

**PROJECT NO. 37622**

<b>RULEMAKING TO AMEND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CUSTOMER PROTECTION RULES</b>	<b>§</b>	
<b>RELATING TO DESIGNATION OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CRITICAL CARE CUSTOMERS</b>	<b>§</b>	

**ORDER ADOPTING THE REPEAL OF §25.497 AND NEW §25.497  
AS APPROVED AT THE SEPTEMBER 15, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §25.497 relating to Critical Care Customers and new §25.497 relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers with changes to the proposed text as published in the April 16, 2010 issue of the *Texas Register* (35 TexReg 2910). The new rule provides uniform requirements regarding residential customers with certain medical conditions who face disconnection of electric service by a transmission and distribution utility (TDU). Previous commission rules included a critical care and an ill and disabled category, which were not defined. In this rule the ill and disabled category is eliminated, and two categories of critical care customers with different protections are adopted. There were also differences in the procedures for qualifying customers as critical care customers from one utility to another that will be eliminated with the adoption of this rule. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This repeal and new section are adopted under Project Number 37622.

A public hearing on the proposed new section was held at commission offices on May 17, 2010 at 1:00 p.m. Representatives from American Association of Retired Persons (AARP); National Multiple Sclerosis Society: Lonestar (MS Society); One Voice Texas; Public Citizen; Smart UR

Citizens; State Representative Sylvester Turner's staff; State Representative Lon Burnam and his staff; Texas Legal Services Center (TLSC); Texas Organizing Project (TOP); and Texas Ratepayers' Organization to Save Energy (TX ROSE) attended the hearing and provided comments related to the proposed critical care rulemaking. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new section from AARP; AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively Joint TDUs); Alliance for Retail Markets, CPL Retail Energy LP, Direct Energy LP, Texas Energy Association for Marketers, TXU Retail Electric Company LLC, and WTU Retail Energy LP (collectively, REP Group); Steering Committee of Cities Served by Oncor (Cities); City of Houston, Texas (Houston); the Electric Reliability Council of Texas (ERCOT); MS Society; Office of Public Utility Counsel (OPC); Public Citizen; Reliant Energy Retail Services, LLC; TLSC and TX ROSE (TLSC/TX ROSE); TOP; TLSC/TX ROSE noted that its Reply Comments are joined and supported by State Representatives Lon Burnam, Sylvester Turner, and Rafael Anchía; Texas One Voice; The Senior Source; TOP; Smart UR Citizens; and Mr. Bert Walsh.

#### *General Comments*

Houston noted that during the November 20, 2009 workshop, the utilities reported that a relatively small number of customers had a critical care designation. All utilities reported that, once customers are on the critical care list, the utilities' systems automatically reject disconnect notices for nonpayment, and REPs rarely protest those rejections. In general, as discussed at the

commission's workshop in November, the existing critical care rule seems to be working as intended, with the exception of practices that only CenterPoint Energy employs. Houston pointed out that while there were several suggestions on how to improve the commission's existing Critical Care Eligibility Form, it appears that most of these suggestions (such as including a physician identification number) could be handled with changes to the form, without the need to adopt a new rule.

*Commission Response*

**The commission believes that the expansion of the definitions, standardizing the application of those definitions among TDU territories, and requiring uniform processes among TDU territories is important and therefore adopts changes to the rule.**

*(1) This proposal includes two designations: chronic condition and critical care residential customers. Some parties have suggested only one category. Please provide feedback on the benefits of each approach.*

Joint TDUs, Public Citizen, AARP, OPC, MS Society, Reliant, Texas One Voice, and the REP Group supported the two designations.

OPC argued that when customers who may lose their life if their electricity is disconnected, a medical emergency is created, and therefore the disconnection protections in PURA §39.101 apply. OPC went on to state that the real difference in treatment of the two categories is addressed in PUC Project No. 36131, *Rulemaking Relating to Disconnection of Electric Service*

*and Deferred Payment Plans*, regarding §25.483 relating to disconnection of service and notice of disconnection.

TLSC/TX ROSE strongly supported having any person qualify for critical care status who is dependent on medical equipment that uses electricity or who requires heating and/or cooling to maintain life functions. TLSC/TX ROSE stated that how this is accomplished is less important than broadening the definition of critical care beyond those customers dependent on life support equipment powered by electricity. TLSC/TX ROSE also suggested that the current terminology of critical care and ill and disabled could still be used as set forth in current rules, with critical care lasting for one year, and ill and disabled lasting for up to 90 days. TLSC/TX ROSE suggested that using the same terms used today may reduce customer confusion that is always present when programs and terminology change.

The REP Group stated that the proposed rule appropriately defines the two categories of customers with health issues and affords the right protections for each category. The REP Group expressed its concern with ensuring that the most vulnerable customers are afforded sufficient protections under the rule. Specifically, if the customer or someone who resides with the customer depends on an electric-powered device to sustain life, the customer will qualify for critical care designation. The REP Group advocated that when a loss of electricity results in a loss of life for someone at the premises, that the customer should be provided the highest priority treatment. In contrast, while there are a significant number of individuals who use medical devices that consume electricity, a loss of electricity does not necessarily mean that most of them face imminent loss of life. Therefore, the REP group supported the two designations.

*Commission Response*

**The commission adopts a rule with the two designations as proposed - critical care residential customer and chronic condition residential customer. The commission believes that these modified definitions eliminate the prior confusion experienced in the market with an ill and disabled category that was not defined in the commission's rules. The commission agrees with the REP Group that the proposed rule appropriately defines the two categories of customers with health issues and affords reasonable protections for each category. The commission therefore declines to adopt the suggestion by TLSC/TX ROSE that the terminology of ill and disabled as set forth in current rules be retained.**

*(2) If the commission proceeds with two designations, what is the proper treatment or transition mechanism for customers currently on the critical care list prior to their regular renewal date? Which protections should they be afforded? Should they be required to reapply before their regular renewal date?*

Joint TDUs, Public Citizen, AARP, OPC, TLSC/TX ROSE, and MS Society, did not support language that would require customers to re-apply for designation following adoption of this rulemaking. REP Group, Reliant, TLSC/TX ROSE and AARP all suggested some form of a transition letter be sent by the TDU to critical care customers. AARP specifically suggested that the commission develop a transition letter that should be mailed to all current critical care customers explaining the new rule, including any necessary steps that must be taken to apply or renew for a chronic condition or critical care designation. AARP suggested this mailing should

also include the new critical care and chronic condition application form, and added that the TDU should follow up with a second letter if no response is provided by the customer.

OPC suggested that the TDUs should follow the procedures for notification of expiration under the proposed §25.497(e)(9).

TLSC/TX ROSE stated that there would be little value in having customers designated as critical care re-apply, as their information would be essentially the same, except for the one difference on the application - the secondary contact. TLSC/TX ROSE commented that the requirement of the customer to provide a secondary contact, and requiring the REP to notify the secondary contact when there are problems is a positive change that will benefit both the consumer and the REP. Many times people with serious health problems get confused or lack the energy to cope with paperwork and problems. Having a secondary contact that is notified by the TDU and the REP when there is a problem should provide for better maintenance of problem accounts. TLSC/TX Rose commented that information needed to comply with the secondary contact requirements could be obtained through a letter mailed directly to the customer and could be accomplished without having to complete the application process through a physician's office. Having to repeat the application process unnecessarily, is overly burdensome to the consumer and appears to be unnecessary, TLSC/TX ROSE opined.

