

- (D) Segregated cash accounts must be documented by a current account statement and the executed agreement with an unaffiliated person that controls the segregated cash account.
- (i) The account statement must clearly identify:
 - (I) the name of the financial institution where the applicant has established the account;
 - (II) the account number; and
 - (III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.
 - (ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:
 - (I) U.S. domestic bank; or
 - (II) a domestic office of a foreign bank with an investment-grade credit rating.
 - (iii) A REP must provide an executed agreement with a provider of credit that governs the control and management of the account. The provider of credit must not be affiliated with the applicant or the applicant's corporate parent. If the segregated cash account contains customer deposits, the agreement must specify that the customer deposits are not the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.
- (E) Escrow accounts must be documented by a current account statement and the executed escrow account agreement.
- (i) The account statement must clearly identify:
 - (I) the name of the financial institution where the applicant has established the account;
 - (II) the account number; and

- (III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.
 - (ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:
 - (I) U.S. domestic bank; or
 - (II) a domestic office of a foreign bank with an investment-grade credit rating.
 - (iii) The escrow account agreement must provide that the account holds only customer deposits, prepayments, or both, and that the customer deposits will be held in trust by the escrow agent and will not be the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.
- (F) Irrevocable stand-by letters of credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission. The original document of the irrevocable stand-by letter of credit must be provided in a manner established by the commission.
 - (i) The irrevocable stand-by letter of credit must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:
 - (I) U.S. domestic bank; or
 - (II) a domestic office of a foreign bank with an investment-grade credit rating.
 - (ii) The irrevocable stand-by letter of credit must:
 - (I) be irrevocable for a period not less than twelve months;

- (II) automatically renew, and only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff signs the notice of non-renewal to acknowledge that the notice was received 90 days before the expiration;
 - (III) be payable to the commission;
 - (IV) permit a draw to be made in part or in full;
 - (V) permit a draw to be made with the return of the original document or a photocopy;
 - (VI) permit a draw to be made, among other ways, through overnight mail;
 - (VII) permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit; and
 - (VIII) require commission staff approve all amendment requests to decrease the value of the irrevocable stand-by letter of credit prior the value of the irrevocable stand-by letter of credit decreasing. Amendments to decrease the value of the irrevocable stand-by letter of credit must be accompanied by a notarized affidavit signed by an executive officer of the REP and include, as applicable, the current number of ESI IDs the REP serves, the value of customer deposits and prepayments the REP is liable for.
- (G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission's demands on behalf of the applicant. A copy of the executed irrevocable guaranty agreement must be provided in the manner established by the commission.
- (i) The guarantor's obligation to satisfy a commission demand for payment must be in an amount not less than \$1,500,000 and must be

absolute, and the guarantor may not avoid its obligation for any reason.

- (ii) The irrevocable guaranty agreement must automatically renew and only expire if prior notice is provided to the commission at least 90 days before expiration. Commission staff must sign a notice of non-renewal to acknowledge that the notice was received at least 90 days prior to the date of expiration. Any notices or amendments must be provided to the commission in a commission approved method. Until the 90 days advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain completely and absolutely liable to the extent provided by the terms of the agreement.
- (H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.
- (5) **Commission draw on financial instruments.** The commission may seek full or partial funds from a REP's financial resources in any of the following circumstances:
 - (A) An applicable independent organization performs a mass transition of a REP's customers under §25.43 of this title;
 - (B) The commission issues an order revoking a REP's certificate;
 - (C) ERCOT terminates a REP's SFA or the applicable independent organization terminates a similar agreement and the REP's financial resource expires in 30 days less; or
 - (D) The commission's executive director determines that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols; and the financial resource expires in 30 days or less.
- (6) **Proceeds from financial instruments.**
 - (A) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection may be used to satisfy the following obligations of a REP, in the following order of priority:

- (i) first, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title (relating to Low-Income List Administrator);
 - (ii) second, if available, to assist in the payment of residential customer deposits to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title;
 - (iii) third, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provider service in a mass transition event under §25.43 of this title, and to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title;
 - (iv) fourth, for services provided by the independent organization related to serving customer load;
 - (v) fifth, for services provided by a TDU; and
 - (vi) sixth, for administrative penalties assessed under Chapter 15 of PURA or commission rules.
- (B) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection must, to the extent that the proceeds are not needed to satisfy an obligation set out in subparagraph (A) of this paragraph, be paid to the applicable entity identified as the Applicant on the irrevocable stand-by letter of credit or the Guarantor on the irrevocable guaranty agreement.
- (g) **Persons prohibited from exercising control.** An Option 1 REP must maintain compliance with this subsection at all times. This subsection does not apply to an Option 2 or Option 3 REP.

