PROJECT NO. 29637

RULEMAKING TO AMEND P.U.C. SUBSTANTIVE RULE §25.214 AND PRO-FORMA RETAIL DELIVERY TARIFF	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENT TO §25.214
AS APPROVED AT THE APRIL 13, 2006 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities with changes to the proposed text as published in the November 18, 2005 issue of the *Texas Register* (30 TexReg 7647). The amendment will clarify terms and conditions of retail delivery service and establish standard services to be provided by all investor owned utilities. This amendment is adopted under Project Number 29637.

The commission received comments on the proposed amendment from the Colorado River Municipal Water District (CRMWD); the Electric Reliability Council of Texas (ERCOT); Joint Transmission and Distribution Utilities (TDUs), comprised of: AEP Texas Central Company and AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, TXU Electric Delivery Company (TXU ED), and Texas New Mexico Power Company; the Office of the Public Utility Counsel (OPC); Tenaska Power Services d/b/a TPS III; Texas Industrial Energy Consumers (TIEC); Texas Ratepayers Organization to Save Energy, and Texas Legal Services Center (Consumers). The commission also received comments from the REP Coalition, comprised of: CPL Retail Energy; Direct Energy; Entergy Solutions Ltd.; Gexa Energy; Green Mountain Energy Company; Reliant Energy, Inc.; Stream Energy; TXU Energy Retail Company LP; WTU Retail Energy; the Alliance for Retail Markets, comprised of APS Energy Services, Constellation

New Energy, Inc, Direct Energy, Entergy Solutions, Ltd., Green Mountain Energy Company, Strategic Energy and Stream Energy; the Texas Energy Association for Marketers, comprised of Accent Energy, Cirro Energy, Entergy Solutions Ltd., Star Tex Power, Stream Energy and Tara Energy; and Competitive Assets on behalf of its REP clients, and specifically including, Spark Energy, Stream Energy, Alliance Power Company, LLC, Bridgepoint Power & Light LLC, Econnergy Energy Company, Freedom Power, Hino Electric, Tara Energy and TriEagle Energy. The commission received reply comments from Joint TDUs, OPC, Suez Energy Resources, NA, Inc (Suez), TIEC, and the REP Coalition.

The term "Retail Electric Provider (REP)" will be used throughout this document in lieu of "Competitive Retailer" unless specifically quoting the tariff or discussing the difference in terms in the tariff. Additionally, REP will include municipally owned utilities and cooperatives that have opted into competition.

The commission posed the following question: *Public Utility Regulatory Act (PURA) §43.055 states that an "an electric utility…shall employ all reasonable measures to ensure that the operation of the BPL (Broadband over Power Line) system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery service." Should the commission alter the retail electric delivery service tariff to implement this provision or otherwise recognize that*

some Transmission and Distribution Utilities (TDUs) will be using their distribution facilities to provide BPL?

The TDUs recommended that the tariff not be altered to address BPL issues because it is not an element of retail electric delivery service.

TIEC commented that it is still formulating its position on whether having a provision regarding BPL is necessary. TIEC added that it is not clear where BPL providers would fit in the tariff, and it may be premature to include tariff provisions at this time.

The REP Coalition commented that PURA §43.055 clearly states that a disruption of service should be governed by the terms and conditions of the retail electricity delivery service tariff, and therefore, it should be addressed in the delivery tariffs for TDUs providing service in ERCOT, and utilities providing service in other areas of Texas.

The REP Coalition proposed that a new rulemaking be initiated to address BPL policies for all utilities under its jurisdiction. Most Texas market participants do not have experience with BPL, and more time is needed to study the implementation of BPL in other jurisdictions to identify what issues other jurisdictions have faced, and how those issues were resolved. The REP Coalition recommended a new section be added to the pro-forma tariff as a placeholder, and that once the commission has adopted a rule articulating its policies on BPL and retail delivery service, the TDUs would then file compliance tariffs to implement the new rule. The TDUs responded in agreement that it would be premature to make substantive decisions about BPL at

this time, and added that it would be premature to assume that the filing of a compliance tariff will ultimately be needed or would be the proper approach to the implementation of any BPL rule adopted by the commission. The TDUs commented that all issues related to BPL can and should be dealt with outside of the tariff, in a separate rule, and that there is no rationale for inserting a placeholder for BPL policies in the tariff at this time.

