

**PROJECT NO. 39969**

<b>RULEMAKING TO AMEND SUBST. R.</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>25.43, RELATING TO PROVIDER OF</b>	<b>§</b>	
<b>LAST RESORT (POLR), 25.478,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RELATING TO CREDIT</b>	<b>§</b>	
<b>REQUIREMENTS AND DEPOSITS,</b>	<b>§</b>	
<b>AND 25.498, RELATING TO PREPAID</b>	<b>§</b>	
<b>SERVICE</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENTS TO §25.43, §25.478 AND §25.498  
AS APPROVED AT THE JULY 27, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.43, relating to Provider of Last Resort (POLR); §25.478, relating to Credit Requirements and Deposits; and §25.498, relating to Prepaid Service, with changes to the proposed text as published in the April 6, 2012 issue of the *Texas Register* (37 TexReg 2295).

The amendments to §25.478 and §25.498 are for the limited purpose of specifying criteria for determining if metered electric service sold to residential customers on a prepaid basis is not higher than the price charged by the provider of last resort (POLR) as required by PURA §39.107(g). The amendments to §25.43 reflect current practices and changes in terminology resulting from the shift from an Electric Reliability Council of Texas (ERCOT) zonal market to an ERCOT nodal market. The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA) §39.001(e). The amendments are adopted under Project No. 39969.

The commission did not receive a request for a public hearing. The commission received comments on the proposed amendments from the Retail Electric Provider Coalition (REP

Coalition); the Steering Committee of Cities Served by Oncor (Cities); Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (TX ROSE/TLSC); and Sharyland Utilities, L.P. (Sharyland).

The REP Coalition was composed of Alliance For Retail Markets (ARM); CPL Retail Energy, LP; Direct Energy, LP; Green Mountain Energy Company; First Choice Power Special Purpose, LP; Reliant Energy Retail Services, LLC; Stream Energy; Texas Energy Association of Marketers (TEAM); TXU Energy Retail Company LLC; and WTU Retail Energy. The participating members of ARM with respect to the REP Coalition Comments were: Champion Energy Services, LLC; Constellation NewEnergy, Inc.; Gexa Energy, LP; StarTex Power; Direct Energy, LP; Stream Energy; GDF Suez Energy Resources NA, Inc.; Green Mountain Energy Company; and Noble Americas Energy Solutions LLC. The participating members of TEAM with respect to the REP Coalition Comments were: Accent Energy, Amigo Energy, Bounce Energy, Cirro Energy, dPi Energy, Green Mountain Energy, Hudson Energy, Just Energy, StarTex Power, Stream Energy, Tara Energy, and TriEagle.

## **Summary of Comments**

### *General Comments*

TX ROSE/TLSC expressed concern that electricity should be made affordable for low-income consumers and concluded that the proposed amendments fail to provide needed consumer protections for prepaid consumers. TX ROSE/TLSC stated that PURA §39.107(g) specifically set the maximum prepaid rate to be no higher than the POLR rate to protect prepaid customers from exploitive prices experienced in the telecommunications market. TX ROSE/TLSC

anticipated that the proposed rules would provide a standard that would be clear to the customer and could readily be monitored and enforced by the commission and would further provide some consumer protection language that would require a REP to refund any amount of overcharge to the customer. TX ROSE/TLSC concluded that the commission should not adopt the portion of the proposed §25.498 amendment applying to prepaid service caps but should develop a new proposed rule to incorporate their recommendations and procedures for customer disclosure, monitoring, and market transparency. Specifically, TX ROSE/TLSC indicated that §25.498 should: (1) define how the POLR rate will be calculated for the purpose of establishing the price cap so that consumers could calculate the rate, (2) define how the prices will be monitored, (3) establish procedures by which overcharged customers will receive a refund, and (4) clarify that violation of the price cap is subject to investigation and enforcement by the commission. TX ROSE/TLSC also noted that the proposed §25.498 lacks any process or procedure for informing prepaid customers of the rate cap and how they can audit their own accounts to monitor REP compliance with the cap and lacks any requirement for prepaid REPs to report to the commission their prices and the cap applied.

The REP Coalition noted that the purpose of the proposed amendments to §25.43, §25.478, and §25.498 is limited to two areas: (1) specifying criteria for determining whether prepaid service complies with the mandate in PURA §39.107(g); and (2) reflecting current practices and changes in terminology resulting from a move from an ERCOT zonal market to a nodal market. The REP Coalition opined that this limited scope does not encompass re-visiting the concept of the POLR floor price or limiting the manner in which REPs may design prepaid product offerings.

The REP Coalition stated that TX ROSE/TLSC's proposal that the §25.498 include language that would require a REP to refund any amount of overcharges to the customer is unnecessary. If a price exceeds the tests, then the REP will be subject to the commission's overbilling rules in §25.480(d) and enforcement rules in §25.8 and PURA §15.023. The REP Coalition believed that the tests in the proposed rules provide the necessary information to customers interested in verifying whether the prices of a prepaid service offer is at or below the POLR price and opposed TX ROSE/TLSC's recommendation. The REP Coalition also opposed TX ROSE/TLSC's recommendation to require prepaid service REPs to report to the commission the price charged and the cap applied since the commission has the authority to request such documentation from REPs if circumstances warrant the need for such information under §25.491.

*Commission Response*

**The commission does not adopt TX ROSE/TLSC's recommendations. The commission believes that amending the rules to provide the specific tests to be used to determine REP compliance with PURA §39.107(g) will provide sufficient information to determine and monitor the POLR price cap. Moreover, these provisions provide additional protections for customers because they will allow the commission to use its enforcement powers more effectively because they provide explicit criteria to determine if a REP is in compliance with PURA §39.107(g) and §25.498. The commission agrees with the REP Coalition that customers are protected from overcharges under prepaid plans pursuant to §25.480(d). To the extent that commenters' general comments include specific recommendations related to the proposed rule amendments, the commission takes into account these recommendations in the discussion below.**

Comments on Specific Sections of the Proposed Rule

Section 25.43: Provider of Last Resort (POLR)

*Subsection (c): Definitions*

The REP Coalition proposed language to amend the definition of POLR area in §25.43(c)(10) to remove the exception that includes Sharyland in the AEP Texas Central Company service area and to amend §25.43(j), as discussed below, to allow for retail electric provider (REP) eligibility to be governed by a transition to competition plan for new transmission and distribution utility (TDU) service areas transitioning to competition. The REP Coalition noted that Sharyland has proposed transitioning four divisions to competition in Docket No. 39592 that would add approximately 26,000 residential and 18,000 non-residential delivery points to the competitive ERCOT market. The REP Coalition contended that the existing competitive territory of Sharyland has been in operation long enough to transition the POLR selection process to the same process used for other Transmission and Distribution Utility (TDU) territories even without the additional Sharyland divisions. Sharyland did not object to removing the exception and noted that it would only include Sharyland's McAllen division at least initially because the issue of moving its other four divisions to competition is being addressed in pending Docket No. 39592 and is currently unresolved. The non-unanimous stipulation in that docket contemplates that Sharyland will establish retail delivery rates for the four divisions and will not be system-wide rates because they would not apply to the McAllen division. Sharyland noted that the different rates would not impact the selection or designation of POLR providers, but they could impact the pricing of Volunteer Retail Electric Providers (VREPs) since VREPs are required by

§25.43(1)(1) to use the same market-based, month-to-month product for all customers in the same class and POLR area.

*Commission Response*

**The commission agrees with the REP Coalition and Sharyland and modifies §25.43(c)(10) and §25.43(j)(1) accordingly. The commission agrees with Sharyland that the selection of POLR providers will not be affected by potentially having different retail delivery rates within the Sharyland service area. VREPs will be required to use the same market-based, month-to-month product for all customers in the same class and POLR area.**

*Subsection (f): Customer information*

The REP Coalition recommended that the POLR terms of service documents, which are incorporated into §25.43 and referenced in §25.43(f)(1) as Figure 16, be modified consistent with the substitution of the term “replacement reserve charges” with “Reliability Unit Commitment (RUC)” as discussed in its comments on §25.43(1)(2)(A)(i)-(1)(2)(C)(i).

*Commission Response*

**As discussed in the commission’s response to proposed changes to §25.43(l), the commission agrees with the REP Coalition and modifies the terms of service documents to be consistent with the adopted rule language.**

*Subsection (j): LSPs*

The REP Coalition noted that a non-unanimous stipulation has been filed in Docket No. 39592 that addresses which REPs will assume POLR obligations from the time Sharyland's four divisions are transferred to competition and suggested that this subsection be amended to state that the selection of Large Service Provider (LSP) POLRs may be governed by a commission-approved transition to competition plan in new TDU areas transitioned to competition. Sharyland supported the REP Coalition's proposed amendment.

*Commission Response*

**The commission agrees with the REP Coalition's proposal. See commission response to Subsection (c) of the preamble above.**

*Subsection (l): Rates applicable to POLR service*

The REP Coalition stated that the proposed amendments correctly update the terminology in the rule to reflect that the ERCOT market has transitioned from a zonal market to a nodal market. The REP Coalition agreed with the proposed changes to establish a single minimum POLR rate in each TDU service territory for residential and small non-residential customers. The REP Coalition pointed out that, under the existing rule, different minimum POLR rates apply to residential and small non-residential customers located in the different load zones even though only one of those minimum rates is posted on the commission's website. The REP Coalition commented that a single minimum POLR rate for these two customers classes will allow a straightforward test to determine whether a REP's prepaid service price meets the proposed

standards in §25.498 and will provide a more accurate customer disclosure because the posted POLR EFL minimum rates will reflect the actual minimum POLR rate in each TDU service area.

TX ROSE/TLSC recommended that §25.43(1)(2)(A)(vi) and §25.43(1)(2)(B)(vii), which would allow a REP to increase the POLR rate when prices are below average, be deleted so that the actual market prices would be the basis for the POLR rate calculation. In the alternative to deleting the two clauses, TX ROSE/TLSC agreed with Cities' recommendation to use the average load zone price instead of the highest simple average and recommended that the multiplier be reduced from the current 125% to 120% consistent with §25.43(1)(2)(A)(iii). TX ROSE/TLSC also recommended that the commission post the POLR rate by load zone and promote transparency. In its reply comments, TX ROSE/TLSC opined that the language in §25.43(1)(2)(A)(iii) is ambiguous and offered language to clarify how the LSP energy charge is to be calculated.