- (1) In no instance may any of the following persons control the REP or be relied upon to meet the requirements of subsections (d) and (e) of this section:
 - (A) A person who was a principal of a market participant, at any time within the six months prior to the market participant:
 - (i) experiencing a mass transition of the REP's customers under §25.43 of this title;
 - (ii) having their ERCOT SFA, or similar agreement for an independent organization other than ERCOT terminated; or
 - (iii) exiting an electricity or gas market with outstanding payment obligations that, at the time of the application or amendment, remain outstanding; or
 - (B) A person who, by commission order, is prohibited from serving as a principal for any commission-regulated entity.
 - (2) If an independent organization or TDU is aware that a person who is otherwise barred from exercising direct or indirect control over a REP is acting in violation of this section or other commission substantive rules, the independent organization or TDU has an affirmative duty to report this information to the division of the commission charged with enforcement of the commission's substantive rules.
- (h) **Update or relinquishment of certification.** A REP must maintain and update the information required by subsections (d), (e), and (f) of this section, as applicable, on an ongoing basis.
- (1) A REP must electronically submit updated information in the manner established by the commission within five working days of any change to its contact information as identified in subsection (d)(1)(D) or this section.
 - (2) A REP must apply to amend its certification within ten working days from the occurrence of a material change to its certification. A REP may apply for the commission to approve a material change by filing an application to amend its certification before the material change is anticipated to occur. A material change includes:

- (A) a change in control of the REP including a change in the 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, but not including a change in the ownership percentages of individual owners;
- (B) a name change (including addition or deletion of assumed names);
- (C) for Option 1 REPs, a change in service area;
- (D) for Option 1 REPs, a change in technical or managerial qualifications, including
 - (i) any information previously provided or attested to under the technical and managerial requirements of subsection (e)(1)(A) and (B) of this section that correspond with the documentation requirements under subsection (e)(2)(B) and (C), and (E)(iv) and (v) of this section. Such information includes:
 - (ii) personnel relied upon for experience, and
 - (iii) changes, termination, or expiration of a contract to provide commodity risk management services;
 - (iv) a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under subsection (e)(2)(E)(iv)(I) of this section, or a change in the applicant's relationship with such persons under subsection(e)(2)(E)(iv)(II) of this section, if such a relationship exists; and
 - (v) a change necessitating an updated statement affirming that the persons identified under subsection (g)(1) of this section do not control the REP and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section; and
- (E) for Option 1 REPs, a change in financial qualifications, including:
 - (i) the REP's certificated method for maintaining its access to capital requirement of subsection (f)(1) of this section, including

- terminations made to the irrevocable guaranty agreement or power purchase agreement;
- (ii) the certificated method for protecting its customer deposits and prepayments, and
 - (iii) the approved account for protecting customer deposits and prepayments;
- (F) a change in REP's type of certification as an Option 1, Option 2, or Option 3 REP; and
- (G) for Option 2 REPs, the addition or removal of customers served by the Option 2 REP.
- (3) A REP that no longer serves customers may relinquish its REP certificate by filing an application for relinquishment on a form prescribed by the commission. A REP that does not serve customers for two consecutive years must relinquish its certificate. Prior to relinquishing its certificate, the REP must no longer serve any customers. At least 45 days prior to ceasing operations, a REP that intends to cease operations as a REP and is not seeking to relinquish its REP certificate must file a notice in the commission control number established under this paragraph to notify the commission of a REP ceasing operations. A REP must not cease operations as a REP without prior notice of at least 45 days to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations. The REP must also notify, the Low Income Discount Administrator, the applicable independent organization, and all TDUs and the providers of last resort for service territories in which the REP serves customers. As applicable, a REP must also notify all electric cooperatives and municipally owned utilities in whose service territory the REP serves customers. If a REP improperly transfers customers without providing adequate notice, under §25.493 of this title (relating to Acquisition and Transfer of Customers from one Retail Electric Provider to Another) then the REP may be subject to enforcement proceedings even after relinquishment of its certificate. Within the application to relinquish its certificate a REP must include a statement explaining whether customers' deposits were

refunded to the customers or transferred to an alternative REP. The statement must be supported by a signed, notarized affidavit from an executive officer of the REP.