Commission response

The commission agrees with the REP Coalition that PURA §43.055 establishes the secondary nature of BPL services to reliability and states that disruptions in service shall be governed by this tariff. Therefore the commission amends Sections 4.2.5 and 5.2.5 to recognize the priority of electric service over communications service that the statute establishes.

§25.214

The TDUs commented that the phrase "and to standardize the terms of service among TDUs" should not be added to subsection (a) of the rule because the reason for adding it is unclear and the phrase "terms of service" has no meaning in the tariff. The TDUs stated that the language appears to have been taken from the Customer Protection Rules. If the intended meaning is to require all TDUs to offer the same services, it conflicts with the company specific portion of each utility's tariff, but, if the purpose is to require all TDUs to abide by the tariff, it is redundant and unnecessary.

Commission response

The commission understands that there may be certain Discretionary Services that are company specific (not standardized) but one of the purposes of this rulemaking is to establish standardized terms and conditions of service. In general, the amendments that are being adopted in this rulemaking proceeding will increase the level of standardization, because more standardization will facilitate REP participation in the retail market in all of the TDU service areas. Therefore, the commission declines to make the requested changes to the rule.

The REP Coalition commented that to the extent that BPL is addressed in this rulemaking, including through the addition of a placeholder in the tariff, language should be added in subsection (a) to recognize that §25.214 applies to BPL. The TDUs disagreed with this proposal and argued that BPL should be addressed separately, outside of this rule and tariff.

Commission response

The commission disagrees that the requested changes to subsection (a) or (c) are necessary but does agree that the tariff should address the secondary nature of BPL to reliability and makes changes to Sections 4.2.5 and 5.2.5 in this regard.

The TDUs commented that the proposed sentence referencing "minimum, mandatory requirements…unless otherwise specified" should not be included in subsection (c) of the rule or in Section 3.1 of the tariff, and argued that the statement has no clear meaning and creates confusion.

The TDUs stated that the fact that minimum mandatory language is found in the Customer Protection Rules does not mean it is appropriate in the tariff. The TDUs argued that the "minimum mandatory" language is appropriate in the Customer Protection Rules, because: the REP is primarily unregulated and free to offer services however it chooses, so long as it complies with the minimum mandatory standards, while all services provided by the utility must be approved by the commission and are governed by the tariff; the Customer Protection Rules address procedures and policies designated to protect the Retail Customer; and the tariff governs operational issues. The REPs disagreed and stated that the tariff provides more than operational guidance; it sets forth minimum expectations by all market participants for any interaction with the TDU. REPs, their customers, and the TDU are protected by the tariff and the tariff should state clearly that each Retail Customer is entitled to these protections.

The TDUs also offered the following possible interpretations of the language, and arguments for why the language should not be included for each possible interpretation.

The TDUs noted that a possible interpretation of the "minimum mandatory" language in the tariff is that it allows service requirements that are more stringent than those contained in the tariff to be adopted elsewhere, which would contradict the requirement in §25.214 that Chapters 4 and 5 of the tariff be used "exactly as written" and may only be changed through a rulemaking, and would damage the necessary and legal link between a utility's services and its rates and charges.

The REP Coalition replied that they agreed there could be confusion with the phrase "used exactly as written" and referenced their proposal for addressing this in their initial comments. The REP Coalition stated that one of the difficulties experienced by REPs and Retail Customers is the ambiguity between the tariff and other rules or protocols, and that while it cannot cover all of the detailed requirements, it should set minimum requirements and be clear to that effect.

The TDUs suggested that the language could also be interpreted to require enforcement of the specific requirements at a 100% level, which the TDUs stated would be impossible to achieve and would drastically impact staffing and costs. The TDUs recommended that compliance be evaluated on the basis of a performance metric or other evaluation process that looks at compliance over time, and suggested language to this effect. The REP Coalition responded that while REPs and Retail Customers deserve quality service from their TDU they have never demanded or insisted on 100% compliance for every service regardless of the conditions, and that from the inception of this project, the REP Coalition has proposed reasonable performance measures, including exceptions for force majeure and/or other catastrophic events. The REPs added that until recently, the TDUs rejected REP Coalition efforts to review performance measures along with standardizing services, and now argue that market improvements should not proceed until performance measures are determined, and insist on language that compliance should be judged over time similar to the manner in which transaction performance is judged in §25.88. The REP Coalition recommended that the commission reject these arguments and move forward with expedited implementation.