TLSC/Texas Rose also suggested that the TDUs solicit secondary contact information from the patient at the time the rule is adopted. The Joint TDUs did not support this idea, and explained that the customer is unlikely to respond to a solicitation from the TDU solely on that issue, and if

this suggestion is adopted, then such communication should come from the customer's REP. Joint TDUs added there can be no assurance that secondary contact information will be provided by all current critical care customers.

Reliant recommended that the TDUs send a renewal notice to all existing critical care customers, with an explanation of the changes to the rule, including the new requirement for secondary contact information. Reliant added that if the customer has submitted physician verification of critical care during the last 12 months, additional physician verification should not be required for this renewal. Joint TDUs responded that this suggestion that the renewal not be accompanied by physician verification is unworkable. The physician must designate which category the patient qualifies for and the new procedure requires that the application come from the physician. Joint TDUs added that without the physician's input, the application will be incomplete, and the TDU will be unable to classify the customer.

The REP Group commented that the best process would be for the TDU to send a notice to each existing critical care customer 45 days before the effective date of this section of the adopted rule. The notice should inform the customer about the rule changes, include a certification form, and instruct the customer to recertify under the new rule. The REP Group stated that re-certification is important so that secondary contact information, for example, is obtained. The REP Group suggested that if the customer fails to take action on the re-certification notice within the 45 days, the TDU should send a letter to the customer informing the customer of removal of the critical care designation.

The REP Group added that re-certification is especially important given that the modified rule requires TDUs to contact not only the critical care customer before working a disconnect order, but also a designated secondary contact. This secondary contact can best help the affected customer resolve the situation (*e.g.*, paying an unpaid balance to the REP or finding new accommodations for the affected customer). Thus, it is important that the TDUs obtain secondary contact information for the most vulnerable customers as soon as possible and re-certification is the most appropriate means for obtaining the customer's secondary contact information.

Public Citizen suggested that the commission develop a transition letter that should be mailed to all currently designated critical care customers and their designated representatives, in the event there are issues with medical competency during their illness, explaining the new §25.497, including any necessary steps that must be taken to apply or renew for a chronic condition or critical care designation. Public Citizen recommended that this mailing also include the new critical care and chronic condition application form. They added that since the protections these designations provide are essential to protect the health and well-being of current critical care customers, the TDU should also mail a follow up letter to the customer and the customer's designated representative, and also place a door hanger both at the customer's premises if no response is received, within a reasonable time.

Joint TDUs recommended that all residential customers currently designated as critical care be designated as "Critical Care Residential Customers," but only until the renewal date is reached that would otherwise apply to them under the old rule. Joint TDUs argued that it would be

burdensome to require all customers to reapply, and that the current designation lasts for at most a year. Joint TDUs added that the customer should be given the most protective classification during that time to avoid misclassification if the customer needs the highest level of protection.

*Commission Response:*

**The commission agrees with the Joint TDUs, Public Citizen, AARP, OPC, TLSC/TX ROSE and MS Society that customers who are currently designated as critical care should not have to re-apply for designation following adoption of this rule. Those customers should be afforded the protections they enjoy today, and shall be allowed to re-apply on a schedule consistent with the current renewal cycle. The commission agrees with TLSC/TX ROSE that requiring customers to repeat the application process is overly burdensome and is therefore unnecessary.**

**The commission does not agree with commenters that the TDU should send a transition letter to customers following adoption of the rule. The commission notes that important information regarding the new form, the new rule and associated processes can be provided by the TDU when it sends out the renewal letter as scheduled to existing critical care customers. The commission therefore includes language to this effect in subsection (e)(9). The commission declines to adopt the recommendation by TLSC/Texas ROSE to require the TDUs to solicit secondary contact information from a currently-enrolled critical care customer at the time the rule is adopted. The commission agrees with the Joint TDUs that the customer is unlikely to respond to a solicitation from the TDU solely on that issue.**

*(3) In the proposal, customers who are dependent upon an electric-powered medical device to sustain life and have battery back-up available are not classified as critical care. Should this provision be reconsidered? Please provide alternative recommendations.*

Joint TDUs and Houston agreed that a panel of medical experts should be consulted to determine whether this is a workable criterion for physicians to implement. Joint TDUs added that it is appropriate that the definitions be vetted by medical professionals given that the stakeholders agree that electric service providers should not be in the business of determining which customers have conditions that qualify.

OPC commented that it undertook the task of identifying any other state that uses a similar restriction to their critical care equivalent category of residential electricity customers. OPC was unable to find any other state that would reject a customer based on the availability or even actual possession of a battery. MS Society also commented that in its limited review of U.S. utility companies' policies, they could not find a utility that uses battery backup as a criterion for disqualifying potential life support customers from such a designation.

TLSC/TX ROSE stated that the question is inconsistent with the wording in the proposed rule. The proposed rule states "If a medical device has battery back-up available in the marketplace, the device is not considered to require electric service." TLSC/TX ROSE commented that the proposed language is far more restrictive than the preamble question suggests. Denying critical

care status to customers using life support equipment with battery backup available in the marketplace is contrary to the intent of the rule to assure a continuous supply of electricity.

Texas One Voice expressed concern for the battery-back up language as well as the proposed disconnection procedures. Texas One Voice explained that a blanket exclusion of anyone whose medical equipment could use battery backup would be a weakening of the protections that currently exist. Ms. Wattner, Mr. Adair and Mr. Jackson also expressed concern over the battery back-up proposal. Mr. Smith noted that the batteries that are for medical backup have a life span of two or three years. Mr. Smith stated from personal experience that if they are frequently used, they may not work in an emergency. Mr. Smith added they are never meant to be a replacement for power.

AARP, Cities, Public Citizen, MS Society, TLSC/TX ROSE and OPC opposed the concept of battery back-up as a defining criterion between the two designations. They argued that all consumers dependent on a life saving device should be eligible for critical care designation, regardless of battery availability. MS Society stated that the qualification is irrelevant, as someone's health status (dependent on electricity to sustain life) does not change if they have access to a battery. Cities argued this proposed restriction contravenes the purposes of the rule, which are to protect the lives of critical care customers as well as to provide REPs with the tools to deal with customers who have not paid their bills. Houston strongly urged the commission to seek input from medical professionals before adopting such a restrictive definition. Houston noted that battery backup affords only limited assurance if the battery itself cannot readily be recharged.

Texas One Voice, OPC, AARP, Public Citizen, MS Society, Cities and TLSC/TX ROSE pointed out many concerns with the battery back-up language. They stated that while knowing that battery backups are available and can bring temporary protection, they are no more than what they claim to be - a temporary battery back-up power supply. Texas One Voice argued that battery back-ups do not negate the need for a permanent power supply, and their limitations must be recognized and validated. In addition, these commenters noted that battery back-up devices available in the marketplace might be at prices well out of the reach of a medically-needy person. The availability of such a device, if unaffordable, is of no help to a medically-needy person facing a disconnection. Cities noted that the proposed restriction also poses practical problems for REPs, commission staff and critical care customers, particularly with respect to who is responsible for identifying if a battery back-up is available. OPC pointed out that many customers may not have access to battery backup even if it is available in the marketplace, and that Medicare, Medicaid, and private insurance companies may not cover the costs for the battery backup for life sustaining equipment. It is also unclear from the proposed rule who would be responsible to verify whether a battery exists for a particular medical device, the doctor, the customer, or the TDU. Cities opined that determining the commercial availability of medical equipment is clearly not within the expertise of electric and regulatory professionals.