- (4) A REP that applies to amend its certification must:
 - (A) state the effective date of each material change that prompted the amendment application; and
 - (B) identify whether it is currently providing service to customers in Texas.

(i) **Reporting requirements.** An Option 1 REP must file with the commission an annual and a semi-annual report each year. Option 2 and Option 3 REPs do not have reporting obligations under this section.

- (1) The annual report is due on March 5, or
 - (A) 65 days after the end of the REP's fiscal year; or
 - (B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 65 days after the end of the guarantor's fiscal year.
- (2) The semi-annual report is due on August 15, or
 - (A) 225 days after the end of the REP's fiscal year; or
 - (B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 225 days after the end of the guarantor's fiscal year.
- (3) The annual and semi-annual report must include the following information.
 - (A) A signed, notarized affidavit from an executive officer affirming that the certificate holder is not in material violation of any of the requirements of its certificate under this section and that the information reported in the entire report is true and correct.
 - (B) Any changes in ownership, control, corporate restructuring, or transfer of a REP certificate.

- (C) Any changes in management, experience, and persons relied on for certification in subsection (e) of this section including the person or third-party provider acting as the REP's risk manager.
- (D) A list of all principals, provided in Microsoft Excel format.
- (E) A list of all executive officers, provided in Microsoft Excel format.
- (F) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided in Microsoft Excel format.
- (G) For a REP providing retail electric service in the ERCOT region, a copy of the REP's current LSE contact information kept on file with ERCOT, including a copy of each Notice of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. If the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, the REP must 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.
- (H) Demonstration of ongoing compliance with the financial requirements of subsection (f) of this section.
 - (i) This can include:
 - (I) calculations demonstrating a guarantor's adequate tangible net worth and financial ratios,
 - (II) proof that a REP maintains adequate shareholders' equity,
 - (III) a statement of the value of customer deposits and prepayments the REP is currently liable for, and
 - (IV) a current account statement demonstrating that the balance of the account in which customer deposits and prepayments are held 100% covers the value of customer deposits and prepayments the REP is liable for.
 - (ii) A REP must submit relevant documentation as required by subsection (f)(4) of this section to demonstrate its ongoing

compliance with the financial requirements of subsection (f)(1) and (2) of this section.

- (iii) Financial statements provided as part of the annual and semi-annual report must be as of the end of the most recent fiscal quarter.
 - (4) In addition to the information required in paragraph (3) of this subsection, the annual report must also include the following information.
 - (A) Any changes in a REP's contact information identified in subsection (d)(1)(D) of this section.
 - (B) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.
 - (C) The information required by §25.491 of this title (relating to Record Retention and Reporting Requirements) and other commission rules, as applicable.
 - (5) Reporting under this subsection does not change the requirement for a REP to amend its certification to reflect the change in accordance with subsection (h) of this section.
- (j) Protection of TDU financial integrity.**
- (1) A TDU must not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission substantive rules.
 - (2) A TDU must create a regulatory asset for bad debt expenses, net of collateral posted under paragraph (1) of this subsection and bad debt already included in its rates, resulting from a REP's default on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization

of such regulatory asset will be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.

- (k) **Revocation of a REP certificate.** A certificate granted under this section may be revoked for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. The revocation of a REP's certificate requires the cessation of all REP activities in the state of Texas, in accordance with commission order. The commission may impose an administrative penalty on a person for a violation of PURA, commission substantive rules, or protocols adopted by an independent organization. Significant violations include, but are not limited to:
- (1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;
 - (2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;
 - (3) Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;
 - (4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;
 - (5) Failure to maintain continuous and reliable electric service to a customer or customers under this section;
 - (6) Failure to maintain financial resources in accordance with subsection (f) of this section;
 - (7) The inability to meet financial obligations on a reasonable and timely basis;
 - (8) Failure to timely remit payment for invoiced charges to an independent organization;
 - (9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other protocols established by an applicable independent organization;
 - (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