Another interpretation suggested by the TDUs was that it was to indicate that the new standardized Discretionary Services described in Chapter 6 are minimum mandatory, but that other Discretionary Services may be offered as well, in which case the language should be amended. The TDUs recommended that if the language is adopted as proposed, it should be located only in Section 3.1 of the tariff and should not be repeated in the rule.

Commission response

The commission agrees with the REPs that the tariff provides more than operational guidance; it sets forth minimum expectations by REPs and Retail Customers for any interaction with the TDU. These services must be provided by each TDU exactly as written in the tariff. The commission agrees that the terms minimum and mandatory can be confusing depending on the perspective of the entity making the judgment. Because the original intent of the language was to provide better customer service when feasible, the commission determines that the original proposed language could cause misinterpretation and the commission agrees to remove the minimum and mandatory standard. The commission retains the language in Section 3.1 of the tariff that the TDU will use reasonable diligence to comply with the operational and transactional requirements and timelines, which more adequately addresses the 100% compliance expectation the TDUs expressed. The commission, however, declines to add language specifying that compliance will be judged over time because it would be inappropriate to limit the commission's authority to pursue enforcement action when a violation of the tariff warrants such action.

The REP Coalition commented that existing language in subsection (c) requires that Chapters 1, 3, 4, and 5 of the tariff be "used exactly as written" which could be construed to refer to the actions that the TDUs may take based upon the tariff. This creates potential conflict and ambiguity in interpreting the tariff's requirements. The REP Coalition was concerned that this language could conflict with the "minimum mandatory" language found in §25.214(c) and Section 3.1 of the tariff as published, with the unintended consequences of preventing a TDU or the market from innovating or going beyond the minimum requirements of the tariff. The REP Coalition recommended that §25.214(c) be revised to require that Chapters 1, 3, 4 and 5 be "incorporated verbatim" into the TDU's tariff Chapters 1, 3, 4, and 5. In reply comments, the TDUs commented that they have significant concerns about the "minimum mandatory" language proposed for inclusion in §25.214. The TDUs stated that the REPs make clear that their intent in recommending this language is to allow forum shopping for market rules that go beyond the "minimum" standards of the tariff which the TDUs strongly disagree with. The TDUs requested that the commission make clear that the tariff governs and that timeline and specific service requirements considered at length and adopted in this rulemaking should not be revisited in market forums. The TDUs commented that allowing different timelines or service descriptions to be adopted outside of the tariff, without commission consideration, will negatively impact the necessary linkage between their requirements and the rates charged for the services by the TDU. The TDUs recognized that multiple references to "Applicable Legal Authorities" are included in the tariff, but stated that they generally point to market procedures or processes that implement, not govern, specific field performance requirements or timelines. The appropriate place for dealing with process and implementation issues is the tariff and neither the rule nor the tariff should contain language suggesting that the terms of the tariff can be generally overruled in the

market. The TDUs stated their opinion that the market rules should govern in place of the tariff only when the tariff specifically points to those rules, and therefore recommended that "minimum mandatory" language be deleted from the published amendments to the rule and Section 3.1, and that the REP Coalition's recommendation to change the phrase "exactly as written" not be adopted.

Commission response

The commission agrees with the TDUs that a great deal of time has been spent in this rulemaking to address issues in the retail market and specifically the timelines associated with performing services. While the commission understands that other entities must take measures, and adopt specific guidelines by which to implement these tariff provisions, those entities are not free to deviate from the requirements contained in this tariff. Therefore, this tariff, and the individual provisions contained herein shall not be generally overruled in stakeholder forums. However, the commission notes that from time to time, the TDUs may agree to meet performance standards that exceed the requirements in this tariff and commission rules in order to effectuate market improvements, and the commission does not intend for the adoption of amendments to the rule or the discussion of the reasons for doing so in this order to impede such progress. Based on the comments of the TDUs the commission recognizes that the proposed minimum mandatory language has proved confusing and therefore removes the minimum mandatory language from the rule. However, the commission retains the "due diligence" language for performance by the TDU within the tariff.