MS Society recommended that alternatively, the rule could ensure that language is included on qualifying forms or other materials readily available to the customer which state that the customer is responsible for preparing for an outage or emergency, not the REP. Joint TDUs agreed with this suggestion. MS Society also recommended that for each qualifying life support

customer, the notification sent to customers should outline the customer's entitlements, as well as the expectations of the REP & TDU.

Joint TDUs commented that this discussion highlights the need for the commission to first articulate the goal of the rule and the benefits that qualifying customers receive in order that appropriate criteria can be developed for matching the patient to the level of protection provided. Joint TDUs opined that the higher the level of protection, the more important it is that the definitions be correct. Joint TDUs added that customers should have battery back-up for their own safety regardless of issues identified by commenters in this rulemaking, because continuous electric service can never be guaranteed and the battery allows time for the patient to make other arrangements when service is unavailable.

OPC also recalled the workshop held in 2009, in which CenterPoint stated it was applying a different standard of scrutiny regarding critical care applications than the other TDUs. During the workshop CenterPoint offered to begin applying the same scrutiny as the other TDUs. OPC commented that the commissioners seemed appreciative of the utility's offer and agreed that the CenterPoint standards were too strict. The commissioners also appeared concerned that CenterPoint judged the critical care applications based on the need for a life saving device without consideration of whether a lack of electricity would create a dangerous condition as the current rule provides. OPC stated that it is perplexing that the Commissioners previously wanted CenterPoint to raise its standards to those of the other TDUs that approved all complete forms, and now the proposed rule will lower the standards to those of CenterPoint.

Joint TDUs and the REP Group agreed that where battery back-up is available for a medical device, the customer should not be classified as a Critical Care Residential Customer on the basis of the need for the equipment. Joint TDUs argued that the proposed rule points out that if battery back-up is available, the customer is not dependent upon electric service to keep the equipment running. This designation is appropriately reserved for those who have no other option than to rely on electric service. The REP Group commented that the availability of battery-powered backup is an important consideration to ensure the highest level of protection to those critical care residential customers unable to rely on battery-powered backup.

The REP Group stated that maintaining the back-up battery provision in the definition encourages customers to take primary responsibility for themselves. Those customers who are most in need of electricity should receive the highest level of protection. The REP Group added that many at-home medical devices, including ventilators and heart pumps, have internal batteries. Battery back-up provides time for customers to implement more permanent back-up plans. The REP Group opined that devices that do not have battery back-ups available clearly pose a higher risk of mortality to a patient if loss of life is imminent without the electric-powered medical device.

The REP Group emphasized that the critical care designation serves three primary purposes: (1) prioritized restoration in the case of unplanned outages, like hurricanes; (2) advance notification in the case of planned outages, like regular maintenance work; and (3) specific advance contact by the TDU if the customer is subject to disconnection for non-payment. The REP Group suggested that none of these purposes guarantees the customer an uninterrupted power flow. The

primary protection afforded to customers who meet the proposed definition of critical care is advance notification of a loss of power, and advance notification will occur before a disconnection for non-payment.

*Commission Response:*

**The commission declines to adopt definitions that use temporary battery back-up as a criterion to differentiate between the critical care and chronic condition categories. The commission agrees with commenters that the battery back-up is temporary, may be unaffordable for customers, and may not be reliable, and including this criterion would be administratively burdensome to apply in the market. The commission agrees that the critical care customers should receive the highest level of protection. The commission recognizes the comments by the REP Group that the critical care designation and its benefits do not guarantee the customer an interrupted power flow. The commission agrees with MS Society and Joint TDUs that that it is the customer's responsibility to prepare for an outage or an emergency, not the REP's responsibility. The commission also agrees with MS Society that the critical care form could include language to state that the customer is responsible for preparing for an outage or emergency, and not the REP, and it will address this requirement within the compliance project, to be opened up following the adoption of this rule.**

*Subsection (a)*

Houston urged the commission to rely on informed medical expert testimony before it adopts changes that could adversely impact the health or safety of at risk customers. Adoption of a rule

containing confusing or variably interpretable language will arguably produce no more desirable results than the differing definitions electric utilities currently use.

Joint TDUs recommended that the rule create defined terms for types of customers covered by the rule, that the defined terms be capitalized, and that they be used in full each time that group of customers is referred to in the rule; for example, critical care customers should be referred as “Critical Care Residential Customers.” Joint TDUs suggested that if these definitions are not made clear, that there is a danger that the rule will be interpreted incorrectly. Joint TDUs also recommended that the definition of a “Critical Care Industrial Customer” be removed. They argued it is redundant to the definition of “Critical Load Industrial Customer,” and creates uncertainty when the commission refers to critical care customers. Alternatively, if the definition remains, Joint TDUs argued that it is particularly important that the rule clearly state what kind of critical care customer is being referred to in other sections of the rule.

TIEC stated that the current process for qualifying industrial customers for critical care designation has worked well, and the commission should ensure that the proposed revisions to §25.497 do not change this process. Joint TDUs agreed, and recommended the better approach is to bring forward most of the language from the existing rule that covers these customers. TIEC commented the current rule provides that critical care industrial customers qualify for protection through a collaborative process between the REP, customer, and the TDU. The definition of critical care industrial customer also specifies that these customers qualify for notification of interruptions or suspensions of service as provided in certain sections of the TDU’s tariff. This process should be maintained in the proposed revisions to the rule. TIEC

therefore recommended that the definition of a critical care industrial customer contained in the current version of §25.497 be restored. TIEC further recommended removing the definition of a critical load customer as it is unnecessary if the critical care industrial customer definition is reinstated, and neither the proposed rule nor §25.483 provides any protections for critical load customers. TIEC clarified that the proposed revisions will maintain the status quo for critical care industrial customers and will not impact the commission's goal to create uniform standards for the designation of critical care residential customers.

Joint TDUs recommended that industrial customers be referred to as "Critical Load Industrial Customers" rather than "Critical Care Industrial Customers."

Cities commented that they and other local governments provide essential public safety functions to their citizens. Fire and police services, water and wastewater facilities are all crucial to the health of the citizens served by cities and other local governments and cannot function in the event of electric service disconnection. The current rule defines the process by which crucial public safety loads receive critical care designation. However, the proposed rule entirely removes the language defining that designation process. The proposed rule also removes key references to the transmission and distribution utility (TDU) tariff. The language omitted from the proposed rule defined how disconnection of public health and safety facilities would occur.

Houston commented that as the largest city in Texas, it receives many calls on electricity issues and has developed experience on how the commission's rules affect its citizens, particularly citizens with serious medical conditions. Houston believes that the proposed definitions for

critical care residential customer and chronic condition residential customer will confuse and potentially unduly restrict the persons defined. Further, Houston expressed concern that if the definition of ill and disabled contained in existing §25.483(g) were eliminated, customers temporarily unable to pay their bills due to a medical condition would see their current protections significantly lowered. Houston believes that, with one exception, the current treatment of critical care customers in §25.497 and ill and disabled customers in §25.483(g) is superior to language contained in the proposed rules and urged the commission not to adopt either provision. Houston recommended more work be done before adopting these definitions to determine how they impact existing critical care customers and whether these definitions may be overly restrictive. Houston suggested that commission staff should undertake an analysis of how these existing critical customers could be impacted by the new definitions and whether customers who need critical care status would be removed because of the overly restrictive definitions contained in the proposed rule.