Cities opined that use of the highest simple average price to calculate the LSP energy charge would artificially inflate the POLR rate and would incorrectly calculate the true cost to provide POLR service to the general body of customers within the TDU service territory. Use of the highest simple average price would not be commensurate with the lower energy costs associated with providing POLR service in some zones. Cities added that the proposed rule could result in a small population load zone driving the POLR pricing for a high population area because the LSP energy charge would be based on the simple average of the Real-Time Settlement Point Prices (RTSPPs) for the highest average price load zone partially or wholly within a customer's TDU service territory. Cities proposed language that would use the average of all load zone prices,

rather than the highest average load zone price. TX ROSE/TLSC agreed with Cities' proposed language.

The REP Coalition stated that deletion of §25.43(1)(2)(A)(vi), as proposed by TX ROSE/TLSC, would result in a significant change to the POLR pricing formula and would be outside the limited scope of this proceeding. The REP Coalition argued that a POLR floor price is a necessary component of the POLR pricing formula and the language in the current rule is essentially the same as the language adopted in Project No. 31416 in 2006. In that project, the commission designed the price formula to allow the REP to recover the costs associated with POLR service without creating a product that would compete with market offerings.

The REP Coalition stated that a price floor is necessary for three reasons: (1) RTSPP could be negative and a price floor ensures a REP is not required to provide retail service at a below-market price or at a price that does not enable the REP to recover its costs contrary to the commission's position in Project No. 31416; (2) eliminating the POLR price floor would prevent the commission from calculating the low-income discount using the current methodology set forth in §25.454(e)(1); and (3) removing the POLR price floor would create more uncertainty for customers due to the nature of the POLR calculation in that the POLR price floor provides customers with an expectation of the price and helps inform them how the price compares to competitive offers. The REP Coalition added that removal of a price floor would remove the incentive for customers on POLR service to affirmatively choose a more competitive price, instead of remaining on POLR service for an extended period of time.

Similarly, the REP Coalition opposed Cities' recommendation to use the simple average of all load zones for each TDU rather than using the highest load zone for the floor price because it may result in a below-market price that could interfere with market-based pricing in the competitive market, contrary to the commission's stated objective in Project No. 31416. Using the average of all load zones instead of the highest load zone to calculate the POLR floor price could result in a lower discount for low-income customers whose price is established as a percentage of the minimum POLR price. The REP Coalition added that customers affected by a mass transition to POLR can avoid the POLR price by affirmatively selecting a competitively priced product with a REP and that REPs serving customers under the POLR formula are required to transition the customer to a market-based price after 60 days.

In its Reply Comments, the REP Coalition noted that the current rule refers to "replacement reserve charges," which is a holdover from the ERCOT zonal market and that it was replaced in the ERCOT nodal market with "Reliability Unit Commitment (RUC)". Accordingly, the REP Coalition recommended that the term "replacement reserve charges" be replaced with "Reliability Unit Commitment (RUC)" at §25.43(1)(2)(A)(i), (B)(i), and (C)(i) and in the terms of service documents prescribed in §25.43(f).

### *Commission Response*

**The commission agrees with the REP Coalition that it is necessary to have a POLR price floor to ensure that REPs are not required to provide retail service at below-market prices that could potentially interfere with competitively based market prices. As the commission discussed in its order approving amendments to the POLR rule in Project No. 31416, the**

POLR rate is intended to recover costs associated with POLR service and should not be a rate that competes with market offerings. The commission believes that using a simple average as proposed by Cities and supported by TX ROSE/TLSC could result in below-market prices. The commission notes that the POLR rule provides for REPs to transition customers in a POLR event to market-based month-to-month products and customers affected by a mass transition can avoid the POLR price by selecting a competitively priced product. The commission makes no changes based on these comments.

The commission agrees with TX ROSE/TLSC that the rule language in §25.43(l)(2)(A)(iii) would benefit from additional clarity and makes changes accordingly. The commission also makes clarifying changes to §25.43(l)(2)(A)(v)-(vi), §25.43(l)(2)(B)(iv), and §25.43(l)(2)(B)(vi)-(vii) consistent with the clarifying language in §25.43(l)(2)(A)(iii). The commission appreciates TX ROSE/TLSC's comments regarding posting POLR rates and will investigate the feasibility of doing so.

The commission agrees with the REP Coalition's proposal to change "replacement reserve charges" to "Reliability Unit Commitment (RUC)." The commission notes that these specific changes were not contained in the published rule, but this rulemaking was noticed to "change rule language regarding POLR pricing to reflect current practices and changes in terminology resulting from the shift from an Electric Reliability Council of Texas (ERCOT) zonal market to an ERCOT nodal market." The commission has reviewed ERCOT documentation that shows that the term "replacement reserve charges" has been

replaced with “Reliability Unit Commitment (RUC)” and that “RUC capacity short charge” is appropriate. The commission amends the proposed rule accordingly.

*Section 25.478, Credit Requirements and Deposits*

*Subsection(a): Credit requirements for residential customers*

The REP Coalition supported the proposed deletion of §25.478(a)(5) and relocation of the PURA §39.107(g) requirement that prohibits electric service sold to residential customers on a prepaid basis from being sold at a price that is higher than the price charged by the POLR to §25.498.

*Commission Response*

The commission appreciates the REP Coalition’s comments and makes no change to the proposed rule. The commission notes that §25.498(a)(1) refers to §25.474(f)(3)(G), which was deleted in Project No. 38674 and approved by the commission at its October 27, 2011 Open Meeting. The commission amends §25.498(a) accordingly.

*Subsection (c): Requirements for prepaid service*

Cities recommended that REPs offering prepaid service be required to select, no more than annually, which test would be used to determine that its prepaid service rates are lower than the POLR rate to ensure that REPs are not switching between the listed tests in order to select whichever option nets the REP the most revenue. TX ROSE/TLSC agreed and believed that the use of one option for a year would provide administrative efficiency and increased effectiveness in the monitoring and enforcement of the rule.

The REP Coalition opposed Cities' recommendation that REPs offering prepaid service should annually select which test is to be used to determine if its prepaid service rates are lower than the POLR rate. The REP Coalition posited that the REPs' offerings should be driven by the competitive market. The three tests in the proposed rule along with the fourth test offered by the REP Coalition for fixed rate products are reasonable and address different market conditions in a fair and equitable manner.

Cities proposed language for §25.498(c)(15)(C) consistent with its recommendation on §25.43(l) that would calculate the LSP energy charged based on the simple average of the RTSPPs rather than the highest simple average. TX ROSE/TLSC agreed and reiterated its recommendation that the commission delete the last sentence of §25.498(c)(15)(C), which would allow REPs to continue using the preceding month's average rate for the first ten business days of the month. TX ROSE/TLSC offered that if REPs truly need ten business days to calculate the previous month's surrogate POLR rate, then the relevant month used in calculating the surrogate POLR rate should be an earlier month.

TX ROSE/TLSC stated that under usual pricing circumstances that the poorest families spend from 20% to 75% of their total income on utilities and that even the slightest increase in rates affects the ability to "keep the lights on." TX ROSE/TLSC characterized the proposal to set the POLR rate to be used as a cap for prepaid service prices based on an average as being suspect since PURA directs that the prepaid service prices be no higher than the POLR rate. Nevertheless, they conditionally supported the use of a prior month's average rate in §25.498(c)(15)(C) as the method of calculating the cap for prepaid service price so long as the

REP continues providing prepaid service to the customer at a fixed rate per kWh until the amount prepaid by the customer is expended. TX ROSE/TLSC opined that the ten day grace period provided under §25.498(c)(15)(C) is excessive and recommended that the last sentence of subparagraph (C) be deleted. TX ROSE/TLSC also recommended that the section of the proposed rule allowing a REP to apply the previously replaced month's POLR rate for 30 days after the new rate is posted in §25.498(c)(15)(A) be deleted. TX ROSE/TLSC noted that subparagraph (B) allows the prepaid REP to use the maximum POLR rate but does not provide any transparency for ease of enforcement.

The REP Coalition opposed TX ROSE/TLSC's recommendation that the use of the prior month's average rate as the method of calculating the cap for prepaid service be limited until the amount prepaid by the customer is expended. They stated that the commission considered and rejected this same recommendation in its most recent review of the prepaid service rule in Project No. 38675.

The REP Coalition stated that prepaid charges are usually assessed, at a minimum, on a daily basis and that REPs assess prepaid service charges not only on business days, but also on non-business days. Accordingly, the REP Coalition recommended that the last sentence of proposed §25.498(c)(15)(C) be clarified that the test to determine if the prepaid rate is less than the POLR rate would be the POLR rate for the previous month up to and including the tenth business day of the month rather than one of the first ten business days of the month.

The REP Coalition noted that the commission has determined that prepaid service is compatible with fixed rate products in Project No. 38675 and urged the commission to provide guidance in this rulemaking as to when the determination should be made regarding whether the prepaid service price meets the requirements of PURA §39.107(g) as being lower than the POLR rate. The REP Coalition recommended adding a subparagraph to §25.498(c)(15) that would require REPs to show that prepaid fixed rate product prices are lower than the POLR rate using one of the tests described in subparagraphs (A) and (C) of the paragraph at the time the offer is made.

TX ROSE/TLSC stated that the REP Coalition proposal to establish a new surrogate POLR rate that would be used throughout a fixed term contract involving pre-paid services would be a substantive change to the proposed rule and would constitute an inappropriate change without republication of the rule. TX ROSE/TLSC believed that extension of a single POLR rate cap throughout a fixed term contract for prepaid electrical service would defy PURA §39.107(g) that requires prepaid service to be priced lower than the POLR rate.