The REP Coalition also recommended the addition of language to subsection (c) to require that the tariff "be applied uniformly by and among all TDUs." The TDUs opposed this proposal and commented that this language will not make the tariff be applied uniformly, and leaves questions regarding which interpretation should apply if there are multiple interpretations of a provision, and who should dictate this. The TDUs stated that the provisions of the tariff should speak for themselves and the commission must address application issues provision by provision rather than generally through this requirement. The TDUs added that if they are mandated to uniformly apply the provisions of the tariff, the REPs should also be required to uniformly interpret and apply the tariff and other market rules. The TDUs stated that they incur significant costs in attempting to deal with the wide variation in REP capability, familiarity with how the market operates and familiarity with the rules and interpretation thereof, and that the market is far more affected by REPs' lack of uniformity in interpreting and implementing market rules than by any lack of uniformity by TDUs.

Commission response

The commission requests that the market participants and Staff work towards a common understanding and application of the rule and tariff requirements. However, the commission is concerned that the proposed language would have an end result in which instances of non-uniform practices and interpretations would be resolved by adopting the practice that would involve the least effort from TDUs. Therefore, the commission declines to amend the section as proposed.

Comments on the proposed pro-forma delivery service tariff.

Chapter 1 Definitions

The REP Coalition noted that "Access" and "Protocol" are capitalized, but not defined and suggested that they remain undefined, and be uncapitalized. Joint TDUs agreed with regard to "Access," but stated that "Protocol" is defined in the market, especially as a reference specifically to ERCOT protocols, and so should remain capitalized.

Commission response

The commission agrees that "Access" and "Protocol" are not defined and need not be defined.

Joint TDUs recommended restricting "Billing Determinants" to data which can be transmitted using a TX SET transaction. The REP Coalition replied that all items listed as "Billing Determinants" in the definition should be available, and TX SET transactions should be created for them, if they don't exist. The REP Coalition did not believe that the definition in the tariff should be constrained by existing TX SET capability.

Commission response

The commission agrees with the TDUs that Billing Determinants should be restricted to data that can be transmitted by using a TX SET Transaction. However, the commission also agrees the REP should have information on what they are being billed, therefore, the commission requests that TDUs be prepared to explain any part of the bill to the REP.

The REP Coalition recommended that "Construction Service" be defined to exclude installation of single-phase, self-contained meters. Joint TDUs noted that installation of this type of meter may or may not include Construction Service depending on the exact situation at the site, and so should not be excluded.

Commission response

The commission agrees with Joint TDUs that some situations exist where installation of single-phase, self-contained meters may include Construction Service, and declines to amend the language.

The REP Coalition suggested a definition of "In Writing" that specifies that a SET transaction must be used for a particular type of notification, if the necessary SET transaction exists. Joint TDUs replied that this is unnecessary and referred to Section 3.8 of the tariff as providing necessary guidance.

Commission response

The commission addresses necessary changes in Section 3.8 and makes no change to the definition section to accommodate this request.

Joint TDUs recommended removing "unless otherwise determined by the commission" from the definition of "Meter or Billing Meter," and removing a specific reference to §25.311 in favor of "Applicable Legal Authorities."

Commission response

The commission does not agree to remove "unless otherwise determined by the commission" or the specific rule reference. Metering technology is improving, and it is beneficial to allow flexibility in the tariff to accommodate changes in laws or rules that would make competitive metering legally available to all customers. However, the commission agrees that a reference to Applicable Legal Authorities is also appropriate, and therefore adds "and other Applicable Legal Authorities" after the reference to §25.311.

Joint TDUs suggested adding language to the definition of "Tamper or Tampering" to clarify that an alteration is Tampering if the TDU cannot read the meter in the usual manner for that meter. The REP Coalition responded that situations exist where a meter is inaccessible for the TDU to read in its normal manner, but the reason for the inaccessibility is not necessarily tampering. Therefore, as long as the TDU is able to read the meter, the situation should not be regarded as tampering.

Commission response

The commission agrees with the REP Coalition that not every instance in which a meter is not accessible is tampering, and believes that access issues such as those described by the Joint TDUs are adequately addressed this tariff.