- (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
 - (12) Termination of the REP's SFA with ERCOT or similar agreements with an applicable independent organization other than ERCOT;
 - (13) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;
 - (14) Failure to provide retail electric service to a customer or customers within 24 months of the certificate being granted by the commission or ceasing to provide retail electric service for a period of 24 months;
 - (15) Failure to serve as a POLR if required to do so by the commission under §25.43 of this title;
 - (16) Failure to timely remit payment for invoiced charges to a TDU under §25.214, of this title (relating to Terms and Conditions of Retail Delivery service Provided by Investor Owned Transmission and Distribution Utilities);
 - (17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);
 - (18) Failure to comply with the terms of a suspension under subsection (l) of this section;
 - (19) Failure to comply with §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and
 - (20) Other significant violations or a pattern of failures to meet the requirements of PURA, commissions rules or orders, or protocols adopted by the applicable independent organization.
- (l) **Suspension of a REP's ability to acquire new customers.** The commission may suspend a REP's ability to acquire new customers for a significant violation, as described by subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The suspension order may also impose administrative penalties or other conditions for reinstatement on a REP whose ability to acquire new customers has been suspended.

- (1) Commission staff may initiate a proceeding for suspension of a REP's ability to acquire new customers under this subsection by filing a petition for suspension.
 - (A) Commission staff must provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission).
 - (B) The REP may submit a request for hearing on the petition for suspension within 20 days after the date the REP receives notice of the petition. Notice is deemed to have been received upon the earlier of receipt of actual notice or three days after the order is mailed. A request for hearing received more than 20 days after the date the petition is received by the REP will be denied by the presiding officer.
 - (C) If the REP does not submit a request for hearing within 20 days after receiving notice of the petition for suspension, the presiding officer may administratively approve the petition for suspension under §22.35 of this title (relating to Informal Disposition). The commission delegates authority to the presiding officer to approve a petition for suspension under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title.
- (2) The executive director may suspend a REP's ability to acquire new customers without prior notice or opportunity for a hearing in the form of a cease and desist order if the executive director determines that providing notice and an opportunity for a hearing is impracticable and that the conduct of the REP meets the criteria for issuing such an order under PURA §15.104(a)(2). In determining the practicability of providing notice and an opportunity for hearing, 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. For purposes of determining whether the criteria of PURA §15.104(a)(2) are met, the statutory term continuous and adequate electric service includes continuous and reliable electric service as defined in this section. If the

executive director issues a cease and desist order suspending a REP's ability to acquire new customers without prior notice or opportunity for a hearing, the procedural provisions of §25.54(d)(2) of this title (relating to Cease and Desist Orders) apply.

- (3) In addition to any other applicable requirements, an order suspending a REP's ability to acquire new customers must describe the conduct of the of the REP and the significant violations that support the issuance of the order. The order must also describe any conditions the REP must meet for reinstatement.
- (4) If appropriate, an order suspending a REP's ability to acquire new customers may also include specific, verifiable conditions for expedited reinstatement. The conditions for expedited reinstatement may require actions beyond those required to come into compliance with applicable law and may include verification from commission staff that the conditions for expedited reinstatement have been met, verification that commission staff has not identified any reasons the suspension should remain in effect, or a deadline for meeting one or more of the conditions. Expedited 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. If appropriate, a compliance docket will be opened for filings relevant to this paragraph. If the REP fulfills the conditions for expedited reinstatement and files all required supporting documentation, commission staff must lift the suspension, notify ERCOT of the reinstatement, and file a notice of reinstatement as soon as practicable. If commission staff verification is required and commission staff does not agree that expedited reinstatement is appropriate under the terms of the suspension order, the REP may seek reinstatement under paragraph (6) of this subsection.
- (5) A REP that has its ability to acquire new customers suspended must cease, within three working days, the solicitation or enrollment of new customers and the applicable independent organization will be directed to report to commission staff,

on a weekly basis, any new customers that have been added by the REP. In this subparagraph, the term “enrollment” means the act of executing a contract with an applicant for the provision of electric service but does not include renewing the contract of an existing customer.

- (6) A REP may request reinstatement by filing a petition for reinstatement. The commission delegates authority to the presiding officer to approve a petition for reinstatement under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title. In determining whether to lift the suspension, the presiding officer may consider, as appropriate, whether:
 - (A) the REP has resolved all violations underlying the suspension and fulfilled all conditions for reinstatement;
 - (B) the REP is in compliance with all or specific individual technical, managerial, and financial requirements in this section; and
 - (C) there exist any additional grounds that would support the suspension of the REPs ability to acquire new customers under this subsection.
- (7) A REP subject to suspension of acquiring new customers under this section must continue to serve existing customers and maintain compliance with PURA, commission substantive rules, and protocols adopted by the applicable independent organization. Suspension of the ability to acquire new customers does not impact a REP’s obligation to timely initiate service to a customer that completed enrollment with the REP prior to the effective date of the suspension, even if the scheduled service initiation date falls within the suspension period.
- (8) Nothing in this subsection limits the commission’s ability to revoke a REP’s certificate, proceed with a draw on a REP’s financial instruments, or impose administrative penalties. Commission staff retains the discretion to seek to revoke the certificate of a REP subject to suspension.