The REP Group responded that the proposed designations are anything but overly restrictive as they will permit more customers than are currently allowed to receive extended notice of disconnection of service. It is appropriate to distinguish between critical care and chronic condition customers to ensure each group of customers receives the appropriate protections. As to the City of Houston's request for additional study, the REP Group noted the numerous stakeholder meetings with commission Staff, Commissioner Nelson's office, and others regarding these designations. The critical care and chronic condition paradigm has been fully vetted.

*Commission Response*

**The commission does not agree with Houston that the proposed designations are narrow, overly restrictive or confusing. Rather, the commission concludes that the adoption of the critical care residential customer and critical care chronic condition customer should eliminate previous confusion in the market due to inconsistent application of the critical care category across TDUs. Professional medical personnel will be applying the definitions in deciding whether to sign a form on behalf of a customer, and the commission is confident that they have the knowledge and training to apply them appropriately. The commission agrees with the REP Group that the numerous stakeholder meetings and discussions at workshops and public hearings have provided the opportunity to fully review the two designations. The commission acknowledges the comments by the Cities regarding the critical load and public safety customer language, as well as references to the Tariff, and has included those provisions in the definitions. The commission has also restored the language for industrial customers, as noted by TIEC and Joint TDUs. The suggestions regarding the wording for chronic condition and critical care residential customers made by the Joint TDUs are adopted by the commission as well for consistency.**

*Subsection (a)(3)*

OPC suggested striking the 90 day designation provision and allowing the treating physician to fill in a specified period of time, up to one year, for the designation of chronic care. This will allow the doctor some flexibility in addressing the patient's condition. MS Society agreed with OPC, and added that conversations related to the length of time necessary for this designation is one that takes place between the doctor and the patient, and not with the TDU or REP. MS

Society recommended that the length of one year is appropriate for those who have been diagnosed with a life-long illness. Joint TDUs strongly recommended against this concept because the level of complexity it would create in implementation and the disparity it would create between customers. Joint TDUs suggested alternatively that if 90 days is too short for patients who do not have a “life-long” condition, a more workable solution would be to apply the one year designation to all customers qualifying for this status, rather than creating numerous classifications that must be maintained on an ongoing basis.

TLSC/TX ROSE supported the chronic condition category, as those customers who currently qualify for “Ill and Disabled” status would qualify in the proposed rule under chronic condition for at least 90 days. TLSC/TX ROSE clarified that its support for the proposed definitions is based on the understanding that the ill and disabled protection is not eliminated, but subsumed under the chronic condition category.

### *Commission Response*

**The commission adopts a definition for Chronic Condition Residential Customers in this rule. As noted by TLSC/TX ROSE, the commission believes that many, if not all, customers currently receiving disconnection protection through the “ill and disabled” language will be subsumed under this chronic condition category. The commission does not agree with the recommendations by OPC and Joint TDUs regarding the time the designation may last for customers under this designation, and adopts a definition that allows the physician to designate the condition as a life-long condition, in which case the**

**protection lasts for one year (unless the customer no longer resides in the home).  
Otherwise, the designation by the physician will last for 90 days.**

Reliant commented that use of the word “customer” in the proposed rule is inconsistent with the use of that word in other commission rules. Joint TDUs agreed with Reliant. Section 25.471(d)(3) defines “customer” as “A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse...” In contrast, both proposed §25.497(a)(5) and (6) can be read to include a “person who currently resides and has been in residence with that customer for the most recent three consecutive months” as a customer. Reliant argued that no other commission rule confers the rights or responsibilities of a customer upon any person residing in the household; therefore these rights and responsibilities are limited to the account-holder and the account-holder’s spouse. Reliant recommended that principle be retained in proposed §25.497.

Reliant agreed that residential critical care or chronic condition status should be limited to homes where the person with the serious medical condition is a long-term resident, and not a short-term visitor. TLSC/TX ROSE agreed with Reliant. Reliant argued, however, that the three-month *prior residency* requirement is not an appropriate standard for that determination; one could easily envision a scenario where the onset of a serious medical condition causes a person to take up residence with a family member. Public Citizen agreed. In that case, Reliant commented the person in question would not have been in residence for “the most recent three consecutive months” but would still be in need of the critical care (or chronic condition) protections. Joint TDUs and Public Citizen agreed.

The REP Group recommended that the phrase “is diagnosed by the customer's physician” should be changed to “is diagnosed by a physician”, and explained that in practice it will be the physician of the person meeting the definition, which may not be the customer, who makes the diagnosis.

*Commission Response*

**The commission agrees with the REP Group that the phrase in this definition should be modified to state “is diagnosed by a physician”. The commission further agrees with the comments by Public Citizen, Reliant, TLSC/TX ROSE and Joint TDUs that the rule should state that the definition of “customer” should apply to a residential customer who has a person permanently residing in his or her home - and strikes the language referring to the three-month prior residency.**

*Subsection (b)*

Joint TDUs suggested changes to this subsection, to clarify that the process requires the physician to submit the application, not the customer, and REP Group agreed. Additional language was proposed by Joint TDUs, making it clear that not only must an application be submitted, but that it must be done in accordance with all of the requirements of the rule. Joint TDUs provided these changes in order to prevent misunderstanding among customers who otherwise might assume that they could submit an application in a variety of ways.

*Commission Response*

**The commission agrees with the suggested changes by the Joint TDUs and the REP Group that clarify the process for the physician's submittal of the application, and modifies this subsection accordingly.**

*Subsection (c)*

OPC suggested this section include a provision in the rule that, in the event of a Governor declared emergency or disaster such as a hurricane or flooding, the utilities be required to provide the list of critical care customers to the first responders. OPC also suggested that the application form include a notice explaining to the customer that in such events, the utility will disclose the customer's name and service address to the first responders. OPC explained that including this direction in the rule as well as retaining the customers' consent on the application form will hopefully open the door for the utilities to provide that information to emergency crews that can assist the customers during emergencies. Joint TDUs agreed that this could be helpful to patients in the event of emergencies such as storms, but suggested that there may be confidentiality concerns with this approach. Joint TDUs recommended this issue be carefully explored before adopting such a requirement.

Texas One Voice asked that an information sharing agreement be established between the commission and other government agencies that act as first responders in times of disaster. Texas Once Voice pointed out that after a disaster such as Hurricane Ike, customers may go weeks without power while the TDUs work diligently to repair damaged power lines and restore electricity. Texas One Voice explained that if the names and contact information of individuals

on the critical care list are shared after a disaster, emergency responders will be able to either evacuate people to a safe place or provide them with potentially life-saving generators. Cities, counties and the state have spent millions of dollars establishing highly trained, professional and competent first responder programs that are charged with prioritizing and meeting the needs of the community in times of disaster. Utilizing these programs is a way to ensure that customers who are known to have severe health problems are protected in times of disaster, Texas One Voice explained.

*Commission Response*

**The commission declines to adopt the proposed language that would require TDUs to provide the critical care lists to first responders as recommended by Texas One Voice and OPC. However, the commission agrees that this is a reasonable recommendation, and clearly will benefit critical care residential customers during an emergency situation. OPC suggested that customers' consent to this practice should be addressed in the creation of the critical care form, and the commission agrees. Because of the logistical concerns as well as customer privacy and confidentiality concerns, noted by the Joint TDUs, the commission concludes that the process for turning lists over to first responders should be more thoroughly considered in the compliance project, to be opened following adoption of this rulemaking. The commission is concerned that the current substantive rules addressing proprietary customer information, most notably §25.272(g)(1), relating to privacy of customer information, may prohibit a TDU from providing the list. Therefore, the commission finds that the upcoming project to develop the critical care form shall address**

**these issues, as well Joint TDUs' concerns relating to how this information would be provided to the correct people.**

TLSC/TX ROSE stated that the intent of this rule is to assure a continuous supply of electricity to critical care customers. Joint TDUs responded that the assumption seems to be that the power will never go out for those on the critical care list. No one can guarantee an uninterrupted or continuous power supply as outages occur, storms take down power lines, and equipment malfunctions. Joint TDUs commented there is a distinction between a "disconnection" of service that occurs intentionally, perhaps as a result of a failure to pay, and disruption of service caused by an outage or other uncontrollable event. Joint TDUs opined this needs to be made clear and customers need to understand the need to prepare for these events.

*Commission Response*

**The commission does not agree with TLSC/TX ROSE that the intent of this rule is to assure a continuous supply of electricity to critical care customers. The intent of this rule is to establish clear and reasonable rules for customers to be protected from disconnections of electric service that pose a threat to their life and health as a consequence of serious medical conditions, ensure consistent application of the standards across TDU territories, and standardize the application process for customers' applying for these protections. The commission agrees with the Joint TDUs that no one can guarantee an uninterrupted or continuous power supply as outages, storms and equipment malfunctions occur, and the primary impact of this amendment will be to afford protections from disconnection or additional notices, related to disconnections for non-payment, by virtue of amendments**

**that the commission is adopting to §25.483, relating to Disconnection of Service. Further, a customer's designation as a critical care or chronic condition customer, consistent with this rule, does not relieve the customer of the responsibility to pay the bills for electric service. The REP is not required to provide power to these customers without payment, and a REP may pursue disconnection for these customers, consistent with §25.483, in the event of non-payment.**

Joint TDUs stated that because of the four proposed definitions, readers of this subsection will be looking for the portions of the rule that apply to those customers. Rules of construction applicable to statutes and rules allow for meaning to be implied when not otherwise stated, and therefore, this section should expressly state the benefits that apply to industrial public safety customers in order to avoid misinterpretation. Joint TDUs added that the tariff sections that apply to Critical Load Customers should be identified and that it should be made clear that the remainder of the rule does not apply to these customers. Joint TDUs also recommended the rule reference Sections 4.3.8.1 and 5.3.7.1 of the TDU Tariff, as well as those named in the Proposal for Publication.

REP Group and MS Society both noted that one of the benefits of being on the critical care list is priority service restoration. While MS Society recognized that priority restoration is not guaranteed, Joint TDUs responded that they are very concerned that mention of this as a benefit of critical care status sets up a dangerous and incorrect expectation. Joint TDUs explained that with expansion of the critical care lists, the ability to provide priority restoration is severely compromised because there could be a critical care customer on every feeder. Thus, not only can

priority restoration not be guaranteed, it should not be expected, and it should certainly not be promised. Moreover, it needs to be clear that to the extent priority restoration is possible, it only applies to outages, not restoration after disconnection of service at the request of the REP. Joint TDUs requested clarification of this in the preamble.

Joint TDUs further recommended that this part of the rule should also clearly state that critical care status does not guarantee continuous electric service in order to avoid any confusion or misunderstanding. This will protect customers who might otherwise assume that they are not at risk for interruptions of service which, the Joint TDUs pointed out, as is recognized in the Tariff, cannot always be avoided. Joint TDUs commented that those customers need to be made aware that they must continue to take responsibility for their electrical needs.

*Commission Response*

**The commission adopts language in subsection (c)(4) to specify that designation as a Critical Load Customer, Critical Care Residential Customer, or Chronic Condition Residential Customer does not guarantee the uninterrupted supply of electricity. The commission agrees that customers need to be made aware that they must continue to take responsibility for their electricity needs. The commission further agrees with the Joint TDUs that priority restoration cannot be guaranteed. The commission notes that with the installation of advanced meters in the TDU territory, the ability to prevent disconnection no longer needs to be done at the feeder level - it can be managed at the meter level, with enhancements to the TDU's back-office operations. The commission concludes that this is**

**an important benefit of advanced meter deployment, and expects this functionality to be developed during the deployment period.**

**The commission also adopts the non-substantive clarifications suggested by the Joint TDUs, and also adds the additional references to the Tariff in subsection (c)(1) and (c)(2).**

*Subsection (d)*

TLSC/TX ROSE supported the proposed procedure regarding notice to customers in this section. The Joint TDUs recommended that the defined terms be used consistently in this section and throughout the rule, and made suggested wording changes to that effect.

Reliant commented that the notice required by a REP three times per year regarding the availability of critical care and chronic condition designations is overly burdensome, and should be stricken from the proposed rule. Reliant argued that there are already numerous other customer notifications required of REPs, and requiring a notice to be sent three times per year to every residential customer about a designation for which a relatively small number of people are qualified is an inefficient use of resources. Reliant calculated that with all of the existing requirements, this additional requirement would mean that during the five months of June through October, a REP will display nine mandated messages on its customer bills.

Lastly, Reliant argued that limited space exists on a customer bill and within a billing envelope to display messages and provide bill inserts. Case law provides that billing envelopes are the property of the provider sending the bill, and therefore each additional message required by the

commission serves to reduce the space available for the REP to communicate with its customers, restricting commercial speech within the REP's own bill. Reliant concluded that the only way the government can regulate commercial speech is if such regulation directly advances a governmental interest, and the regulation is not more extensive than necessary to serve that interest. Reliant opined that that while it can be argued that the State may have an interest in sending customers numerous messages in REP bills, clearly, the requirement, which unreasonably limits the amount of space that a REP can use for its lawful commercial speech, is more extensive than necessary to serve that interest.

*Commission Response*

**The commission agrees with Reliant that the proposed requirements that a REP provide notice of customers' rights regarding the availability of critical care and chronic condition designations is overly burdensome three times a year, and adopts language to require REPs to provide information to residential customers two times a year.**

*Subsection (e)(1)*

TLSC/TX ROSE proposed minor amendments to the wording related to electronic transmission of the application from the physician to the TDU. They expressed support for the use of electronic submissions, but did not agree with language suggesting that a physician without the ability to submit the form electronically would result in the prevention of the processing the application. Joint TDUs did not agree with this suggestion, and stated that requiring electronic submission of the form is in the customer's best interest - as it is the quickest method of getting the form to the TDU, and ensures that it is received at the right place at the TDU's operations. It

is also the best way to ensure that the doctor's recommendation is accurately represented on the form.

OPC stated that it appreciated the commission's efforts in including a contact phone number on the form and offered one minor revision. The last sentence in the paragraph explains that the application must include a telephone number for the physician or customer to call in the event the physician or customer has logistical questions regarding the form. OPC suggested a minor edit to clarify that the telephone number should be one from the TDU.

The REP Group stated that in situations where the form is mistakenly submitted to the REP instead of the TDU, the application form should be designed to include contact information only for the TDU. The REP Group stated that REPs should not be responsible for receiving the application forms. The REP Group therefore recommended deleting the proposed rule's two business day timeline for REPs to forward errant application forms to the TDU. Not only is expedited mail to ensure two-day delivery expensive, it is unlikely that the REP would be able to route the form to the correct person at the TDU for processing on the day it arrived in error. The REP Group also recommended that the critical care/chronic condition application form should be designed to prevent errors that would result in a REP receiving the completed form, and REPs should not be held to a strict time standard for forwarding the form to the TDU if a form is received in error.

Joint TDUs agreed that if they will be responsible for answering questions about the application form, this should only occur during normal business hours.

*Commission Response*

The commission concludes that electronic submission of the form is in the customer's best interest, as noted by the Joint TDUs. The commission agrees with OPC's suggested clarification regarding the TDU telephone number and modifies subsection (e)(1) accordingly. The commission agrees that REPs should not be responsible for receiving applications, and that the form should be designed to prevent errors including the possibility of the customer sending the form to the REP by mistake. However, the commission does not agree with the REP Group's recommendation that REPs should not be held to the two business day standard for forwarding the form to the TDU, and retains that requirement in this paragraph. The commission acknowledges the comments by the REP Group that the form may be mistakenly submitted to the REP and not the TDU and agrees that the REP is not responsible for receiving the application forms; however, the commission retains the two-day requirement for forwarding the form to the TDU. This is so the customer's application can be processed by the TDU in a timely manner.

*Subsection (e)(2)*

TLSC/TX ROSE stated that the language in this paragraph which allows the TDU to determine that the form is materially complete and still request additional information "that is necessary to make a final determination on the application" is too broad and is counterintuitive to subsection (e)(6) which specifically states that the "TDU shall not challenge the diagnosis of the physician." In effect, the physician has determined that the critical care status is appropriate. TLSC/TX

ROSE therefore recommended that if an application is materially complete, there should be no need to request additional information. Joint TDUs agreed.

Joint TDUs recommended wording changes to correctly reflect the role of the TDU in processing the application. Joint TDUs clarified that the TDU is only responsible for assessing whether the form is incomplete, and OPC agreed.

### *Commission Response*

**The commission finds that the language originally proposed in this subsection is too broad. The commission agrees with TLSC/TX ROSE and Joint TDUs that if an application is materially complete, there should be no need for the TDU to request additional information. Therefore, the commission adopts changes in this paragraph to require the TDU to evaluate the form for completeness, and if the form is incomplete, the TDU shall mail the form to the customer no later than two business days with an explanation in writing that information is needed to complete the form.**

### *Subsection (e)(3)*

The Joint TDUs recommended changes to this subsection that simplify the rule while providing as much or more protection to customers applying for critical care status. The Joint TDUs proposed to designate any customer who has not had final action taken on its application within two days, with the highest level of protection while the process continues. This assures that the customer will receive protection in two days. The Joint TDUs also added a provision that specifies that the temporary designation lasts 14 days if the application form is returned to the customer as incomplete, and TLSC/TX ROSE agreed.

*Commission Response*

**The commission agrees with the recommendation by the Joint TDUs that if processing of a form is not completed within two business days from receipt of the form, the customer shall be designated as a Critical Care Residential Customer on a temporary basis, pending final designation by the TDU. The language also specifies that the temporary designation shall last for 14 days if the application is returned to the customer as incomplete, as recommended by the Joint TDUs and TLSC/TX ROSE.**

*Subsection (e)(4)*

TLSC/TX ROSE stated that this paragraph should be amended to only apply to materially incomplete applications. The Joint TDUs recommended this paragraph be deleted in its entirety. Joint TDUs explained that if the form is complete, there is no other information the TDUs needs or will request. If additional information is required, then the application is incomplete and will be returned pursuant to subsection (e)(3). Joint TDUs added that inclusion of this provision seems to indicate that the TDU is doing something other than merely processing a complete application, and OPC agreed.

Reliant commented that the proposed language regarding the form should be modified so that a form is considered incomplete if any of the required items are not completed in full. Additionally, Reliant stated it is not clear which “name” (customer or medical patient, if different) and “signature” (customer or physician) is being sought. Joint TDUs responded that they agree that some of the references can be reworded to be more clear, however, it is not necessary to state repeatedly that the information on the form must be “complete”. Joint TDUs

added that even if not intended, this appears to set a standard designed to prevent a customer from qualifying. In addition, when the TDU processes the application, it will have no way of knowing if, for example, the customer's provided name is “complete.”

*Commission Response*

**The commission adopts a revised subsection (e)(4) that specifies the reasons a TDU shall consider a form incomplete for a Critical Care or Chronic Condition Residential Customer. The commission clarifies the language to specify the name of the person for whom the protection is sought, the contact information including secondary contact information, the physician signature, and the designation by the physician and the medical board license number of the customer’s physician. Any additional mandatory information required for completeness will be clearly identified on the form, and finalized in a compliance project following the adoption of this rule by the commission. These revisions to this paragraph address the comments provided by Reliant, Joint TDUs and OPC. The commission also clarifies that the utility is not performing any role other than processing a complete application, as Joint TDUs and OPC commented.**

*Subsection (e)(5)*

TLSC/TX ROSE stated that while this language allows the TDU to ask questions about inconsistencies in the information provided in the application, the ability to require that the applications be materially complete and consistent is sufficient review for the TDU. TLSC/TX ROSE went on to state that they support a rule that would update the status of customers with

conditions that are incurable but not require the customers to complete the application process through their physician's office.

Joint TDUs recommended that this paragraph be modified to clarify the role of the TDU and simplify the process for designation of critical care customers. Joint TDUs recommended that this section of the rule require the TDU to "apply the physician's designation" as indicated on the form.

*Commission Response*

**The commission agrees with TLSC/TX ROSE that the ability for the TDU to ask questions about inconsistencies, and to require that the applications be materially complete is sufficient review for the TDU. The commission adopts language consistent with this in subsection (e)(4) and (5). The commission agrees with the Joint TDUs' recommendation and adds to subsection (e)(5) the requirement that the TDU shall "apply the physician's designation," as indicated on the form.**

*Subsection (e)(6)*

The Joint TDUs pointed out that there is currently no "standard market transaction" that can be used to notify a new REP of the secondary contact information of a critical customer as required in this subsection. The Joint TDUs also pointed out that there is currently nothing in the switch process that flags the switch request as being applicable to a customer designated as critical care. The TDUs will have to find a manual process for identifying that a switch has occurred that requires this notification, and for notifying the REP of the secondary contact information. The

Joint TDUs stated they will work with the commission Staff and the REPs to develop an appropriate process, but until there is a new TX SET release, it will not be possible to comply with this through a “standard market transaction.”

The Joint TDUs also highlighted an important concern regarding switches for critical care customers. They stated when there is a “Move-in” transaction for a premises, any critical care designation related to that premises is removed. Therefore, Joint TDUs stressed it is important that a Move-in transaction not be used as a substitute for a switch for these customers.

*Commission Response*

**The commission notes that until there is a new TX SET release, the TDUs will have to comply with this provision through manual processes. The commission agrees with Joint TDUs that a move-in transaction shall not be used as a substitute switch mechanism.**

*Subsection (e)(9)*

The Joint TDUs recommended that an exception be included in this paragraph for customers who are grandfathered in as Critical Care Residential Customers when the rule takes effect. It is not likely that secondary contact information will be available for these customers and providing notice to secondary contacts should not be required for these customers until they have re-qualified under the new rule.

The Joint TDUs and the REP Group agreed that language can be added to this subsection requiring that the renewal notice inform the customer that the designation will expire if the form

is not returned by the expiration date, and that the REP will be notified when the customer is no longer classified as critical care.

*Commission Response*

**The commission agrees with the Joint TDUs that existing critical care customers, who are grandfathered in as Critical Care Residential Customers, should not have to provide secondary contact information until they have re-qualified under the new rule. The commission also agrees with Joint TDUs and the REP Group that the renewal notice should inform the customer of the expiration of its designation if a completed form is not submitted, and has modified the rule accordingly.**

*Subsection (f)*

Ms. Hamilton, Mr. Paez, Ms. Layton and Mr. Jackson stated that the new rule should not allow for the disconnection of critical care customers under any situation. Mr. Paez commented that he has been connected to a machine that requires electricity for his health. Mr. Paez explained that he was not dependent on that machine to sustain life, but it helped him quite a bit, and if his electricity was disconnected, his recuperation time would have increased as a result of not having that machine.

AARP commented that in order to effectuate remarks made by Chairman Smitherman at the Public Hearing on May 17, 2010, the commission should strike the last clause in this subsection which explicitly states a critical care or chronic condition customer's service may be disconnected pursuant to §25.483. MS Society expressed appreciation for Chairman

Smitherman's comments that the policy should continue that these customers are not disconnected, because loss of life is the biggest concern.

AARP stated that disconnecting customers that have been found to need electricity to prevent the impairment of a major life function or sustain life is very serious. AARP argued that disconnecting these customers appears to be in conflict with PURA §39.101(a)(1), which states that customers are entitled to "safe, reliable and reasonably priced electricity, including protection against service disconnections in an extreme weather emergency as provided by Subsection (h) *or in cases of medical emergency* or nonpayment for unrelated services." Public Citizen agreed. AARP added that if the commission proceeds with explicitly providing for disconnecting chronic condition and critical care customers as proposed under §25.497 and proposed §25.483 (revisions under consideration in PUC Project No. 36131), at a minimum the TDU should be required to get the commission's approval before disconnecting. TLSC/TX ROSE and Public Citizen supported this recommendation. AARP noted that in Rhode Island, utilities must obtain written approval from the Division of Public Utilities and Carriers before disconnecting households where all residents are aged 62 or older or any resident is handicapped. Joint TDUs responded that this scrutiny indeed may be needed when a REP requests the TDU to disconnect a customer for whom electric service is a necessity to maintain life, and this approach should be considered in this rulemaking.

OPC, Public Citizen, AARP, MS Society and TLSC/TX ROSE commented that they believe that it is contrary to PURA §39.101(a) to disconnect a customer whose life will be threatened if their electric service is disconnected. Therefore, OPC suggested a modification to clarify that the

critical care customer has an obligation to pay, but will not be disconnected. Joint TDUs responded that this highlights the concern of the TDUs in carrying out a REP's request to disconnect such a customer.

TLSC/TX ROSE agreed with the language relating to the customer's obligation to pay for electric service, but strongly opposed the language allowing for disconnection of customers. TLSC/TX ROSE opined that the primary purpose of this rule is to protect the customer from disconnection. TLSC/TX ROSE concluded that if adopted, the disconnection procedure would become the number one collection tool for REPs. TLSC/TX ROSE further recommended that the disconnection language be deleted, and new language be added to require the REP to work with the customer and the secondary contact to arrange workable payment arrangements and assist as necessary, by providing information on available sources of bill payment assistance.

### *Commission Response*

**The commission does not agree with TLSC/TX ROSE that the purpose of this rule is to protect customers from disconnection. The designation as a Critical Care Residential Customer does not guarantee an uninterrupted power supply, nor does it relieve the customer from the responsibility of paying his or her bill. Customers have an obligation to pay for the electric service that they receive. The commission does not agree with the recommendation by Public Citizen, AARP, TLSC/TX ROSE and Joint TDUs that if the TDU is requested to disconnect a critical care customer, it must receive approval from the commission before effectuating a disconnection. The commission rules are intended to provide rules for general application that do not require recourse to the commission on a**

**routine basis. The recommendation by TLSC/TX ROSE that language be included in this subsection to require the REP to work with the customer and the secondary contact for payment arrangements and bill assistance is not adopted by the commission in this rule, as this topic and related issues are being addressed in Project Number 36131, *Rulemaking Relating to Disconnection of Electric Service and Deferred Payment Plans.***

*Subsection (g)*

ERCOT commented that it does not currently collect customer information that delineates critical care customers into Chronic Condition and Critical Care Residential Customer designations and secondary contact information to facilitate switch and move-in transactions. ERCOT would have to make system changes to send and receive the new customer information to and from the TDSPs and REPs. ERCOT also noted that the TDUs and REPs will also need to make system changes to enable all of the parties to send and receive the new customer information.

ERCOT pointed out that the TX SET changes as proposed will be bundled with additional TX SET changes resulting from other approved rule changes and market improvements that have been approved in the ERCOT governance process. As with all TX SET releases, ERCOT clarified that the TX SET changes will require at least a 14-month implementation timeline. These proposed changes to market participants systems' which will provide for automation necessary to process large volumes for the switch-hold, as well as other improvements will be included in the next TX SET release, scheduled for go-live in the first half of 2012.

The REP Group pointed out that the existing critical care rule requires that customers be informed in the renewal notice that “unless renewed by the date specified by the TDU, the customer's critical care designation will expire” and the commission should include a similar provision here. In addition, subsection (g) should be modified to ensure that the REP receives notification when a critical care or chronic condition designation expires and is not renewed by the customer.

The Joint TDUs strongly recommended that this subsection be made more generic in order to not unnecessarily tie the hands of the ERCOT working groups that will be required to implement this provision. Joint TDUs explained that it has been demonstrated repeatedly that including this level of specificity in a rule hinders rather than helps the process of developing the transactions. They added that there was general agreement in the stakeholder meetings that it was better to simply state that transactions should be developed, without specifying how it should be done.

### *Commission Response*

**The commission acknowledges the comments by ERCOT that it does not currently collect customer information that delineates critical care customers into Chronic Condition and Critical Care Residential Customer designations and secondary contact information to facilitate switch and move-in transactions, and that in order to track this information, changes will need to be made in TX SET that affect REPs, TDUs, and ERCOT. The commission agrees with the Joint TDUs that the description in the rule of the needed changes in TX SET should be generic, and modifies the language in this paragraph accordingly. The commission also agrees with the REP Group that customers must be**

**informed in the renewal notice that unless their status is renewed, the customer's critical care designation will expire, and it has added this provision in subsection (e)(9).**

*New Subsection (h)*

The REP Group recommended that the effective date for this section should be the same as for revised P.U.C. SUBST. R. §25.483, *Relating to Disconnection of Service*, which is being amended in Project No. 36131. REP Group pointed out that a December 1, 2010 effective date is proposed in Project No. 36131, and explained that the changes in the two projects are interrelated and must go into effect at the same time so customers are provided the benefits described in the two rules. Joint TDUs responded that neither of the rules should be implemented until the market has worked out the issues associated with doing so, however, and until the rules are final, market participants cannot evaluate what will be required.

ERCOT commented that the effective date adopted in this rule should specify an exception in subsection (g), to account for the 2012 TX SET Release and associated switch-hold automation which will not be ready by December 2010.

*Commission Response*

**The commission does not agree that there needs to be an exception for this subsection as ERCOT recommended - the language specifically recognizes that the ability to flag critical care cannot go into effect until the next TX SET release. The commission agrees with the REP Group that the changes in this rule and in the rulemaking addressing changes to**

**§25.483 are interrelated, and therefore adopts a January 1, 2011 effective date for §25.497 and notes that it will adopt an identical effective date for the amendments to §25.483.**

All comments, including any not specifically referenced herein, were fully considered by the commission.

This repeal and new section are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to the termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.101.

**§25.497. Critical Care Customers (Repeal)**

**§25.497. Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers.**

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

- (1) **Critical Load Public Safety Customer** -- A customer for whom electric service is considered crucial for the protection or maintenance of public safety, including but not limited to hospitals, police stations, fire stations, and critical water and wastewater facilities.
- (2) **Critical Load Industrial Customer** -- An industrial customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical load industrial customer."
- (3) **Chronic Condition Residential Customer** -- A residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as having a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the person's medical condition. If that serious medical condition is diagnosed or re-diagnosed by a physician as a life-long condition, the designation is effective under this section for the shorter of one year or until such time as the person with the

medical condition no longer resides in the home. Otherwise, the designation or re-designation is effective for 90 days.

- (4) **Critical Care Residential Customer** -- A residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life. The designation or re-designation is effective for two years under this section.
- (b) **Eligibility for protections.** In order to be considered for designation under this section, an application for designation must be submitted by or on behalf of the customer.
- (1) To be designated as a Critical Care Residential Customer or Chronic Condition Residential Customer, the commission-approved application form must be submitted to the TDU by a physician, in accordance with provisions of this section.
  - (2) To be designated as a Critical Load Public Safety Customer or a Critical Load Industrial Customer, the customer must notify the TDU. To be eligible for the protections provided under this section, the customer must have a determination of eligibility pending with or approved by the TDU. Eligibility shall be determined through a collaborative process among the customer, REP, and TDU, but in the event that the customer, REP and TDU are unable to agree on the designation, the TDU has the authority to make or decline to make the designation.

(c) **Benefits for Critical Load Public Safety Customers, Critical Load Industrial Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers.**

- (1) A Critical Load Public Safety Customer or a Critical Load Industrial Customer qualifies for notifications of interruptions or suspensions of service as provided in Sections 4.2.5, 5.2.5, and 5.3.7.1 of the TDU's tariff for retail delivery service.
- (2) A Critical Care Residential Customer or Chronic Condition Residential Customer qualifies for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.1, and for Critical Care Residential Customers protections against suspension or disconnection, as provided in Section 5.3.7.4(1)(D) and (E), of the TDU's tariff for retail delivery service.
- (3) A Critical Care Residential Customer or Chronic Condition Residential Customer is also eligible for certain protections as described in §25.483 (relating to Disconnection of Service).
- (4) Designation as a Critical Load Customer, Critical Care Residential Customer, or Chronic Condition Residential Customer does not guarantee the uninterrupted supply of electricity.

(d) **Notice to customers concerning Critical Care Residential Customer and Chronic Condition Residential Customer status.**

- (1) A REP shall notify each residential applicant for service of the right to apply for Critical Care Residential Customer or Chronic Condition Residential Customer

designation. This notice to an applicant for residential service shall be included in the Your Rights as a Customer document.

- (2) All REPs that serve residential customers shall provide information about Critical Care Residential Customer and Chronic Condition Residential Customer designations to each residential customer two times a year. The REP may include the information related to the low income rate reduction program in the same notification.
- (3) Upon a customer's request, the REP shall provide to the customer the application form for Critical Care Residential Customer and Chronic Condition Residential Customer designation.

(e) **Procedure for obtaining Critical Care Residential Customer or Chronic Condition Residential Customer designation.**

- (1) The commission-approved application form shall instruct the customer to have the physician submit the application form by facsimile or other electronic means to the TDU. If the physician submits the form to the REP, the REP shall forward it to the TDU electronically no later than two business days from receipt of the form. The application form shall include a telephone number for reaching a person at the TDU who is capable of responding to questions from a physician or customer about the form during regular business hours.
- (2) After the TDU receives the form, it shall evaluate the form for completeness. If the form is incomplete, no later than two business days after receiving the form,

the TDU shall mail the form to the customer and explain in writing what information is needed to complete the form.

- (3) If the TDU has returned the form as incomplete or has not finished processing the form within two business days from receipt of the form, the customer shall be designated as a Critical Care Residential Customer or Chronic Condition Residential Customer on a temporary basis pending final designation by the TDU. The temporary designation shall be based on the designation selected by the physician on the form if such designation was included; otherwise, the temporary designation shall be as a Critical Care Residential Customer. The TDU shall notify the customer's REP of such temporary designation using a standard market transaction. If the form is returned to the customer as incomplete, the temporary designation shall remain in effect for 14 days, after which the temporary designation shall expire and the application process must start over.
- (4) Reasons that a TDU shall consider a form incomplete for an application for Critical Care Residential Customer or Chronic Condition Residential Customer designation include the omission of the name of the person for whom the protection is sought, contact information (including a secondary contact), physician signature, the designation as a Critical Care Residential Customer or Chronic Condition Residential Customer, and medical board license number of the customer's physician. Any additional mandatory information required for completeness shall be clearly identified on the commission-approved application form.

- (5) The TDU shall not challenge the physician's determination of the customer's status, but shall apply the physician's designation of the customer as a Critical Care Residential Customer or Chronic Condition Residential Customer consistent with the information provided on the form and the definitions in this section. The TDU may verify the physician's identity and signature and may deny an application for designation, if it determines that the identity or signature of the physician is not authentic.
- (6) The TDU shall notify the customer's REP using a standard market transaction and the customer of the final status of the application process, including whether the customer has been designated for Critical Care Residential Customer or Chronic Condition Residential Customer status. The TDU shall also notify the customer of the date a designation, if any, will expire, and whether the customer will receive a renewal notice. The TDU shall provide the secondary contact information to the REP using a standard market transaction. If the customer switches to a different REP, the TDU shall provide the new REP with information on the customer's status and the secondary contact information using a standard market transaction.
- (7) At the same time the TDU notifies the customer the final status of the customer's application, the TDU shall inform the customer of the customer's right to file a complaint with the commission pursuant to §22.242 of this title (relating to Complaints).
- (8) The TDU shall notify Critical Care Residential Customers and Chronic Condition Residential Customers of the expiration of their designation in accordance with

this subsection. The TDU shall notify the customer's REP using a standard market transaction when a customer is no longer designated as a Critical Care Residential Customer or a Chronic Condition Residential Customer.

- (9) The TDU shall mail a renewal notice to a Chronic Condition Residential Customer whose designation was for a period longer than 90 days or a Critical Care Residential Customer, at least 45 days prior to the expiration date of the customer's designation. The renewal notice shall also be mailed to the secondary contact included on the commission-approved application form. The renewal notice shall include the application form and an explanation of how to reapply for Critical Care Residential Customer or Chronic Condition Residential Customer designation. The renewal notice shall inform the customer that the current designation will expire unless the application form is returned by the expiration date of the existing designation.
- (f) **Effect of Critical Care Residential Customer or Chronic Condition Residential Customer status on payment obligations.** A Critical Care Residential Customer or Chronic Condition Residential Customer designation pursuant to this section does not relieve a customer of the obligation to pay the REP for services provided, and a customer's service may be disconnected pursuant to §25.483 of this title.
- (g) **TX SET changes.** In the first TX SET release after the effective date of this section, market transactions shall be included to address the requirements of this section.

- (h) **Effective date.** The effective date of this section is January 1, 2011.
  
- (i) **TDU annual report.** A TDU shall report to the commission by March 1 of each year beginning in 2012, the number of customers for each type of customer defined in subsection (a) of this section as of December 31 of the previous calendar year. The TDU report shall also include for the previous calendar year, for each type of customer defined in subsection (a) of this section, the number of applications that were rejected as a result of incomplete forms, the number of requests from REPs for disconnection, and the number of disconnections and reconnections completed. An interim report shall be filed by the TDU on April 1, 2011 for the time period from January 1, 2011 through March 1, 2011.

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 repeal of §25.497 relating to Critical Care Customers and new §25.497 relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS this the 28<sup>th</sup> day of SEPTEMBER 2010.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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