Cities opposed the REP Coalitions' proposal to use subparagraph (C) to determine if prepaid fixed rate product prices are lower than the POLR rate because energy prices tend to vary widely based on the weather of the season and could result in drastically different prices each month. It would be inappropriate and inaccurate to use energy prices that fluctuate so widely as a compliance test for longer-term prepaid contracts. Cities added that using subparagraph (C) as a compliance option would provide too much opportunity for REPs to vary long-term prepaid contract prices based on the season in order to maximize revenues. To use a compliance standard other than the one in subparagraph (A) for long-term prepaid contracts would allow a

REP to evade the purpose of PURA §39.107(g) by picking and choosing combinations of contract terms and maximum prices in a way that may be patently unfair to consumers.

*Commission response*

**The commission agrees with the REP Coalition that REPs should not be required to annually select which test that they would use to determine if prepaid service rates are lower than the POLR rate. This proposal is unnecessary in light of the purpose of the rule, which is to provide guidance to REPs to ensure compliance with the statutory mandate that prepaid rates be lower than the POLR rate. So long as the prepaid rate is below one of these tests, then the rate would not exceed the POLR rate.**

**The commission disagrees with Cities and TX ROSE/TLSC that the LSP energy charge should be based on the simple average of the RTSPPs rather than the highest simple average. As discussed above, use of a simple average may result in below cost POLR rates and could adversely affect the competitive market rates. The commission believes that it is reasonable to allow REPs to use the preceding month's average rate for the first ten business days of the month.**

**In Project No. 38675, TX ROSE/TLSC recommended that prepaid REPs be required to identify the quantity of kWh the customer is purchasing at the time prepayment is made. The commission rejected that recommendation as being infeasible. The commission agrees with the REP Coalition that TX ROSE/TLSC's recommendation to require REPs to continue providing prepaid service to the customer at a fixed rate per kWh until the**

amount prepaid by the customer is expended would be contrary to the commission's decision in Project No. 38675 and makes no change based on that recommendation.

The commission agrees with the REP Coalition's recommendation to clarify the last sentence of proposed §25.498(c)(15)(C) to state that the test using the average POLR rate for the month preceding the prior month may be used up to and including the tenth business day of a month. The commission modifies the proposed rule accordingly.

The commission agrees with the REP Coalition that it has already determined that prepaid service is compatible with fixed rate products in Project No. 38675 and that a fourth test should be established by which a REP offering a fixed-rate prepaid plan could ensure compliance with the requirement that the prepaid rate be lower than the applicable POLR rate. The fourth test recognizes the unique difficulty presented by a fixed-rate prepaid product since a REP may have considerable difficulty ensuring that the product both provides a fixed-rate to the customer and does not exceed a variable POLR rate over the term of the contract. The commission agrees with the REP Coalition that the determination of the POLR rate should be made at the time of the REP's offer for a fixed term contract. However, the commission limits this option for complying with PURA §39.107(g) to situations where the customer accepts the offer within 30 days. Otherwise, a REP could post a standing offer before a period of declining POLR prices that could be accepted months if not years after the offer was posted, thereby defeating the purpose of PURA §39.107(g). The commission modifies the proposed rule accordingly. The commission disagrees with TX ROSE/TLSC that the REP Coalition proposal constitutes an

**inappropriate change without re-publication. The commission's notice in this project stated that the amendments to §25.498 will be for the purpose of specifying criteria for determining if prepaid service sold to residential customers is less than the price charged by the POLR. The REP Coalition made its proposal consistent with the notice in its initial comments and interested parties were provided an opportunity to comment on their proposal in reply comments.**

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the amended sections, the commission makes other minor modifications for the purpose of clarifying its intent and one conforming change to §25.498.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the commission designate providers of last resort; and §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.106, and 39.107(g).

**§25.43. Provider of Last Resort (POLR).**

- (a) **Purpose.** The purpose of this section is to establish the requirements for Provider of Last Resort (POLR) service and ensure that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.
- (b) **Application.** The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (q) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

- (1) **Basic firm service** -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase “interruption for economic reasons” does not mean disconnection for non-payment.
- (2) **Billing cycle** -- A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.
- (3) **Billing month** -- Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer’s consumption is recorded through the customer’s meter.
- (4) **Business day** -- As defined by the ERCOT Protocols.
- (5) **Large non-residential customer** -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).
- (6) **Large service provider (LSP)** -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.
- (7) **Market-based product** -- For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (1)(2) of this section is not a market-based product.
- (8) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

- (9) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.
  - (10) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.
  - (11) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.
  - (12) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.
  - (13) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.
  - (14) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.
  - (15) **Voluntary retail electric provider (VREP)** -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.
- (d) **POLR service.**
- (1) There are two types of POLR providers: VREPs and LSPs.
  - (2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.
  - (3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.

- (4) A POLR provider shall offer a basic, standard retail service package to customers it is designated to serve, which shall be limited to:
- (A) Basic firm service;
  - (B) Call center facilities available for customer inquiries; and
  - (C) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund.
- (5) A POLR provider shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.
- (6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (1)(2) of this section shall contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice shall also include contact information for the LSP, and the Power to Choose website, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to a LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) **Standards of service.**

- (1) An LSP designated to serve a class in a given POLR area shall serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (1)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.
- (2) A POLR provider shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section shall apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(f) **Customer information.**

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

(A) Standard Terms of Service, POLR Provider Residential Service:

Figure: 16 TAC §25.43(f)(1)(A)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C)

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

Figure: 16 TAC §25.43(f)(1)(D)

(2) An LSP providing service under a rate prescribed by subsection (1)(2) of this section shall provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service shall be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

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

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

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

(h) **REP eligibility to serve as a POLR provider.** In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year. On a schedule to be determined by the commission, POLR providers shall be designated to complete the 2009-2010 period pursuant to the requirements of this section. REPs designated to provide service as of February 26, 2009 may continue providing such service pursuant to the requirements of this section as they existed prior to the 2009 re-adoption of this section, until such time as new POLR providers are required to provide service pursuant to the current requirements of this section. POLRs may serve customers on a market-

based, month-to-month rate and provide notice pursuant to the provisions of this section as of this section's effective date.

- (1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as a POLR provider for the next term, except that for the 2009-2010 term, the information already provided for that term shall serve this purpose. Starting with the 2011-2012 term REPs shall file, by July 10<sup>th</sup>, of each even-numbered year, by service area, information on the classes of customers they provide service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. The independent organization shall provide to the commission the total number of ESI ID and total MWh data for each class. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section shall not be considered confidential information.
- (2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:
  - (A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to

§25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

- (B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;
- (C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;
- (D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;
- (E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;
- (F) The REP is certificated as an Option 2 REP under §25.107 of this title;
- (G) The REP's customers are limited to its own affiliates;
- (H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or
- (I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

- (3) For each term, the commission shall publish the names of all of the REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and shall provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff shall verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff shall notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.
- (4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.
- (5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff shall review the filing, and shall request that the REP demonstrate that it still meets the qualifications to provide the

service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs shall be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

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

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

- (2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.
- (3) Commission staff shall make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff shall reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.
- (4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it shall provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff shall make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request shall be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP shall continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires

from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff shall be communicated to ERCOT and shall be implemented for the current allocation if possible.

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

- (j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.
- (1) The REPs eligible to serve as LSPs shall be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.
  - (2) In each POLR area, for each customer class, the commission shall designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area shall be designated as LSPs. Commission staff shall designate the LSPs by October 15<sup>th</sup> of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as a LSP.
  - (3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL shall be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) shall be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL shall note that such information is REP-specific.
  - (4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (1)(2) of this section shall move such customers to

a market-based month-to-month product, with pricing for such product to be effective no later than either the 61<sup>st</sup> day of service by the LSP or beginning with the customer's next billing cycle date following the 60<sup>th</sup> day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

- (A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (s)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (s)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product shall be provided at a later time, but no later than 14 days before their effective date.
- (B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60<sup>th</sup> day of service. If such a customer becomes current in payments to the LSP, the LSP shall move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60<sup>th</sup> day of service to a market-based month-to-month product, the LSP shall

inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

- (5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP shall continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee shall, with 90 days notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.
- (k) **Mass transition of customers to POLR providers.** The transfer of customers to POLR providers shall be consistent with this subsection.
- (1) ERCOT shall first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT shall use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP shall not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT shall:
- (A) Sort ESI IDs by POLR area;
  - (B) Sort ESI IDs by customer class;
  - (C) Sort ESI IDs numerically;

- (D) Sort VREPs numerically by randomly generated number; and
  - (E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.
- (2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT shall assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area shall be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT shall:
- (A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;
  - (B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;
  - (C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

- (D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;
  - (E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;
  - (F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and
  - (G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.
- (3) Each mass transition shall be treated as a separate event.
- (1) **Rates applicable to POLR service.**
- (1) A VREP shall provide service to customers using a market-based, month-to-month product. The VREP shall use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.
  - (2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum

rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

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

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

Where:

- (i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.
- (iv) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

- (v) “Number of kWhs the customer used” is based either on interval data or on an allocation of the customer’s total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer’s profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer’s profile type and weather zone over the customer’s entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer’s TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer’s billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer’s TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer’s billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

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

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

Where:

- (i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPs, for the customer's load zone that is multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.
- (v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

- (vi) “Number of kWhs the customer used” is based either on interval data or on an allocation of the customer’s total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer’s profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer’s profile type and weather zone over the customer’s entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer’s TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer’s billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer’s TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer’s billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

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

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

Where:

- (i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
  - (ii) LSP customer charge shall be \$2,897.00 per month.
  - (iii) LSP demand charge shall be \$6.00 per kW, per month.
  - (iv) LSP energy charge shall be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of \$7.25 per MWh.
- (3) If in response to a complaint or upon its own investigation, the commission determines that a LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP shall issue refunds to the specific customers who were overcharged.