§25.109. Registration of Power Generation Companies and Self-Generators. (REPEAL)**§25.109. Registration by Power Generation Companies and Self-Generators.**

(a) **Applicability.** This section contains the registration and renewal of registration requirements for a power generation company (PGC) as defined by §25.5 of this title (relating to Definitions) and a self-generator.

(1) A person that owns an electric generating facility, including a Qualifying Facility (QF) as defined by §25.5 of this title, must register under this section as a PGC before the first day it generates electricity.

(2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator before the first day it generates electricity. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.

(3) A person already certified as a PGC or self-generator as of the effective date of this section must come into compliance with the requirements of this section no later than June 1, 2023.

(A) A PGC or self-generator must complete and file a commission approved form that demonstrates the PGC or self-generator is in compliance with this section on or before June 1, 2023.

(B) A PGC or self-generator who does not demonstrate compliance with this section on or before June 1, 2023, may be subject to revocation of the PGC's or self-generator's commission registration under subsection (i) of this section.

(b) **Definitions.** In this section, the following definitions apply unless the context indicates otherwise.

(1) **Generating facility** -- all generating units located at, or providing power to, the electricity-consuming equipment at an entire facility or location.

(2) **Principal** -- includes:

(A) A sole proprietor of a sole proprietorship;

(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 person, if a public company; or
 - (F) A person who exercises control and has apparent or actual authority to exercise such control over either the person or a principal that is otherwise described by this subsection. A 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 person or a principal of the person, and exercises such control.
- (c) **Initial registration information.** To register as a PGC or a self-generator a person must use the registration form prescribed by the commission. A person registering as a PGC or a self-generator must provide the following information.
- (1) Contact information of the registrant and the registrant's primary and secondary emergency contacts, which includes :
 - (A) a legal business name;
 - (B) a physical and business mailing address;
 - (C) a business telephone number; and
 - (D) a business e-mail address.
 - (2) The name of the current regulatory contact, the contact's e-mail address and telephone number, and if the regulatory contact is an internal staff member of the registrant.
 - (3) For each generating facility operated by the registrant:
 - (A) the name, address, county and power region of operation of each generating facility;
 - (B) whether the generating facility is an electric storage facility;

- (C) the name of the transmission service providers interconnecting the generating facility; and
 - (D) the capacity rating for each generating unit following the rating method established in §25.91(f) of this title (relating to Generating Capacity Reports).
- (4) A description of the types of services provided by the registrant that relate to the generation of electricity.
- (5) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that none of the registrant's principals:
- (A) were principals of a commission-regulated person whose license was revoked by commission order within the prior six months of when they were a principal;
 - (B) were principals of any person registered with the Electric Reliability Council of Texas (ERCOT) whose standard form market participant agreement was terminated by ERCOT for misconduct within the prior six months of when they were a principal; or
 - (C) are otherwise prohibited by commission order from acting as a principal of a commission-regulated entity.
- (d) **Additional information required for PGC registration.** In addition to the information required under subsection (c) of this section, a person registering as a PGC must also submit the following information to the commission.
- (1) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that the registrant:
- (A) generates electricity that is intended to be sold at wholesale;
 - (B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title (related to Definitions); and
 - (C) does not have a certified service area.

