

PROJECT NO. 38675

AMENDMENTS TO CUSTOMER	§	PUBLIC UTILITY COMMISSION
PROTECTION RULES RELATING TO	§	
PREPAID SERVICE	§	OF TEXAS
	§	

**PROPOSAL FOR PUBLICATION OF REPEAL OF §25.498 AND NEW §25.498
AS APPROVED AT THE OCTOBER 14, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §25.498, relating to Prepaid Electric Service Using Customer-Premise Prepayment Devices, and new §25.498, relating to Prepaid Service. The new rule addresses the requirements for a retail electric provider (REP) to offer a service whose normal billing arrangement provides for payment before the rendition of service (prepaid service). The new rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 38675 is assigned to this proceeding.

Rebecca Reed, Retail Market Analyst, Competitive Markets Division, has determined that, for each year of the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Reed has determined that, for each year of the first five years the new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be better protection of customers receiving prepaid service. Some REPs provide prepaid service without using customer prepayment devices or systems (CPDS). As a result, these REPs do not have timely access to the actual electricity consumption of their customers and consequently require customers to make payments based on the REPs' estimates of how much electricity the customers have consumed,

which are later trued-up after the REPs obtain the customers' actual consumption. In contrast, REPs that provide prepaid service using CPDS and REPs that provide post-paid service do not rely on estimated consumption and instead rely on actual consumption for the calculation of charges for service. The use of estimated consumption as the basis for payment gives REPs considerable discretion in determining payments, and customer complaints made to the commission suggest that there may be considerable abuse of this discretion. Because of the fact-specific nature of these consumption estimates, it is difficult for the commission to ensure that REPs do not abuse their discretion in making these estimates.

REPs providing prepaid service without CPDS not only base payments on estimated usage, they also send disconnection notices to customers and disconnect customers based on estimated usage. As a result, customers may receive disconnection notices and actually be disconnected based on inaccurate estimates of their consumption.

Existing §25.498 applies to REPs that provide prepaid service using CPDS, but does not address the rendition of prepaid service without CPDS. As a result, REPs that offer prepaid service without CPDS are subject to the commission's other customer protection rules, which were designed for the rendition of post-paid service. As a result, serious questions have been raised as to whether REPs that provide prepaid service without CPDS can feasibly comply with those rules on an ongoing basis.

In the three years since the commission first adopted §25.498 in 2007, it has gained experience with the rendition of service pursuant to the rule, and that experience has shown problems that

have arisen that can be addressed through the additional customer protections included in the proposed new §25.498.

The probable economic cost to persons required to comply with the new rule will vary from REP to REP. For REPs already providing prepaid service with CPDS, the economic cost will arise from compliance with the additional customer protections and will be modest and substantially outweighed by the public benefits of these protections. For REPs currently providing prepaid service without CPDS, those REPs may choose to discontinue providing prepaid service and provide only post-paid service as many other REPs currently do, or may convert to prepaid service using CPDS. The viability of converting from prepaid service using estimated usage to prepaid service using CPDS is evidenced by the number of REPs that already provide prepaid service using CPDS.

Based on data provided by the Electric Reliability Council of Texas (ERCOT), market participants, and other sources, Ms. Reed estimates that approximately 21 REPs are providing prepaid service. Staff calculates that 10 of those REPs are presently providing service to customers under existing §25.498. At least four of these 10 REPs have offered prepaid service to customers without advanced meters. Ms. Reed has calculated that the number of residential customers that currently receive prepaid service without use of a CPDS is less than 3% of the residential customer base in ERCOT. Although the probable economic cost of the new rule to REPs currently providing prepaid service without CPDS is not available to the commission, Ms. Reed has determined that the cost is substantially outweighed by the public benefits of requiring these REPs to discontinue providing prepaid service without CPDS, because of the serious harm

that often occurs to customers receiving this service. In addition, the new rule provides a six-month transition period to reduce the rule's economic cost.

Ms. Reed has determined that the new rule may be considered not to have an adverse economic effect on small businesses or micro-businesses. As explained above, serious questions have been raised as to whether REPs that provide prepaid service without CPDS can feasibly comply with the commission's rules on an ongoing basis. Because of the fact-specific nature of consumption estimates and other compliance issues, it is difficult for the commission to ensure that REPs providing prepaid service without CPDS are complying with all applicable commission rules. Nevertheless, REPs that provide prepaid service without CPDS could face the risk of substantial administrative penalties for violation of the commission's rules and possible revocation of their REP certificates. The new rule provides a viable and clearly lawful means of providing prepaid service, and REPs that stop providing prepaid service and instead limit themselves to prepaid service with CPDS and post-paid service will eliminate the regulatory risk of providing prepaid service without CPDS.