- (4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate shall be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.
- (5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection shall be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.
- (m) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer shall then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

- (n) **Limitation on liability.** The POLR providers shall make reasonable provisions to provide service under this section to customers who request POLR service, or are transferred to the POLR provider, individually or through a mass transition; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages.
- (1) Neither the customer nor the POLR provider shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.
- (2) In no event shall ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.
- (o) **REP obligations in a transition of customers to POLR service.**
- (1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (1)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.
- (2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The

customer is responsible for charges for service under this section at the rate in effect at that time.

- (3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.
- (4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.
- (5) A defaulting REP whose customers are subject to a mass transition event shall return the customers' deposits within seven calendar days of the initiation of the transition.
- (6) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, shall be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission shall establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.
- (7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information

including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section shall be treated as confidential and shall only be used for mass transition related purposes.

- (8) Information from the TDU and ERCOT to the POLR providers shall be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section shall not constitute a violation of the customer protection rules that address confidentiality.
- (9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider shall begin providing service to the customer even if the service initiation date is before it receives the deposit – if any deposit is required. A POLR provider shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential

customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it shall determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider shall not request a deposit from the residential customer.

- (A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director shall distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. These funds shall first be used to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program). The Executive Director or staff designee shall, at the time of a transition event, determine the reasonable deposit amount up to \$400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above \$400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, shall satisfy in full the customers' initial deposit obligation to the VREP or LSP.

- (B) The Executive Director or the staff designee shall distribute available proceeds pursuant to §25.107(f)(6) of this title to VREPs proportionate to the number of customers they received in the mass transition, who at the time of the transition are enrolled in the rate reduction program pursuant to §25.454 of this title, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds shall be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.
- (C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference shall be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits) that allows an eligible customer to pay its deposit in two equal installments provided that:
- (i) The amount distributed shall be considered part of the first installment and the VREP or LSP shall not request an additional first deposit installment amount if the amount distributed is at least 50% of the reasonable deposit amount; and
  - (ii) A VREP or LSP may not request payment of any remaining difference between the reasonable deposit amount and the

distributed deposit amount sooner than 40 days after the transition date.

- (D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.
- (10) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to POLR providers, of all of the customers served by a REP:
- (A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;
  - (B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;
  - (C) Issuance of a commission order de-certifying a REP;
  - (D) Issuance of a commission order requiring a mass transition to POLR providers;
  - (E) Issuance of a judicial order requiring a mass transition to POLR providers; and
  - (F) At the request of a REP, for the mass transition of all of that REP's customers.
- (11) A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's

improper use of the mass transition process may lead to de-certification of the REP.

- (12) ERCOT may provide procedures for the mass transition process, consistent with this section.
- (13) A mass transition under this section shall not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch shall be made on the next available switch date.
- (14) Customers who are mass transitioned shall be identified for a period of 60 calendar days. The identification shall terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions shall be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.
- (15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(1) of this title (relating to Selection of Retail Electric Provider) is not required.

- (16) In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. A TDU shall create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU shall not bill as a discretionary charge, the costs included in this regulatory asset, which shall consist of the following:
- (A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and
  - (B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.
- (17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU shall perform a true-up evaluation of each ESI ID after an actual meter

reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU shall calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(p) **Termination of POLR service provider status.**

- (1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:
  - (A) If the POLR provider fails to maintain REP certification;
  - (B) If the POLR provider fails to provide service in a manner consistent with this section;
  - (C) The POLR provider fails to maintain appropriate financial qualifications;  
or
  - (D) For other good cause.
- (2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee shall, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

- (3) At the end of the POLR service term, the outgoing LSP shall continue to serve customers who have not selected another REP.
- (q) **Electric cooperative delegation of authority.** An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission shall, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions shall apply:
- (1) The board of directors shall provide the commission with a copy of a board resolution authorizing such delegation of authority;
  - (2) The delegation of authority shall be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;
  - (3) The delegation of authority shall be for a minimum period corresponding to the period for which the solicitation shall be made;
  - (4) The electric cooperative wishing to delegate its authority to designate an continuous provider shall also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and
  - (5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission shall automatically reject the delegation of authority.

(r) **Reporting requirements.** Each LSP that serves customers under a rate prescribed by subsection (1)(2) of this section shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP shall report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:

- (A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;
- (B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;
- (C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;
- (D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and
- (E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

- (2) For each month of the reporting quarter each LSP shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:
- (A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;
  - (B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;
  - (C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;
  - (D) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and
  - (E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.
- (3) For the entirety of the reporting quarter, each LSP shall report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.
- (s) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer shall be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice shall be provided within two days of the time ERCOT and the transitioning REP know that the

customer shall be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. The POLR provider shall provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and shall provide the notice to transitioning customers as soon as practicable. The POLR provider shall email the notice to the commission staff members designated for receipt of the notice.

- (1) ERCOT notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (o)(6) of this section. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.
- (2) Notice by the REP from which the customer is transferred shall include:
  - (A) The reason for the transition;
  - (B) A contact number for the REP;
  - (C) A statement that the customer shall receive a separate notice from the POLR provider that shall disclose the date the POLR provider shall begin serving the customer;
  - (D) Either the customer's deposit plus accrued interest, or a statement that the deposit shall be returned within seven days of the transition;
  - (E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another

competitive REP, as well as the following statement: “If you would like to see offers from different retail electric providers, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;”

- (F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header “An Important Message from the Public Utility Commission Regarding Your Electric Service” addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);
  - (G) If applicable, a description of the activities that the REP shall use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and
  - (H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.
- (3) Notice by the POLR provider shall include:
- (A) The date the POLR provider began or shall begin serving the customer and a contact number for the POLR provider;

- (B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (1)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period shall not be determined until the time the bill is prepared;
- (C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;
- (D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement:  
"If you would like to choose a different retail electric provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"
- (E) The applicable Terms of Service and Electricity Facts Label (EFL); and
- (F) For residential customers that are served by an LSP under a rate prescribed by subsection (1)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

- (t) **Market notice of transition to POLR service.** ERCOT shall notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification shall include the exiting REP's name, total number of ESI IDs, and estimated load.
- (u) **Disconnection by a POLR provider.** The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section shall begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.
- (v) **Deposit payment assistance.** Customers enrolled in the rate reduction program pursuant to §25.454 of this title shall receive POLR deposit payment assistance when proceeds are available in accordance with §25.107(f)(6) of this title.
- (1) Using the most recent Low-Income Discount Administrator (LIDA) enrolled customer list, the Executive Director or staff designee shall work with ERCOT to determine the number of customer ESI IDs enrolled on the rate reduction program that shall be assigned to each VREP, and if necessary, each LSP.

- (2) The commission staff designee shall distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.
- (3) The Executive Director or staff designee shall use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:
  - (A) a list of the ESI IDs enrolled on the rate reduction program that have been or shall be transitioned to the applicable POLR; and
  - (B) the amount of deposit payment assistance that shall be provided on behalf of a POLR customer enrolled on the rate reduction program.
- (4) Amounts credited as deposit payment assistance pursuant to this section shall be refunded to the customer in accordance with §25.478(j) of this title.

**Figure: 16 TAC §25.43(f)(1)(A)****Standard Terms of Service**

[Insert LSP Name] (Certificate No. \_\_\_\_)  
**Provider of Last Resort (POLR) Residential Service**

This Standard Terms of Service applies to residential customers receiving Provider of Last Resort (POLR) service from [insert LSP name] under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].**

**1. PRICE FOR BASIC FIRM SERVICE**

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below.

Your rate for POLR service will be derived from the following formula:

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

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, Reliability Unit Commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.
- (iv) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.
- (v) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in

**Figure: 16 TAC §25.43(f)(1)(A)**

the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

**2. SECURITY**

LSP shall not require a cash deposit if you are able to provide the LSP with a Credit Reference Letter that includes the following representations: 1) you have been a customer of any retail electric provider within the two years prior to your request for electric service or prior to your transfer to POLR service; 2) you are not delinquent in payment of any such electric service account; and 3) you were not late in paying a bill more than once during the last 12 consecutive months.

A residential customer shall also be deemed as having established satisfactory credit and shall not be required to pay a cash deposit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency.

A residential customer currently enrolled in the LITE UP Texas program may be eligible for additional deposit assistance. (See paragraph 3, under Cash Deposit.)

If these conditions do not apply, LSP may require a cash deposit unless you can demonstrate to the LSP any of the following prior to the due date of the cash deposit: 1) you are 65 years of age or older and you are not currently delinquent in payment of any electric service account; 2) you are a victim of family violence as defined by the Texas Family Code § 71.004, and as determined by a family violence center, or by treating medical personnel;\* or 3) you are medically indigent.\*\*

\*This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of the toll-free fax number listed below to LSP.

*[Insert toll-free FAX Number]*

\*\* To be considered medically indigent, the customer must demonstrate that the following criteria are met: the customer's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider, and either of the following must apply: (i) the customer or the customer's spouse has been certified by that person's physician (for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social worker, state-licensed physical and occupational therapist, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 et seq as being unable to perform three or more activities of daily living, as defined in Title 22, Texas Administrative Code, Section 218.2, or (ii) the customer's monthly out-of-pocket medical expenses exceed 20% of the household's gross income.

**CASH DEPOSIT**

- 1) Your cash deposit, if required, may not exceed one fifth (1/5) of your estimated annual billing. You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and your billings are more than twice the amount estimated to determine your cash deposit. Instead of an additional cash deposit, you may pay the total amount due by the due date of the bill, provided you have not exercised this option in the previous 12 months.

