

**-PROJECT NO. 40180**

<b>RULEMAKING TO AMEND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUBSTANTIVE RULE 25.497 TO</b>	<b>§</b>	
<b>MAKE A SECONDARY/EMERGENCY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONTACT OPTIONAL</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENTS TO §25.497  
AS APPROVED AT THE MAY 18, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.497, relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers, with a change to the proposed text as published in the March 9, 2012 issue of the *Texas Register* (37 TexReg 1582). The amendments make the inclusion of a secondary contact optional in an application to be designated as a Critical Care Residential Customer and/or Chronic Condition Residential Customer. In addition, the amendments add the term “emergency contact” and make it synonymous with “secondary contact.” These amendments are adopted under Project Number 40180.

The commission received comments on the proposed amendments from the REP Coalition and from Texas Ratepayers’ Organization to Save Energy and Texas Legal Services Center (Texas ROSE/TLSC). Texas ROSE/TLSC was joined by the Honorable Sylvester Turner; Economic Opportunities Advancement Corporation of Planning Region XI; Public Citizen Texas Office; Paul M. Mixson, LMSW-AP; the Senior Source; City of Forth Worth; Carol Woman Thorpe; and the Texas Public Interest Research Group (TexPIRG) in filing comments. The REP Coalition was comprised of the Alliance for Retail Markets (ARM); CPL Retail Energy, LP; Gexa 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 in this proceeding are Direct Energy, LP; Green Mountain Energy Company; Gexa Energy, LP; and Stream Energy.

*Summary of Comments*

*Section 25.497*

The REP Coalition and Texas ROSE/TLSC supported the amendments as proposed. Texas ROSE/TLSC commented that it supported in the previous rulemaking and continues to support the inclusion of an emergency/secondary contact (emergency contact) in the rule, as they viewed it as a safety net for critical care consumers who lacked the reasoning or ability to effectively manage their utility situation. Texas ROSE/TLSC admitted that there are applicants who may choose not to provide a contact name in the emergency contact section for various reasons. Texas ROSE/TLSC emphasized that denying critical care or chronic care status because a customer did not provide a secondary contact defeats the primary purpose of the rule, which is to protect seriously ill customers from physical harm due to a loss of electric service. Therefore, Texas ROSE/TLSC supported the changes proposed and urged the adoption of the rule.

The REP Coalition commented that it believes the proposed modifications successfully align the rule language with the recently adopted application form. The REP Coalition supported the changes to add the term “emergency contact” synonymous with the term “secondary contact.” This change allows the words to be used interchangeably in §25.497 and §25.483, on the application form, and in communications from the TDU and/or others providing customers

assistance in completing the form. They added that if the commission decides to amend the language in §25.497 (e)(9) such that it is no longer similar to the language in §25.483, then there may be a need to revisit §25.483 to address the notice issue when there is no secondary or emergency contact provided. The REP Coalition also noted a typo in the language: “A customer may, but it [sic] not required to, include an emergency (secondary) contact in the application”.

*Commission response*

**The commission appreciates the comments from the REP Coalition and from Texas ROSE/TLSC in support of the rule amendments. The commission agrees with Texas ROSE/TLSC that the emergency contact information is intended to act as a safety net for critical or chronic care consumers, but there are applicants who may not choose to provide a contact name. The commission is not changing the language in §25.497(e)(9), other than changing the reference from secondary contact to emergency contact. The commission therefore corrects the typo identified by the REP Coalition and otherwise adopts the amendments to this section as proposed.**

Texas ROSE/TLSC also urged the commission to further examine how the secondary/emergency contacts are being used by the transmission and distribution utilities (TDUs) and retail electric providers (REPs). Texas ROSE/TLSC stated that the wording applied to the application form significantly differs from the language of the rule. They continued that the wording implies that a person does not have to provide an emergency contact but the person may be disconnected or the application may be rejected because the customer failed to respond to a question about the emergency contact. Texas ROSE/TLSC stated that the proposed rule language does not require

an emergency contact or an affirmation that the customer chooses not to provide one. Texas ROSE/TLSC therefore recommended that the form be modified again to be consistent with the intent and spirit of the rule, so that the emergency contact is presented only in a positive light.

*Commission response*

**The commission declines to re-open the chronic condition and critical care residential consumer application form at this time, as recommended by Texas ROSE/TLSC. Section 25.497 requires an applicant to use the commission-approved application form but does not specify all information that an application must contain. Inclusion of an emergency contact is beneficial and important to the applicant. As a result, the current form appropriately requires the applicant to provide an emergency contact or affirmatively state that the applicant declines to do so.**

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

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 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 §17.004 and §39.101(a)(1) and (e), which provide

the commission with the authority to adopt and enforce rules for minimum service standards for termination of service, including in cases of medical emergency.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.004(b), and 39.101(a)(1) and (e).

**§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 redesignation 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, 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. A customer may, but it is not required to, include an emergency (secondary) contact in the application.
- (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 emergency contact information (if applicable) 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 emergency contact information (if applicable) 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 emergency contact included on the commission-approved application form (if applicable). 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §25.497 relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers is hereby adopted with a change to the text as proposed.

**SIGNED AT AUSTIN, TEXAS on the \_\_22nd\_\_ day of MAY, 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**