- (2) The name of the registrant's corporate parent.
 - (3) A list of affiliates of the registrant's and the registrant's corporate parent identified by name that buy and sell electricity at wholesale in Texas, sell electricity at retail in Texas, or is an electric cooperative or municipally owned utility in Texas.
 - (4) The applicable control number and item number that the registrant has filed its initial Emergency Operations Plan in as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).
 - (5) As applicable, copies of the registrant's Federal Energy Regulatory Commission registration as a QF or an EWG.
- (e) **Additional information required for self-generator registration.** In addition to the information required under subsection (c) of this section, a person registering as a self-generator must also submit an affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting:
- (1) that the registrant is not a power generation company and does not intend to generate electricity intended to be sold at wholesale; or
 - (2) if the registrant is a QF, the registrant either does not sell electricity or provides electricity only to the purchaser of the facility's thermal output.
- (f) **Update or relinquishment of registration.** A PGC or self-generator may update or relinquish its registration.
- (1) A PGC must complete the commission form to amend its registration within 30 days of a change to any information reported in response to subsections (c)(2)-(4) and (d)(2) of this section.
 - (2) A self-generator must complete the commission form to amend its registration within in 30 days of a change to any of the information reported in response to subsection (c)(2)-(4) of this section.
 - (3) A PGC and self-generator must update, in a manner established by the commission, its contact information listed in subsection (c)(1) of this section within 30 days of a change.

- (g) **Review of registration of PGC or self-generator.** Commission staff will review the submitted or updated registration form for sufficiency and submit a written recommendation to the presiding officer within 30 days from the date the registration was filed.
- (1) If commission staff recommends the registration form be found insufficient, commission staff will file a statement indicating the deficiencies as part of its recommendation. If the presiding officer finds the registration form to be insufficient, the presiding officer will notify the registrant in writing of the finding and the specific deficiencies. The registrant will have 20 days from the issuance of the notice to cure the deficiencies. Commission staff will have 15 days to review the supplemental information submitted by the registrant and file a statement indicating whether any deficiencies remain. If the presiding officer determines that the deficiencies have not been cured within 20 days of the issuance of the notice, the presiding officer will reject the registration request without prejudice and notify the registrant of the rejection.
 - (2) Upon finding the registration sufficient, the presiding officer will approve the registration and issue a registration number to the PGC or self-generator.
- (h) **Renewal of registration.** A PGC or self-generator must renew its registration on or before February 28 of every other calendar year by submitting the information required by subsection (c) and, as applicable, (d) and (e) of this section by submitting a statement that the PGC or self-generator's registration information on file with the commission is current and correct.
- (1) A PGC or self-generator whose commission registration number is an even number must submit its registration renewal on all even number years.
 - (2) A PGC or self-generator whose commission registration number is an odd number must submit its registration renewal on all odd number years.
- (i) **Revocation of registration and administrative penalty.** Registration of a PGC under this section is subject to revocation for a significant violation of statute or commission rules.

The commission may impose an administrative penalty on a person for a violation of PURA, commission rules, or rules adopted by an independent organization, including:

- (1) failure to comply with the reliability standards and operational criteria duly established by the independent organization certified under PURA §39.151 for the ERCOT power region;
- (2) failure to observe any scheduling, operating, planning, reliability, or settlement policy, rule, guideline, or procedure established by ERCOT;
- (3) providing false or misleading information to the commission, commission staff, or ERCOT;
- (4) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;
- (5) a pattern of failure to meet the requirements of statute, this section, or other commission rules, regulations or orders;
- (6) suspension or revocation of a registration, certification, or license by any state or federal authority;
- (7) failure to operate within the applicable legal parameters established by PURA §39.351, or other applicable provisions of PURA, commission rules, or ERCOT Protocols; and
- (8) failure to timely respond to commission or commission staff inquiries or customer complaints.

§25.485. Customer Access and Complaint Handling.

- (a) **Applicability.** This section contains a customer's entitlement to reasonable access to a retail electric provider's (REP) or aggregator's representatives and identifies a customer's ability make a complaint against a REP or aggregator. REPs and aggregators are subject to processes of this section to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.
- (b) **Customer access.**
- (1) A retail electric provider (REP) or aggregator must ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's bills, terminate competitive service, and transact any other pertinent business.
 - (2) Telephone access must be toll-free and must afford customers a prompt answer during normal business hours.
 - (3) A REP must provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.
 - (4) A REP or aggregator must employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, under rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).
- (c) **Complaint handling.** A residential or small commercial customer has the right to make a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. A REP or aggregator must not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial

customer from filing an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.

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

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

(1) **Informal complaints.** If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator must advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, 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 website address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989.