To address the possibility that the new rule has an adverse economic effect on small businesses or micro-businesses, Ms. Reed has prepared an economic impact statement and regulatory flexibility analysis pursuant to Texas Government Code §2006.002. The commission has issued certificates to approximately 130 REPs. Of these REPs, approximately 100 (77%) are serving customers. Approximately 30 of the 130 REPs (21%) are small or micro businesses. Approximately 15 of these small and micro businesses (50%) are currently not serving customers. The small and micro businesses that are serving customers represent about \$25

million in combined annual revenues and about 0.53% of annual ERCOT electricity consumption. The projected economic impact of the new rule on small and micro businesses is the same as for other businesses, and this impact is described above in the discussion of the probable economic cost to persons required to comply with the new rule.

Ms. Reed has determined that no alternative methods of achieving the purpose of the new rule exist. The requirement to use CPDS to provide prepaid service is necessary to eliminate payments, disconnection notices, and disconnections based on estimated usage. As explained above, payments, disconnection notices, and disconnections based on estimated usage can cause serious harm to customers.

Ms. Reed has also determined that for each year of the first five years the new rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, November 30, 2010, at 10:00 a.m. The request for a public hearing must be received by November 18, 2010 (20 days after publication).

Initial comments on the new rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by November 29, 2010, (31 days after publication). Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by December 6, 2010 (37 days after publication). Comments should be organized in a manner consistent with the organization of the new rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the new rule. The commission will consider the costs and benefits in deciding whether to adopt the new rule. All comments should refer to Project Number 38675.

The repeal and new rule are proposed 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; PURA §17.004, which directs the commission to establish and enforce customer protection standards, including protection from unfair, misleading, deceptive, or anticompetitive practices; the right to have bills presented in a clear, readable format and easy-to-understand language; and the right of low-income customers to have access to bill payment assistance programs designed to reduce uncollectible amounts; PURA §39.001, which adopts a policy that competition in the sale of electricity is consistent with the public interest and directs the commission to use competitive, rather than regulatory methods, to achieve this policy; and PURA §39.101, which requires customer safeguards, including the right to safe, reliable and reasonably priced electricity; protection against service disconnections in extreme weather emergencies or in cases of medical emergency; bills presented in a clear format and in a

language readily understandable by customers; accuracy of meter reading and billing; and other protections necessary to ensure high-quality service to customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001, and 39.101.

REPEAL §25.498. Retail Electric Service Using a Customer Prepayment Device or System.

NEW §25.498. Prepaid Service.

(a) **Applicability.** This section applies to retail electric providers (REPs) that offer prepaid service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service unless it complies with this section. The following provisions do not apply to prepaid service:

- (1) §25.474(f)(3)(G) of this title (relating to Selection of Retail Electric Provider);
- (2) §25.479(b) and (c)(1) of this title (relating to Issuance and Format of Bills);
- (3) §25.480(b), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and
- (4) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6).

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

- (1) **Current balance** -- An account balance calculated consistent with subsection (c)(7)(A)(i)-(iii) of this section.
- (2) **Customer prepayment device or system (CPDS)** -- A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption information from a TDU's advanced meter or information system.
- (3) **Landlord** -- a landlord or property manager or other agent of a landlord.

- (4) **Minimum balance** -- An account balance, net of applicable TDU and REP discretionary fees, to initiate electric service, avoid disconnection of service, or reconnect electric service following disconnection.
 - (5) **Prepaid service** -- A service offered by a REP for which the customer normally makes a payment for service before service is rendered.
 - (6) **Prepaid disclosure statement (PDS)** -- A document described by subsection (e) of this section.
 - (7) **Summary of usage and payment (SUP)** -- A document described by subsection (g) of this section.
- (c) **Requirements for prepaid service.**
- (1) A REP shall file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent shall include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), Terms of Service (TOS), and PDS for the service.
 - (2) A CPDS that relies on metering equipment other than the TDU meter shall conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
 - (3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not

constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

- (4) A CPDS shall not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS shall be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU shall protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).
- (5) A REP providing prepaid service may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, email, telephone, mobile phone, or other electronic communications. The means by which the REP will use to communicate required information to a customer shall be described in the TOS and the PDS.
- (6) A REP providing prepaid service shall afford a means by which the customer may make payments for service by phone, internet, or other means that can be accomplished at the customer's premises, or at a location no farther than five miles from the customer's premises. The payment mechanism may include a requirement that a customer who has made a payment verify the payment using a card, code, or other similar method.
- (7) A REP offering prepaid service shall:
 - (A) provide to the customer its current balance, which shall be calculated by reducing the prepaid balance by:

- (i) charges that are known and have been incurred;
 - (ii) estimated applicable taxes; and
 - (iii) estimated TDU charges that will be passed through; and the date and time the current balance was determined and the estimated time or days of paid electricity remaining.
- (B) provide the customer the current price for electric service calculated as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);
- (C) provide a warning to the customer at an event trigger explained in the customer's TOS and PDS, at least three days and not more than seven days before the customer's current balance is estimated to drop to the minimum balance;
- (D) when a customer makes a payment, provide a confirmation code, except that the REP shall provide a receipt showing the amount paid for payment in person and is not required to provide a confirmation code or receipt for payment by check. The customer may elect to have the REP confirm all payments by providing to the customer the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received; and
- (E) ensure that the CPDS does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When a REP receives notice that a customer on a

prepayment plan has chosen a new REP, the REP shall take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions.

- (8) The information provided pursuant to paragraph (7)(A) of this subsection either shall be available to the customer continuously or shall be provided within two hours of the customer's request. Nothing in this subsection limits a customer from obtaining a SUP.
- (9) The communications provided under paragraph (7)(A)-(C) of this subsection and any confirmation of payment as described in paragraph (7)(D) of this subsection shall be provided in English or Spanish, at the customer's election.
- (10) A REP shall cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.
- (11) A REP providing prepaid service shall not:
 - (A) tie the duration of an electric service contract to the duration of a tenant's lease;
 - (B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;
 - (C) require a minimum balance in excess of \$75;
 - (E) require security deposits, but may charge and collect early termination fees for contracts with a term of more than one month; or
 - (F) base charges on estimated usage, other than a minimum balance.

- (12) A REP providing service shall not charge a customer any fee for:
- (A) transitioning from a prepaid service to a post-paid service;
 - (B) the cancellation or discontinuance of service, including a fee for the removal of equipment; or
 - (C) the switching of a customer to another REP or otherwise discontinuing taking prepaid service.
- (13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.
- (d) **Customer acknowledgement.** A REP shall obtain a customer's acknowledgement that prepaid service depends on the customer prepaying for service on a timely basis and that if the customer's account balance falls below the specified minimum balance, the customer's service may be disconnected. The REP shall obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title.
- (e) **Prepaid disclosure statement (PDS).** The PDS shall be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP. A REP shall also provide a PDS contemporaneous with the delivery of the contract documents to a customer pursuant to §25.474 of this title. The PDS shall be a separate document and shall be at a minimum written in 12-point font, and shall notify the customer:

- (1) that the continuation of service depends on the customer prepaying for service on a timely basis and that if the customer's current balance falls below the specified minimum balance, the customer's service may be disconnected;
- (2) inform the customer of the following:
 - (A) the minimum balance that is required to initiate or reconnect service;
 - (B) the acceptable forms of payment, the hours that payment can be made, and instructions on how to make payments;
 - (C) when service may be disconnected;
 - (D) that prepaid service is not available to critical care and chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);
 - (E) the means by which the REP will use to communicate required information;
 - (F) the availability of deferred payment plans; and
 - (G) the availability of energy bill payment assistance.
- (f) **Landlord as customer of record.** A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.
 - (1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP shall provide the TDU the name, service and mailing

addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

- (2) The REP shall treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(g) **Summary of usage and payment (SUP).**

- (1) A REP shall provide a SUP to each customer upon the customer's request within three business days of receipt of the request. SUP shall be delivered by the United States Postal Service or, if the customer agrees, by an electronic means of communications that provides a durable record of the SUP. If a customer requests a paper copy of the SUP more than once per calendar month, a REP may charge a reasonable fee for the summary.
- (2) A SUP shall include the following information:
 - (A) the certified name and address of the REP and the number of the license issued to the REP by the commission;
 - (B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;
 - (C) the name, account number, or ESI ID of the customer, and the service address of the customer;

- (D) the dates and amounts of payments made during the period covered by the summary;
 - (E) a statement of the customer's consumption and charges by month during the period covered by the summary;
 - (F) an itemization of non-recurring charges, including returned check fees and reconnection fees;
 - (G) if applicable, a statement that indicates the customer is receiving the LITE-UP Discount, pursuant to §25.454 of this title (relating to Rate Reduction Program); and
 - (H) unless another time period is requested by the customer, information provided shall be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months;
- (3) In accordance with §25.472(b)(1)(D) of this title, a REP shall provide an SUP to an energy assistance agency within one business day of receipt of the agency's request, and shall not charge the agency for the SUP.
- (h) **Deferred payment plans.** A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a deficit balance over time. A deferred payment plan shall be confirmed in writing by the REP to the customer.
- (1) A REP shall place a residential customer on a deferred payment plan, at the customer's request, when the customer's account reflects a deficit balance of \$50

or more, not considering the customer's minimum balance. The deferred payment plan shall include both the deficit balance and the minimum balance.

- (2) A REP shall not refuse a customer's request for a deferred payment plan on any basis set forth in §25.471(c) of this title, if the customer incurs a deficit balance of \$50 or more during a period in which disconnection of service was prohibited.
- (3) A customer has the right to satisfy the deferred payment plan before the prescribed time.
- (4) A REP may require that:
 - (A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or
 - (B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deficit amount paid by reducing the account balance by five equal monthly installments, unless the customer agrees to fewer installments. The installments to repay the deferred balance shall be applied to the customer's account on a specified day of each month.
- (5) A copy of the deferred payment plan shall be provided to the customer.
 - (A) The plan shall include a statement, in clear and conspicuous type, that states, "If you are not satisfied with this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."
 - (B) If a switch-hold will apply, the plan shall include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you

understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on.”

- (C) If the customer and the REP’s representative or agent meet in person, the representative shall read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.
 - (D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but shall not include a finance charge;
 - (E) The plan shall include the terms for payment of deferred amounts, consistent with paragraph (3) of this subsection.
 - (F) The plan shall state the total amount to be paid under the plan.
 - (G) The plan shall state that a customer’s electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan.
- (5) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to §25.480(m) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

- (i) **Disconnection of service.** As provided by subsection (a)(4) of this section, only §25.483 (b)(2)(A) and (B), (d), and (e)(1)-(6) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.
- (1) **Prohibition on disconnection.** A REP shall not authorize a disconnection for a customer's failure to maintain the minimum balance on a weekend day or during any period during which the mechanisms used for payments pursuant to the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483(i)(1) of this title, in the county in which the service is provided.
- (2) **Authorization of disconnection.** A REP may authorize disconnection of service when the current balance is below a customer's minimum balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(C) of this section; and when a customer fails to comply with a deferred payment plan. A REP may send a disconnection request to the TDU if the customer's prepaid balance is exhausted due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.
- (3) **Pledge from electric assistance agencies.** If a REP receives a pledge, letter of intent, purchase order, or other commitment from an electric assistance agency to make a payment for a customer, the REP shall immediately credit the customer's account balance with the amount of the pledge.
- (A) A REP may require the customer to take steps necessary to ensure the customer's CPDS records the payment, such as a revaluing transaction.

- (B) The REP may not authorize disconnection of service and, if the customer has been disconnected, shall request reconnection of service if the credit from the energy assistance agency satisfies the customer's minimum balance.
- (C) The REP may authorize disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's minimum balance.
- (4) **Reconnection of service.** Within one hour of satisfactory correction of the reasons for disconnection, the REP shall request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service.
- (j) **Service to Critical Care Residential Customers and Chronic Condition Residential Customers.** A REP shall not provide prepaid service to a customer or applicant that is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP shall diligently work with the customer to promptly transition the customer to another product or provider in a manner that avoids a service disruption.
- (k) **Effective date.** Not later than six months after the effective date of this section, prepaid service offered by a REP pursuant to a new contract shall comply with this section. Beginning six months after the effective date of this section, a REP shall not renew a contract for prepaid service that does not comply with this section.

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.

**ISSUED IN AUSTIN, TEXAS ON THE 15th DAY OF OCTOBER 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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