**Figure: 16 TAC §25.43(f)(1)(A)**

- 2) LSP may require a deposit to be provided after 15 calendar days of service if you receive 10 days' notice that a deposit is required.
- 3) A customer who is currently enrolled in LITE UP Texas (Low Income Telephone and Electric Utilities Program) may pay the initial cash deposit to LSP in two installments if the deposit exceeds \$50. The first installment shall not exceed one-tenth (1/10) of the estimated annual billing and shall be due within ten calendar days of LSP's issuance of the written notice requiring the cash deposit. The second installment for the remainder of the cash deposit shall be due within 40 calendar days of the issuance of the original written notice. For more information regarding LITE UP Texas, contact LSP or call toll-free 1-866-4-LITE-UP (1-866-454-8387) to determine eligibility or to receive an application.
- 4) A written letter of guarantee may be used in lieu of paying a cash deposit. The guarantor must become or remain a customer of the LSP for the term in which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the LSP, the LSP may require the customer to pay the initial or additional cash deposit as a condition of continuing the contract for service.
- 5) Upon default by a residential customer, the guarantor of the customer's account shall be responsible for the unpaid balance of the account only up to the agreed amount in the letter of guarantee. The LSP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed. The guarantor will have 16 calendar days from the date the notice is issued to pay the amount owed on the defaulted account. If the 16<sup>th</sup> day falls on a holiday or weekend, the due date shall be the next business day. The LSP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill.
- 6) The LSP may initiate disconnection of service to the guarantor for nonpayment of the guaranteed amount within ten calendar days of issuance of a notice of disconnection.
- 7) Your service may be disconnected for failure to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.
- 8) A disconnection notice may be issued concurrently with either the written request for the cash deposit or current monthly bill for electric service. Disconnection means a physical interruption of electric service.
- 9) You will accrue interest on your cash deposit(s) with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 10) Your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 11) Your cash deposit and accrued interest will be refunded if you pay your bills for 12 consecutive months without having any late payments. A REP may refund the deposit to you through a bill credit.
- 12) The guarantee agreement will be terminated if you pay your bills for 12 consecutive months without your service being disconnected for nonpayment and without having more than two delinquent payments within the last 12 months.

**3. BILLING**

- 1) You will be billed for the amount of electricity that you consume.
- 2) Billing statements will reflect the total charges for POLR services provided by LSP.
- 3) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> day after issuance of the bill.
- 4) The LSP or a REP affiliated with the LSP shall offer a level or average payment plan if you are not currently delinquent. You may be required to select a competitive product offered by the LSP or a REP affiliated with the LSP to receive the level or average payment plan. LSP offers deferred and level payment (also known as budget) plans. Please contact LSP at the 24-hour customer service number below for information about these options.
- 5) [Insert toll-free phone Number]

**Figure: 16 TAC §25.43(f)(1)(A)****4. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC SERVICE** in section 1:

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other residential customers}

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period. If you are a low-income customer, the first two premise usage histories provided on your behalf to an agency providing bill payment assistance shall not be counted in determining whether you are subject to an account history charge.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Disconnection charge</b> for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU ]
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment (in addition to any applicable disconnect or reconnect charges).	No charge
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Late fees</b> will be assessed on delinquent deferred payment arrangements. Deferred payment arrangements are delinquent if not paid by the date specified by the deferred payment plan.	5% assessed on the late deferred payment amount
<b>Return check charge</b> for each check returned for insufficient funds.	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification</b> charge for notifying customer that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00

**Figure: 16 TAC §25.43(f)(1)(A)**

LSP reserves the right to charge for court costs, legal fees, and other costs associated with collection of delinquent amounts.
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LSP reserves the right to charge for services requested by you that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU.
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**5. DISCONNECTION OF SERVICE**

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected by the LSP until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 3 **BILLING** and section 4 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.
- g) A disconnection notice may be issued concurrently with your bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

**6. CUSTOMER INFORMATION**

You will be required to provide your social security number, a valid driver's license number, or other verifiable means of personal identification.

The TDU, any previous retail electric provider, or the Independent Organization may provide LSP information about your electric service, including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), driver's license, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**7. LENGTH OF AGREEMENT****NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP or unless you enter a level payment plan or deferred payment plan. If you decide to be placed on LSP's Level or Deferred Payment Plans, you will not be charged a penalty for canceling your service before the end of the

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Date

Residential Service  
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**Figure: 16 TAC §25.43(f)(1)(A)**

term but you will be responsible for all outstanding amounts due, including Level and Deferred Payment Plan reconciliation amounts. If you decide to be placed on LSP's Deferred Payment Plan, your term of service shall be a minimum of three months or the length agreed to for making deferred payments, whichever is longer. The term shall start on the date you enter the Deferred Payment Plan.

**8. CONTACT INFORMATION**

Name of Provider:  
Physical Address:

Customer Service: (toll free)  
24-Hour Power Outages: Contact your local electricity delivery company [provide number]  
Internet web-site:  
Fax: (toll free)

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date, your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the LSP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following LSP's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission of Texas, 1-888-782-8477 (toll free).

**9. LOW INCOME PAYMENT ASSISTANCE INFORMATION**

Rate discounts and other assistance programs may be available for qualified low-income customers. For more information, contact LSP Customer Service or either of the following state agencies:

Texas Department of Housing and Consumer Affairs: 1-512-475-3800  
Public Utility Commission of Texas: 1-888-782-8477 (toll free)

**10. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, debit or credit card, electronic funds transfer, [*Insert if offered by LSP (optional):* in cash through an agent authorized by the LSP], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact the LSP's Customer Service number to begin those options for bill payment at no cost.

If you have had two or more personal checks unpaid by your financial institution within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, money order or debit/credit card. If you pay by debit/credit card and your payment has been declined, rejected or charged back two or more times within the last 12 months, LSP will require all further payments to be by cash, cashier's check or money order.

**11. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism,

**Figure: 16 TAC §25.43(f)(1)(A)**

wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

**12. LIMITATION OF LIABILITY**

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER, OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

**13. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**14. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

**Figure: 16 TAC §25.43(f)(1)(B)****Standard Terms of Service**

**[Insert LSP Name] (Certificate No. \_\_\_\_\_)**  
**Provider of Last Resort (POLR) Small Non-Residential Service**

This Standard Terms of Service (STOS) applies to small non-residential customers (i.e., less than 50 kW) receiving Provider of Last Resort (POLR) service from LSP under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPAÑOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].**

**1. PRICE FOR BASIC FIRM SERVICE.**

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below. Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

Your rate for POLR service will be derived from the following formula:

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

Where:

- (i) Non-bypassable charges shall be all TDSP and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, Reliability Unit Commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs), for the customer's load zone that is multiplied by the level of kWh used and that is further multiplied by 125%.
- (v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPP over the hour.
- (vi) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in

**Figure: 16 TAC §25.43(f)(1)(B)**

the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

**2. BILLING**

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

**CASH DEPOSIT**

You will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16th) day after issuance of the bill. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) You may be required to make a cash deposit or other credit arrangement. {LSP will insert the conditions that will trigger a request for a deposit here} If your service is initiated with LSP and you are required to pay a cash deposit, you will be required to pay the cash deposit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than the estimated billing for a two-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your two highest months of usage and demand in the most recent 12-month period.
- 2) If 12 months of historical usage data is not available, LSP in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC size and type, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and you have used more than twice the amount estimated to determine your cash deposit.
- 4) You will accrue interest on your cash deposit with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP with an irrevocable letter of credit in the amount of the required cash deposit. The required security must be provided within ten calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the final bill for service may be calculated using the out-of-cycle meter readings. Final bills will not be prorated.
- 8) LSP may require payment of the cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the LSP.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.

**Figure: 16 TAC §25.43(f)(1)(B)****3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC FIRM SERVICE** in section 1. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each Premise.

You agree to pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You agree to pay all applicable Taxes and any fees charged by any governmental entity.

You agree to pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Small Non-residential customers}

<i>Service Charges and Fees</i>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12 month history is requested for more than once within a 12 month period.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Drawing on an irrevocable letter of credit.</b> Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Field Collection charge</b> for each trip to customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00/ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A two hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the Field Service Call as well as any TDU discretionary charges.	\$100.00/hour
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Master Contracts</b>	
• Set-up fee per new or transferred contract	\$25.00
• Additional fee per each unit placed on a master contract, added to an existing contract or transferred	\$ 5.00
<b>Master Metered Facilities:</b>	
<b>Master Metered Tenant charge</b> for small non-residential 50 kW and below facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.	[Insert pass through charge from TDSP]
<b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a	\$25.00 to meet Subst. R. 25.483

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Small Non-Residential Service  
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Figure: 16 TAC §25.43(f)(1)(B)

<i>Service Charges and Fees</i>	<b>Amount</b>
tenant in a master metered facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed late fees if not paid by the date pursuant to a negotiated payment plan. <b>Late fees may not be assessed against a customer with a peak demand of less than 50 kW.</b>	5% assessed on the late payment amount
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDSP]
<b>Processing fee</b> for renegotiation of a payment plan. This fee applies if you request renegotiations more than once in any 30-day period. In addition, you may be required to pay the appropriate amount to the Company to reconcile your account balance.	\$10.00
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at Customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDSP]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for incurred court costs, legal fees and miscellaneous costs associated with legal action as a result of maintaining customer accounts.	
LSP reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU and billed to LSP.	

#### 4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Substantive Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC FIRM SERVICE**, section 2 **BILLING** and section 4 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.
- g) A disconnection notice may be issued concurrently with your cash deposit billing.

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Figure: 16 TAC §25.43(f)(1)(B)

- h) Your service may be disconnected for failure to pay an initial cash deposit bill.
- i) LSP cannot disconnect your electric service until you are a customer of the LSP.

5. CUSTOMER INFORMATION

You will be required to provide a Federal tax identification (I.D) number, a social security number, a valid driver’s license number or other verifiable means of personal identification in order to allow verification of changes you request in services from LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide the POLR Provider with information about your electric service including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver’s license number, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

6. LENGTH OF AGREEMENT

**NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

7. CONTACT INFORMATION

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours  
our Power Outage: [provide number]  
Fax:  
Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the LSP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following the LSP’s receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days. Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free).

8. BILL PAYMENT METHODS

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, [*Insert if offered by LSP (optional):* in cash through an agent authorized by the LSP], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must

**Figure: 16 TAC §25.43(f)(1)(B)**

contact the LSP's Customer Service number to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within (16 calendar days of bill issuance. If payments are not received by LSP by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances. Late fees may not be assessed against a customer with a peak demand of less than 50 kW.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, or money order.

**9. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

**10. LIMITATION OF LIABILITY AND INDEMNITY**

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

**11. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Figure: 16 TAC §25.43(f)(1)(B)**

**12. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

Figure: 16 TAC §25.43(f)(1)(C)

### Standard Terms of Service

[Insert LSP Name] (Certificate No. \_\_\_\_\_)  
**Provider of Last Resort (POLR) Medium Non-Residential Service**

This Standard Terms of Service (STOS) applies to medium non-residential customers (i.e., 50 kW or greater, but less than 1,000 kW (one Megawatt)) receiving Provider of Last Resort (POLR) service from LSP under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to changes in applicable charges and transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].**

#### 1. PRICE FOR BASIC FIRM SERVICE.

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below. Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

Your rate for POLR service will be derived from the following formula:

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

Where:

- (i) Non-bypassable charges shall be all TDSP and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, Reliability Unit Commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs), for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 125%.
- (v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPP over the hour.
- (vi) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in

**Figure: 16 TAC §25.43(f)(1)(C)**

the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

**2. SECURITY**

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

**CASH DEPOSIT**

You will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16th) day after issuance of the bill. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) You may be required to make a cash deposit or other credit arrangement. If your service is initiated with LSP and you are required to pay a cash deposit, you will be required to pay the cash deposit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than the estimated billing for a two-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your two highest months of usage and demand in the most recent 12-month period. If 12 months of data are not available, the required two months cash deposit shall be determined by the longest available period less than 12 months.
- 2) If 12 months of historical usage data is not available, LSP in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC size and type, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining credit worthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit or if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and you have used more than twice the amount estimated to determine your cash deposit.
- 4) You will accrue interest on your cash deposit with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP with an irrevocable letter of credit in the amount of the required cash deposit. The required security must be provided within ten calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the final bill for service may be calculated using the out-of-cycle meter readings. Final bills will not be prorated.
- 8) LSP may require payment of the cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the LSP.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.

**Figure: 16 TAC §25.43(f)(1)(C)****3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC FIRM SERVICE** in section 1. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each Premise.

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable Taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Medium Non-residential customers}

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12 month history is requested for more than once within a 12 month period.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Drawing on an irrevocable letter of credit.</b> Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Field Collection charge</b> for each trip to customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00/ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A two hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the Field Service Call as well as any TDU discretionary charges.	\$100.00/hour
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Master Contracts</b>	
<ul style="list-style-type: none"> <li>• Set-up fee per new or transferred contract</li> <li>• Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b>	
<b>Master Metered Tenant charge</b> for small non-residential 50 kW and below facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.	[Insert pass through charge from TDU]

Figure: 16 TAC §25.43(f)(1)(C)

Service Charges and Fees	Amount
<b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master metered facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	\$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed late fees if not paid by the date pursuant to a negotiated payment plan.	5% assessed on the late payment amount
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDU]
<b>Processing fee</b> for renegotiation of a payment plan. This fee applies if you request renegotiations more than once in any 30-day period. In addition, you may be required to pay the appropriate amount to the Company to reconcile your account balance.	\$10.00
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at Customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification charge</b> for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for incurred court costs, legal fees and miscellaneous costs associated with legal action as a result of maintaining customer accounts.	
LSP reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU and billed to LSP.	

#### 4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC FIRM SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.

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**Figure: 16 TAC §25.43(f)(1)(C)**

- g) Your service may be disconnected for failure to pay an initial cash deposit bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

**5. CUSTOMER INFORMATION**

You will be required to provide a Federal tax identification (I.D) number, a social security number, a valid driver’s license number or other verifiable means of personal identification in order to allow verification of changes you request in services from LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide to LSP information about your electric service, including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver’s license number, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**6. LENGTH OF AGREEMENT**

**NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

**7. WAIVER OF CERTAIN CUSTOMER PROTECTION RULES**

The Customer Protection Rule provisions contained within Subchapter R of this chapter shall be deemed waived by the execution of this Standard Terms of Service, except for the following:

- a) §25.481, relating to Unauthorized Charges;
- b) §25.485(a)-(b), relating to Customer Access and Complaint Handling; and
- c) §25.495, relating to Unauthorized Change of Retail Electric Provider.

**8. CONTACT INFORMATION**

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours  
24-Hour Power Outage:  
[provide number]  
Fax:  
Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the LSP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following the LSP’s receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid

**Figure: 16 TAC §25.43(f)(1)(C)**

within ten business days. Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free).

**9. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, [*Insert if offered by LSP (optional):* in cash through an agent authorized by the LSP], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact the LSP's Customer Service number to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within (16 calendar days of bill issuance. If payments are not received by LSP by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances including pay-in-advance. Late fees may not be assessed against a customer with a peak demand of less than 50 kW.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, or money order.

**10. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

**11. LIMITATION OF LIABILITY AND INDEMNITY**

NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

**12. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

**Figure: 16 TAC §25.43(f)(1)(C)**

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**13. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

**Figure: 16 TAC §25.43(f)(1)(D)****Standard Terms of Service**

[Insert LSP Name] (Certificate No. \_\_\_\_)

**Provider of Last Resort (POLR) Large Non-Residential Service (> = One Megawatt)**

This Standard Terms of Service applies to Large Non-Residential customers receiving Provider of Last Resort (POLR) service from pursuant to Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to changes in applicable charges and or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

**1. PRICE FOR BASIC FIRM SERVICE.**

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR Service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market.

The price for your electric service from LSP will be derived from the following formula:

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

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, Reliability Unit Commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$2,897.00 per month.
- (iii) LSP demand charge shall be \$6.00 per kW, per month.
- (iv) LSP energy charge shall be the appropriate Real-Time Settlement Point Prices (RTSPPs), determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kWh used. The RTSPP shall have a floor of \$7.25 per MWH.

Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

**2. SECURITY**

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

**CASH DEPOSIT**

You will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16<sup>th</sup>) day after issuance of the bill. The late payment fee (5%) will be assessed on the seventeenth (17<sup>th</sup>) day after the bill issuance for all unpaid balances. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) You may be required to make a cash deposit of other credit arrangement. If your service is initiated with LSP, you will be required to pay a cash deposit or letter of credit after LSP receives

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Large Non-Residential Service  
Standard Terms of Service

**Figure: 16 TAC §25.43(f)(1)(D)**

- confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than the estimated billing for a three-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your three highest months of usage and demand during the most recent 12-month period.
- 2) If 12 months of historical usage data is not available, LSP in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC type and size, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
  - 3) You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice or if you have been a customer for three months and you have used more than the amount estimated to determine your initial cash deposit.
  - 4) You will accrue interest on your deposit with LSP. Each year in December, the PUCT establishes the interest rate the LSP will apply to your cash deposit for the next calendar year.
  - 5) You may satisfy security requirements by providing LSP with a surety bond or an irrevocable letter of credit in the amount of the required cash deposit. The surety bond must be approved by the LSP. The required security must be provided within three calendar days after a notice is issued to you requesting a cash deposit.
  - 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
  - 7) If your service is terminated prior to the regularly scheduled meter read date, the energy usage for the final bills may be calculated using the out-of-cycle meter readings and will include all charges defined in section 1. **Price for Basic Firm Service.**
  - 8) LSP may require payment of the cash deposit within three calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the LSP.
  - 9) Your service may be disconnected if you fail to pay the required cash deposit within three calendar days of issuance of a notice of disconnection of service.

**3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the rates for service prescribed in section 1 **PRICE FOR BASIC FIRM SERVICE**. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each service point.

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must to pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Large Non-Residential customers}

Figure: 16 TAC §25.43(f)(1)(D)

Service Charges and Fees	Amount
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$ 50.00
<b>Account History charge</b> if you request and are provided a service point usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period.	\$ 25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts or drawing on your letter of credit.	\$15.00
<b>Drawing on irrevocable letter of credit</b> includes all of the activities required to present a drawing letter to your bank.	\$150.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDSP's tariffs, including charges that may be assessed by the TDU for scheduling a disconnection that is canceled.	[Insert pass through charge from TDU]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Field Collection charge</b> for each trip to a customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00 / ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A four hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the field service call.	\$200.00/hour
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed a late fee if not paid by the date pursuant to a negotiated payment plan.	5% assessed on the late payment amounts
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>▪ Set-up fee per new or transferred contract</li> <li>▪ Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by LSP for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master meter facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDU]  \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDU]
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$ 25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any other means of	\$5.00

Figure: 16 TAC §25.43(f)(1)(D)

Service Charges and Fees	Amount
communication appropriate for the customer.	
LSP reserves the right to charge for court costs, legal fees and other costs associated with collection of delinquent amounts and miscellaneous legal costs associated with maintaining the account.	
LSP reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU and billed to LSP.	

#### 4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service.

- a) Your account will be considered delinquent if payment for your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected three calendar days after notice is issued.
- b) Your service may be disconnected for failure to pay cash deposit. Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established. Upon receipt of all amounts and charges owed service may not be reconnected immediately and is dependent upon TDU scheduling.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch to the new provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for either the cash deposit or with a pay-in-advance in lieu of cash deposit billing.
- g) Your service may be disconnected for failure to pay an initial cash deposit bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

#### 5. CUSTOMER INFORMATION

You will be required to provide a legal name, Federal tax identification (I.D.) number, a social security number, a valid driver's license number or other verifiable means of identification in order to allow verification of changes you request in services from LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide information to LSP about your electric service, including but not limited to previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

The LSP at its discretion may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**Figure: 16 TAC §25.43(f)(1)(D)**

**6. LENGTH OF AGREEMENT**

**NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

**7. WAIVER OF CERTAIN CUSTOMER PROTECTION RULES**

The Customer Protection Rule provisions contained within Subchapter R of this chapter shall be deemed waived by the execution of this Standard Terms of Service, except for the following:

- a) §25.481, relating to Unauthorized Charges;
- b) §25.485(a)-(b), relating to Customer Access and Complaint Handling; and
- c) §25.495, relating to Unauthorized Change of Retail Electric Provider.

**8. CONTACT INFORMATION**

Name of Provider:	Certificate Number:
Physical Address:	Customer Assistance:
	Contact hours:
	24-Hour Power Outage:
	[provide number]
	Fax:
	Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the LSP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following the LSP's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free). Complaints directed to the Public Utility Commission do not relieve customer's obligation to pay in full within 16 calendar days.

**9. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, automatic draft from your financial institution or in cash through a company authorized agent. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact the LSP's Customer Service number above to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within 16 calendar days of bill issuance. If LSP does not receive payments by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances.

If you have had two or more personal checks returned for insufficient funds within the past 12 months, LSP may require all further payments for electric service to be by cash, cashier's check or money order.

**10. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism,

**Figure: 16 TAC §25.43(f)(1)(D)**

wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

**11. LIMITATION OF LIABILITY AND INDEMNITY**

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

**12. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBST. R. 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**13. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

**§25.478. Credit Requirements and Deposits.**

- (a) **Credit requirements for residential customers.** A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.
- (1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.
  - (2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.
  - (3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph.
    - (A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:
      - (i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;
      - (ii) is not delinquent in payment of any such electric service account;  
and
      - (iii) during the last 12 consecutive months of service was not late in paying a bill more than once.
    - (B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory

credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.

- (C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
- (D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.
- (E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

- (i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and
  - (ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*
- (4) A residential customer or applicant seeking to establish service with a REP other than an affiliated REP or POLR can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (B) of this paragraph. Notice of these options for customers or applicants shall be included in any written or oral notice to a customer or applicant when a deposit is requested. A REP other than an affiliated REP or POLR may establish additional methods by which a customer or applicant not meeting the criteria of subparagraphs (A) or (B) of this paragraph can demonstrate satisfactory credit, so long as such criteria are not discriminatory

pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

- (A) The residential customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
  - (B) The customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the REP.
- (5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated

or disconnected in order to be able to provide credit history information at the request of the former customer.

- (b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.
- (c) **Initial deposits for applicants and existing customers.**
- (1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.
  - (2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.
  - (3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently

with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).

(d) **Additional deposits by existing customers.**

- (1) A REP may request an additional deposit from an existing customer if:
  - (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and
  - (B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.
- (2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.
- (3) A REP may disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) **Amount of deposit.**

- (1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant:
  - (A) shall not exceed an amount equivalent to the greater of:
    - (i) one-fifth of the customer's estimated annual billing; or
    - (ii) the sum of the estimated billings for the next two months.

- (B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.
- (2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant.
- (3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

- (f) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in December of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.
- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
  - (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.
- (g) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.
- (h) **Records of deposits.**
- (1) A REP that collects a deposit shall keep records to show:
    - (A) the name and address of each depositor;
    - (B) the amount and date of the deposit; and
    - (C) each transaction concerning the deposit.

- (2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.
  - (3) A REP shall maintain a record of each unclaimed deposit for at least four years.
  - (4) A REP shall make a reasonable effort to return unclaimed deposits.
- (i) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:
- (1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.
  - (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.
  - (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

- (4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.
  - (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
    - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.
    - (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
  - (6) The REP may initiate disconnection for nonpayment of the guaranteed amount only if the disconnection of service was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection or §25.483 of this title.
- (j) **Refunding deposits and voiding letters of guarantee.**
- (1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the

deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable, but no later than August 31, 2004.

- (2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.
- (3) If a customer's or applicant's service is not connected, or is disconnected, or the service is terminated by the customer, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is disconnected, or the service is terminated by the customer, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes

the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

- (4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.
- (k) **Re-establishment of credit.** A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.
- (l) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.

**§25.498. Prepaid Service.**

(a) **Applicability.** This section applies to retail electric providers (REPs) that offer a payment option in which a customer pays for retail service prior to the delivery of service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service to residential or small commercial customers unless it complies with this section. The following provisions do not apply to prepaid service, unless otherwise expressly stated:

- (1) §25.479 of this title (relating to Issuance and Format of Bills);
- (2) §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and
- (3) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6) of this title.

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

- (1) **Connection balance** -- A current balance, not to exceed \$75 for a residential customer, required to establish prepaid service or reconnect prepaid service following disconnection.
- (2) **Current balance** -- An account balance calculated consistent with subsection (c)(6) of this section.
- (3) **Customer prepayment device or system (CPDS)** -- A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption

information from a TDU's advanced metering system (AMS). The CPDS may be owned by the REP, and installed by the TDU consistent with subsection (c)(2)-(4) of this section.

- (4) **Disconnection balance** -- An account balance, not to exceed \$10 for a residential customer, below which the REP may initiate disconnection of the customer's service.
  - (5) **Landlord** -- A landlord or property manager or other agent of a landlord.
  - (6) **Postpaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service after the service has been rendered.
  - (7) **Prepaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service before service is rendered.
  - (8) **Prepaid disclosure statement (PDS)** -- A document described by subsection (e) of this section.
  - (9) **Summary of usage and payment (SUP)** -- A document described by subsection (h) of this section.
- (c) **Requirements for prepaid service.**
- (1) A REP shall file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent shall include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), Terms of Service (TOS), and PDS for the service. Except as provided in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.

- (2) A CPDS that relies on metering equipment other than the TDU meter shall conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
- (3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).
- (4) A CPDS shall not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS shall be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU shall protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).
- (5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic communications. The means by which the REP will communicate required information to a customer shall be described in the TOS and the PDS.

- (A) A REP shall communicate time-sensitive notifications required by paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile phone, or electronic means.
  - (B) A REP shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP shall provide these public service notices to its customers by electronic communication, or by other acceptable mass communication methods, as approved by the commission.
- (6) A REP shall calculate the customer's current balance by crediting the account for payments received and reducing the account balance by known charges and fees that have been incurred, including charges based on estimated usage as allowed in paragraph (11)(E) of this subsection.
- (A) The REP may also reduce the account balance by:
    - (i) estimated applicable taxes; and
    - (ii) estimated TDU charges that have been incurred in serving the customer and that, pursuant to the TOS, will be passed through to the customer.
  - (B) If the customer's balance reflects estimated charges and taxes authorized by subparagraph (A) of this paragraph, the REP shall promptly reconcile the estimated charges and taxes with actual charges and taxes, and credit or debit the balance accordingly within 72 hours after actual consumption data or a statement of charges from the TDU is available.

- (C) A REP may reverse a payment for which there are insufficient funds available or that is otherwise rejected by a bank, credit card company, or other payor.
  - (D) If usage sent by the TDU is estimated or the REP estimates consumption according to paragraph (11)(E) of this subsection, the REP shall promptly reconcile the estimated consumption and associated charges with the actual consumption and associated charges within 72 hours after actual consumption data is available to the REP.
- (7) A REP shall:
- (A) on the request of the customer, provide the customer's current balance calculated pursuant to paragraph (6) of this subsection, including the date and time the current balance was calculated and the estimated time or days of paid electricity remaining; and
  - (B) make the current balance available to the customer either:
    - (i) continuously, via the internet, phone, or an in-home device; or
    - (ii) within two hours of the REP's receipt of a customer's balance request, by the means specified in the Terms of Service for making such a request.
  - (C) communicate to the customer the current price for electric service calculated as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);

- (D) provide a warning to the customer at least one day and not more than seven days before the customer's current balance is estimated by the REP to drop to the disconnection balance;
- (E) provide a confirmation code when the customer makes a payment by credit card, debit card, or electronic check. A REP is not required to provide a confirmation code or receipt for payment sent by mail or electronic bill payment system. The REP shall provide a receipt showing the amount paid for payment in person. At the customer's request, the REP shall confirm all payments by providing to the customer the last four digits of the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received;
- (F) ensure that a CPDS controlled by the REP does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When the REP receives notice that a customer has chosen a new REP, the REP shall take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions; and
- (G) refund to the customer or an energy assistance agency, as applicable, any unexpended balance from the account within ten business days after the REP receives the final bill and final meter read from the TDU.

- (i) In the case of unexpended funds provided by an energy assistance agency, the REP shall refund the funds to the energy assistance agency and identify the applicable customer and the customer's address associated with each refund.
  - (ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP shall communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP shall refund the balance within ten business days.
- (8) Nothing in this subsection limits a customer from obtaining a SUP.
- (9) The communications provided under paragraph (7)(A)-(D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, shall be provided in English or Spanish, at the customer's election.
- (10) A REP shall cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.
- (11) A REP shall not:
  - (A) tie the duration of an electric service contract to the duration of a tenant's lease;
  - (B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

- (C) require a connection balance in excess of \$75 for a residential customer;
  - (D) require security deposits for electric service; or
  - (E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.
- (12) A REP providing service shall not charge a customer any fee for:
- (A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:
    - (i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or
    - (ii) bill the deposit to the customer.
  - (B) the removal of equipment; or
  - (C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.

- (13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.
- (14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.
- (15) A REP that provides prepaid service to a residential customer shall not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title shall be equal to or lower than at least one of the tests described in subparagraphs (A)-(C) of this paragraph:
- (A) The minimum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted.

- (B) The maximum POLR rate for the residential customer class calculated pursuant to §25.43(l) of this title (relating to Provider of Last Resort (POLR)).
- (C) The average POLR rate for the residential customer class at the 500 kWh, 1,000 kWh, and 2,000 kWh usage levels using the formula described in §25.43(l) of this title for the applicable TDU service territory, with the LSP energy charge calculated as the simple average of the RTSPPs over the prior month for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price. For prepaid service prices charged by a REP up to and including the tenth business day of a month, the test may be met by using the average POLR rate calculation for the month preceding the prior month.
- (D) For a fixed rate product, the REP must show that the prepaid service prices calculated under §25.475(g)(2)(A), (D)–(E) of this title are equal to or lower than one of the tests described in subparagraphs (A) and (C) of this paragraph at the time the REP makes the offer and provided that the customer accepts the offer within 30 days.
- (d) **Customer acknowledgement.** As part of the enrollment process, a REP shall obtain the applicant's or customer's acknowledgement of the following statement: "The continuation of electric service depends on your prepaying for service on a timely basis and if your balance falls below {insert dollar amount of disconnection balance}, your service may be disconnected with little notice. Some electric assistance agencies may not

provide assistance to customers that use prepaid service.” The REP shall obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title (relating to Selection of Retail Electric Provider).