(A) **Requirements applicable to informal complaints.**

(i) A complaint must include sufficient information to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information must be included in the complaint:

- (I) The account holder's name, billing and service addresses, and telephone number;
 - (II) The name of the REP or aggregator;
 - (III) The customer account number or electric service identifier (ESI-ID);
 - (IV) An explanation of the facts relevant to the complaint;
 - (V) The complainant's requested resolution; and
 - (VI) Any documentation that supports the complaint, including copies of bills or terms of service documents.
- (ii) All REPs and aggregators must provide the commission an email address to receive notification of customer complaints from the commission.
 - (iii) The REP or aggregator must investigate all informal complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the REP or aggregator. For complaints filed with the commission before September 1, 2023, the deadline is 21 days after the complaint is forwarded.
 - (iv) The commission must review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.
- (B) **Prohibited activities during pendency of informal complaint.** While an informal complaint process is pending:
- (i) The REP or aggregator must not initiate collection activities, including disconnection of service or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.
 - (ii) A customer must pay any undisputed portion of the bill and the REP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice.

- (C) **Informal complaint record retention.** The REP or aggregator must keep a record for two years after closure by the commission of all informal 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 rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.
- (2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

§25.495. Unauthorized Change of Retail Electric Provider.

- (a) **Process for resolving unauthorized change of retail electric provider (REP).** If a REP is serving a customer without proper authorization under §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) must follow the procedures set forth in this subsection.
- (1) Either the original REP or switching REP must notify the registration agent of the unauthorized change of REP as promptly as possible, using the process approved by the registration agent.
 - (2) As promptly as possible following receipt of notice by the REP, the registration agent must facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.
 - (3) The affected REPs, the registration agent, and the TDU must take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible. The original REP does not need to obtain an additional authorization from the customer under §25.474 of this title in order to effectuate the provision of this section.
 - (4) The affected REPs, the registration agent, and the TDU must take all actions necessary to bill correctly all charges, so that the end result is that:
 - (A) the REP that served the customer without proper authorization must pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;
 - (B) the original REP has the right to bill the customer under §25.480 of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service from either:
 - (i) the date the customer is returned to the original REP; or
 - (ii) any prior date chosen by the original REP for which the original REP had the authorization to serve the customer.
 - (C) the REP that served the customer without proper authorization must refund all charges paid by the customer for the time period for which the original REP ultimately bills the customer within five business days after the

customer is returned to the original REP, or REP of choice in the case of a move-in;

- (D) the customer will pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;
 - (E) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and
 - (F) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.
- (5) The original REP must provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change.
 - (6) The affected REPs must communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.
 - (7) In a circumstance where paragraph (4) of this subsection is not applicable or its requirements cannot be effectuated, the market participants involved must work together in good faith to rectify the unauthorized switch or move-in in a manner that affords the customer and market participants involved a level of protection comparable to that required in this subsection.

(b) Customer complaints, record retention and enforcement.

- (1) A customer may file a complaint with the commission, under §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.
- (2) Upon receipt of a customer complaint, a REP must:
 - (A) respond to the commission within 15 calendar days after receiving the complaint from the commission. For complaints submitted to the commission before September 1, 2023, the deadline is 21 days after the

complaint is received from the commission. The response to the complaint must provide to the commission all documentation relied upon by the REP and related to the:

- (i) authorization and verification to switch the customer's service; and
 - (ii) corrective actions taken to date, if any.
- (B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

This agency certifies that the adoptions have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the repeals of §§25.105, 25.107, and 25.109 are hereby adopted with no changes as proposed, amendments to §25.30, relating to Complaints, new §25.105, relating to Registration by Power Marketers, new §25.107, relating to Certification and Obligations of Retail Electric Providers (REPs), and new §25.109, relating to Registration by Power Generation Companies and Self-Generators, amendments to §25.485, relating to Customer Access and Complaint Handling, and §25.495 relating to Unauthorized Change of Retail Electric Provider are hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the 15 day of April 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



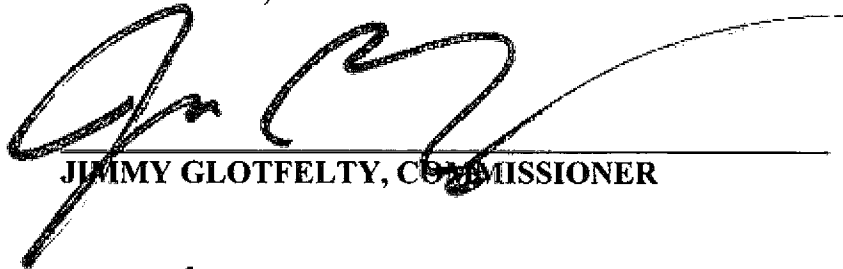
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WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER