municipal utilities, or electric cooperatives in which competition is offered; or

(iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.

(I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of conditional commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of energy. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands

and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

(J) An applicant for an Option 3 REP certificate must:

(i) identify the name of the PGC that owns the distributed generation facilities and affirm that the PGC is registered under §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators); and

(ii) provide a signed, notarized affidavit from an executive officer of the PGC confirming:

(I) the PGC operating the distributed generation facility conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);

(II) the distributed generation facility is installed by a licensed electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and

(III) the distributed generation facility is installed in accordance with the National Electric Safety Code as adopted by the Texas Department of Licensing and Regulation and otherwise complies with all applicable local and regional building codes.

(e) **Technical and managerial requirements.** An Option 1 REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, applicable independent organization protocols, and other applicable laws. This subsection does not apply to an Option 2 or Option 3 REP.

(1) **Technical and managerial resource requirements.** The following are technical and managerial resource requirements a REP must maintain on an ongoing basis.

(A) One or more principals or employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. A third-party provider's experience may not be used to meet this requirement.

(B) One executive officer or employee in a managerial position who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may enter into a contract for a term not less than two years with a third-party provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least $10,000,000.

(C) If providing retail electric service in the ERCOT region, compliance with all applicable ERCOT requirements, including:

(i) execution of a service agreement with a QSE;

(ii) maintaining the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;

(iii) providing outage notifications in accordance with § 25.53 of this title; and

(iv) completing ERCOT flight test obligations.

(D) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(2) **Technical and managerial documentation requirements.** The following information must be provided by an applicant to demonstrate compliance with the technical and managerial requirements under paragraph (1) of this subsection.

(A) A list of all third-party providers accompanied by a description of each third-party provider's responsibilities and delegation of authority, provided in Microsoft Excel format.

(B) Resumes showing prior experience of one or more of the applicant's principals or managerial employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, a resume showing one of the applicant's executive officers or managerial employees possess at least five years' experience in commodity risk management.

(C) If relying upon a third-party provider for commodity risk management services to satisfy the requirement for paragraph (1)(B) of this subsection, a copy of the executed contract is required.

(D) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding the applicant, the applicant's corporate parents, all sister companies and subsidiaries of the applicant, and affiliates of the foregoing that provide utility-like services such as telecommunications, internet, broadband, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons.

(i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information must include the type of complaint,

status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the complaint history of the applicant's principals and affiliates, disciplinary record, and compliance record.

(iii) Any complaint information on file at the commission may also be considered when reviewing the application.

(E) The following statements must be supported by a signed notarized affidavit made by an executive officer of the applicant.

(i) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.

(ii) A statement that identifies whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(iii) A statement that the applicant will register with or be certified by the applicable independent organization and that the applicant will comply with the technical and managerial requirements of this subsection; and that third-party providers with whom the applicant has a contractual relationship are registered with or certified by the independent organization, as appropriate, and will comply with all system rules and protocols established by the applicable independent organization.

(iv) A statement that identifies and, if applicable, describes the applicant's relationship with any of the following persons.

(I) Identification of all of the applicant's principals, executive officers, employees, and third-party providers that:

(-a-) exercised direct or indirect control over a REP that experienced a mass transition of the REP's customers under §25.43 of this title (relating to Provider of Last Resort (POLR)) at any time within the six months prior to the mass transition;

(-b-) exercised direct or indirect control over a market participant at any time within the six months prior to a market participant having had its ERCOT SFA terminated or a similar agreement for an applicable independent organization other than ERCOT terminated;

(-c-) exercised direct or indirect control of a market participant within the prior six months of a market participant having exited an electricity or gas market with outstanding payment obligations that remain outstanding; or

(-d-) have been barred, in any way, participation by commission order.

(II) If a relationship exists as described in subclause (I) of this clause, the applicant must include in the affidavit for each such relationship:

(-a-) the name of the person;

(-b-) the name of the REP that experienced a mass transition of its customers under §25.43 of this title or market participant whose ERCOT SFA or similar agreement for an applicable independent organization was terminated or exited a market with outstanding payment obligations;

(-c-) details about the person's relationship with the REP or market participant;

(-d-) factual statements about the events that necessitated this response, including, if applicable, whether and, if so, how the REP that experienced a mass transition of its customers under §25.43 of this title settled all outstanding payment obligations;

(-e-) the person's current relationship or position with the applicant; and

(-f-) the extent of the person's apparent or actual authority to act in such a way that may be perceived as having direct or indirect control over the applicant.

(v) A statement affirming that the persons listed under paragraph (g)(1) of this section do not control the applicant and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section.

(F) To document compliance with subsection (e)(1)(C) of this section, an applicant must provide:

(i) all relevant information related to each service agreement executed with a QSE, including:

(I) the term of the service agreement and date the service agreement began;

(II) the name of the QSE;

(III) the QSE's contact name and title;

(IV) the QSE's physical address;

(V) the QSE's e-mail address and web address; and

(VI) the QSE's business telephone number and toll-free number;

(ii) a confirmation that applicant has the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with

applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;

(iii) a confirmation that applicant will provide outage notifications in accordance with §25.53 of this title; and

(iv) a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

(f) **Financial requirements.** An Option 1 REP must, on an ongoing basis, maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.

(1) **Access to capital.** A REP must maintain the requirements of subparagraph (A) or (B) of this paragraph on an ongoing basis.

(A) A REP may maintain an executed version of the commission approved standard form irrevocable guaranty agreement.

(i) The guarantor must be:

(I) One or more affiliates of the REP;

(II) A financial institution with an investment-grade credit rating; or

(III) A provider of wholesale power supply for the REP, or one of such power provider's affiliates, with whom the REP has executed a power purchase agreement.

(ii) The guarantor must have:

(I) An investment-grade credit rating; or

(II) Tangible net worth greater than or equal to $100 million, a minimum current ratio (defined as current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load.

(B) A REP may maintain an irrevocable stand-by letter of credit with a face value as determined in clause (i) of this subparagraph, based on the number of electronic service identifiers (ESI IDs) the REP serves in the manner prescribed by clauses (ii) and (iii) of this subparagraph. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders' equity in accordance with clauses (iv) and (v) of this subparagraph.

(i)

Number of ESI IDs	**Required Value of Letter of Credit**
< 50,000	$750,000
≥ 50,000	$1,500,000

(ii) The number of ESI IDs includes all customer classes to which a REP provides retail electric service.

(iii) As the number of ESI IDs served by the REP increases, the irrevocable stand-by letter of credit must be adjusted to reflect the required value as determined in clause (i) of this subparagraph. As the number of ESI IDs served by the REP decreases, the irrevocable stand-by letter of credit may be adjusted to reflect the required value as determined in clause (i) of this subparagraph.

(iv) For the first 24 months a REP is serving load, a REP must not make any distribution or other payment to any shareholders, affiliates, or corporate parent's affiliates if, after giving effect to the distribution or other payment, the REP's shareholders' equity is less than one million dollars. Distributions or other payments include dividend distributions, redemptions and repurchases of equity securities, and loans to shareholders or affiliates.

(v) After a REP has continuously served load for 24 months, a prescribed amount of maintained shareholders' equity is no longer required.

(2) **Customer deposits and prepayments.** A REP certified to collect customer deposits must comply with this paragraph and the requirements of §25.478 of this title (relating to Credit Requirements and Deposits). A REP certified to collect customer prepayments must comply with this paragraph and the requirements of §25.498 of this title (relating to Prepaid Service).

(A) A REP must maintain customer deposits and prepayments in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit.

(i) If a REP is certified to collect both customer deposits and prepayments then the REP must use and maintain either an escrow account, segregated cash account, or irrevocable stand-by letter of credit to protect customer deposits and prepayments. If a REP uses an escrow account or segregated cash account, the same account must be used for customer deposits and prepayments. More than one irrevocable stand-by letter of credit can be provided to protect customer deposits and prepayments.

(ii) For customer deposits, the escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of the REP's outstanding customer deposits held at the close of each calendar month.

(iii) For customer prepayments, a REP must maintain, at minimum, protection for all customer prepayments that equals or exceeds $50. The balance of an escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of customer prepayment funds equal to or exceeding $50 held at the close of each calendar month.

(B) Any irrevocable stand-by letter of credit provided under this paragraph must be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection.

(3) **Bankruptcy disclosure.** If a REP files a petition for bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, including being in default with the applicable independent organization or with a TDU:

(A) The REP must notify the commission within three working days of this event and must file with the commission a summary of the nature of the event; and

(B) The notification must be filed in the commission control number established for notices prescribed under this paragraph. If the REP has filed a petition for bankruptcy, then the REP must include in its filing the petition that initiated the bankruptcy.

(4) **Financial documentation requirements.** The following must be provided by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection, as applicable. Additionally, the applicant must provide the month and last day of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year. The applicant must also provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

(A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the applicant provides must be the most recently released report by the credit reporting agency.

(B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by audited or unaudited financial statements of the guarantor for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the guarantor's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the REP's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.