- (e) **Prepaid disclosure statement (PDS).** A REP shall provide a PDS contemporaneously with the delivery of the contract documents to a customer pursuant to §25.474 of this title and as required by subsection (f) of this section. A REP must also provide a PDS contemporaneously with any advertisement or other marketing materials not addressed in subsection (f) of this section that include a specific price or cost for prepaid service. The commission may adopt a form for a PDS. The PDS shall be a separate document and shall be at a minimum written in 12-point font, and shall:
- (1) provide the following statement: “The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.”;
  - (2) inform the customer of the following:
    - (A) the connection balance that is required to initiate or reconnect electric service;
    - (B) the acceptable forms of payment, the hours that payment can be made, instructions on how to make payments, any requirement to verify payment and any fees associated with making a payment;
    - (C) when service may be disconnected and the disconnection balance;
    - (D) that prepaid service is not available to critical care or chronic condition residential customers as these terms are defined in §25.497 of this title

(relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);

- (E) the means by which the REP will communicate required information;
  - (F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;
  - (G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement “If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it.”; and
  - (H) an itemization of any non-recurring REP fees and charges that the customer may be charged.
- (3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.

(f) **Marketing of prepaid services.**

- (1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages, and electronic media other than Internet websites. If the advertisement includes a specific price or cost, the advertisement shall include in a manner that is clear and conspicuous to the intended audience:
- (A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;
  - (B) the following statement, if applicable: “Utility fees may also apply and may increase the total amount that you pay.”;
  - (C) the maximum fee per payment transaction that may be imposed by the REP; and
  - (D) the following statement: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REP’s phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP shall provide the PDS and EFL to a person who requests standardized information for the product.
- (2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through Internet websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection.

In addition to meeting the requirements of §25.474(d)(7) of this title, a REP shall include the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. For electronic communications, the PDS and EFL may be provided through a hyperlink.

- (3) This paragraph applies to outbound telephonic solicitations initiated by the REP. A REP shall disclose the following:
- (A) information required by paragraph (1)(A)-(C) of this subsection;
  - (B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;
  - (C) the means by which the REP will communicate required information; and
  - (D) the following statement: “You have the right to review standardized documents before you sign up for this product.” The REP shall provide the PDS and EFL to a person who requests standardized information for the product.
- (4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP shall provide the applicant or customer a reasonable opportunity to read the PDS.
- (g) **Landlord as customer of record.** A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

- (1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP shall provide to the TDU the name, service and mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.
  - (2) The REP shall treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.
- (h) **Summary of usage and payment (SUP).**
- (1) A REP shall provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP shall be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the TOS and PDS provided to the customer. For purposes of the SUP, a billing cycle shall conform to a calendar month.
  - (2) A SUP shall include the following information:
    - (A) the certified name and address of the REP and the number of the license issued to the REP by the commission;

- (B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;
  - (C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;
  - (D) the dates and amounts of payments made during the period covered by the summary;
  - (E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;
  - (F) an itemization of non-recurring charges, including returned check fees and reconnection fees;
  - (G) the average price for electric service for each calendar month included in the SUP. The average price for electric service shall reflect the total of all fixed and variable recurring charges, but not including state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and shall be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent; and
  - (H) if applicable, a statement that indicates the customer is receiving or has received during the usage summary period the LITE-UP Discount, pursuant to §25.454 of this title (relating to Rate Reduction Program).
- (3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to

identify the charge, and such term and its definition shall be easily located on the REP's website and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP shall not exceed the amount of the TDU charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's SUP.

- (A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.
- (B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.
- (C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

- (D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.
- (E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.
- (F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.
- (G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.
- (H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.
- (I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.
- (J) System Benefit Fund -- A non-bypassable charge approved by the Public Utility Commission, not to exceed 65 cents per megawatt-hour, that funds the low-income discount, one-time bill payment assistance, customer education, commission administrative expenses, and low-income energy efficiency programs.

- (K) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.
  - (L) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.
  - (M) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.
- (4) If the REP includes any of the following terms in its SUP, the term shall be applied in a manner consistent with the definitions, and such term and its definition shall be easily located on the REP's website and available to a customer free of charge upon request:
- (A) Base Charge -- A charge assessed during each billing cycle of service without regard to the customer's demand or energy consumption.
  - (B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period during the billing cycle.
  - (C) Energy Charge -- A charge based on the electric energy (kWh) consumed.
- (5) Unless a shorter time period is specifically requested by the customer, information provided shall be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.

- (6) In accordance with §25.472(b)(1)(D) of this title, a REP shall provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and shall not charge the agency for the SUP.
- (i) **Deferred payment plans.** A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans shall be confirmed in writing by the REP to the customer.
- (1) The REP shall place a residential customer on a deferred payment plan, at the customer's request:
- (A) when the customer's current balance reflects a negative balance of \$50 or more during an extreme weather emergency, as defined in §25.483(j)(1) of this title, if the customer makes the request within one business day after the weather emergency has ended; or
- (B) during a state of disaster declared by the governor pursuant to Texas Government Code §418.014 if the customer is in an area covered by the declaration and the commission directs that deferred payment plans be offered.
- (2) The REP shall offer a deferred payment plan to a residential customer who has been underbilled by \$50 or more for reasons other than theft of service.
- (3) The REP may offer a deferred payment plan to a customer who has expressed an inability to pay.

- (4) The deferred payment plan shall include both the negative current balance and the connection balance.
- (5) The customer has the right to satisfy the deferred payment plan before the prescribed time.
- (6) The REP may require that:
  - (A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or
  - (B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deferred amount paid in installments. The REP shall inform the customer of the right to pay the remaining deferred balance by reducing the deferred balance by five equal monthly installments. However, the customer can agree to fewer or more frequent installments. The installments to repay the deferred balance shall be applied to the customer's account on a specified day of each month.
- (7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP shall not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.

- (8) The REP may apply a switch-hold while the customer is on a deferred payment plan.
- (9) A copy of the deferred payment plan shall be provided to the customer.
- (A) The plan shall include a statement, in clear and conspicuous type, that states, “If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP).”
- (B) If a switch-hold will apply, the plan shall include a statement, in a clear and conspicuous type, that states “By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on.”
- (C) If the customer and the REP’s representative or agent meet in person, the representative shall read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.
- (D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but shall not include a finance charge.

- (E) The plan shall include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.
  - (F) The plan shall state the total amount to be paid under the plan.
  - (G) The plan shall state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount.
- (10) The REP shall not charge the customer a fee for placing the customer on a deferred payment plan.
- (11) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.
- (j) **Disconnection of service.** As provided by subsection (a)(4) of this section, §25.483 (b)(2)(A) and (B), (d), (e)(1)-(6), and the definition of extreme weather in §25.483(j)(1) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.
- (1) **Prohibition on disconnection.** A REP shall not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance on a weekend day or during any period during which the mechanisms used for payments specified in the customer's PDS are unavailable; or during an extreme

weather emergency, as this term is defined in §25.483 of this title, in the county in which the service is provided.

- (2) **Initiation of disconnection.** A REP may initiate disconnection of service when the current balance falls below the disconnection balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(D) of this section; or when a customer fails to comply with a deferred payment plan, but only if the REP provided the customer a timely warning pursuant to subsection (i)(7) of this section. A REP may initiate disconnection if the customer's current balance falls below the disconnection balance due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.
- (3) **Pledge from electric assistance agencies.** If a REP receives a pledge, letter of intent, purchase order, or other commitment from an energy assistance agency to make a payment for a customer, the REP shall immediately credit the customer's current balance with the amount of the pledge.
  - (A) The REP shall not initiate disconnection of service if the pledge from the energy assistance agency (or energy assistance agencies) establishes a current balance above the customer's disconnection balance or, if the customer has been disconnected, shall request reconnection of service if the pledge from the energy assistance agency establishes a current balance for the customer that is at or above the customer's connection balance required for reconnection.

- (B) The REP may initiate disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's disconnection balance in the case of a currently energized customer, or the customer's connection balance if the customer has been disconnected for falling below the disconnection balance.
- (4) **Reconnection of service.** Within one hour of a customer establishing a connection balance or any otherwise satisfactory correction of the reasons for disconnection, the REP shall request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service. The REP's payment mechanism may include a requirement that the customer verify the payment using a card, code, or other similar method in order to establish a connection balance or current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.
- (k) Service to Critical Care Residential Customers and Chronic Condition Residential Customers. A REP shall not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP shall not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.
- (1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential

customer, the REP shall diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP shall not charge the customer a fee for the transition, including an early termination or disconnection fee.

- (2) If the customer is unresponsive, the REP shall transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(1)(2)(A) of this title. The REP shall provide the customer notice that the customer has been transferred to a new product and shall provide the customer the new product's Terms of Service and Electricity Facts Label.
- (l) **Compliance period.** No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a "settlement provisioned meter," as that term is defined in Chapter 1 of the TDU's tariff for retail delivery service, or using a REP-controlled collar or meter shall comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter shall comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.
- (m) **Transition of Financial Prepaid Service Customers.** A REP may continue to provide a financial prepaid service (*i.e.*, one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a

financial prepaid service shall be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer shall be notified by the REP that the customer's current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP shall provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the customer's current prepaid service. The customer shall be notified that the customer will be moved to a new prepaid service, and the REP shall transmit an EFL and PDS to the customer with the notification, if the customer does not choose another service or REP.

This agency hereby certifies that the adoption has 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 amendments to §25.43, relating to Provider of Last Resort (POLR); §25.478, relating to Credit Requirements and Deposits; and §25.498, relating to Prepaid Service are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS on the 30<sup>th</sup> day of JULY 2012.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**ROLANDO PABLOS, COMMISSIONER**