Section 3.1 Applicability

The REP Coalition supported the addition of language in this section that clarified that the provisions of the tariff set forth minimum, mandatory standards for the TDUs. The REP

Coalition stated that it is important to establish a baseline of performance expectations that all TDUs must adhere to. The REP Coalition also supported inclusion of the language requiring the TDUs to use reasonable diligence to comply with the operational and transactional requirements and timelines for the provision of service as specified in the tariff, but also recommended inclusion of language imposing the reasonable diligence requirement on the TDUs' provision of service under Applicable Legal Authorities "since many transactional requirements are specified in ERCOT protocols and market guidelines, and not just the tariff." The REP Coalition understood that this language was intended to recognize the existence of unusual circumstances that would prevent strict compliance with the tariff. The REPs recommended an additional means to address this concern through the establishment of performance measures that do not necessarily contemplate 100% compliance at all times.

Joint TDUs responded to the REP's comments, stating that the REPs wanted to create an opportunity for "forum shopping" for market rules that go beyond the "minimum" standards of the tariff. The TDUs objected to this approach, and requested that the commission make it clear that the tariff governs, and that any requirements in the tariff may not be revisited in other market forums. "Although other market forums are appropriate for dealing with process and implementation issues, that should not be allowed to override policy decisions made by the commission in this proceeding." The TDUs also stated that allowing the adoption of stricter standards in other forums will increase TDU costs, with the result that rates will not be determined by the commission.

Joint TDUs asserted that the meaning and the reason for adding the "minimum mandatory" language are not clear. Joint TDUs further asserted that there is great potential for confusion, misinterpretation, and argument over this language, and for that reason, it should not be included. The Joint TDUs also reiterated their comments regarding the minimum mandatory language, as argued in comments regarding the rule.

Commission response

Consistent with the commission amendments to the rule, the commission deletes the "minimum mandatory" language from this section, but retains the language regarding reasonable diligence. The commission agrees to extend the reasonable diligence provision to Applicable Legal Authorities, to effectuate the requirements of the tariff. Consistent with the commission discussion in connection with amendments to the rule, the TDUs may agree to meet performance standards that exceed the requirements in this tariff and commission rules to effectuate market improvements, and the commission does not intend that this order would impede such progress.

Section 3.2 General

The REPs stated that while uniform delivery service is important within a TDU's service area, it is just as crucial to have that uniformity among the TDUs, which is not sufficiently addressed by the proposed language. The REPs proposed additional language requiring uniform application of the tariff and Applicable Market Rules within a TDU territory as well as among all TDU service territories.

The Joint TDUs suggested that the proposed sentence at the end of this section be removed, as PURA §39.203(c) requires that the terms and conditions be "reasonable and comparable," not "uniform." The Joint TDUs also contended that the provision is redundant with the previous paragraph in Section 3.2 as well as Section 3.7, if it is intended that the services are provided to REPs on a non-discriminatory basis. Joint TDUs stated that if the intent is something different, then the meaning is unclear, and the amendment could have unintended consequences. The Joint TDUs also responded to the REPs' comments that the requirement that the tariff be uniformly applied may be problematic if there are multiple interpretations of a tariff provision, and that this requirement conflicts with §25.214(c), which allows TDUs to modify Chapters 2 and 6 of the tariff to reflect "individual utility characteristics and rates." The TDUs stated that the notion of total uniformity among the TDUs is unrealistic. Additionally, the REPs should also be required to uniformly interpret and apply the tariff, especially since REPs are not in agreement over how they interpret the tariff.

Commission response

The commission finds that one of the main purposes of this rulemaking proceeding has been to standardize certain processes among TDUs. While all TDUs are not expected to have the exact same systems, TDUs must implement the expectations set forth in this tariff and these should be standardized among all TDUs. The commission finds this language necessary and appropriate, and declines to amend the proposed rule.

Section 3.6 Changes to Tariff

The REP Coalition stated that nothing in the proposed amendments requires a TDU to give advance notice to REPs of changes in the tariff or changes in the TDU's application of the tariff. The REP Coalition recommended requiring a TDU to give REPs 20 days notice. In addition, the REPs stated that nothing in the tariff requires a TDU to give REPs notice of commission approved rates before the rates take effect, and recommended additional language to require this notice. The TDUs disagreed with this comment, stating that REPs could monitor a rate case without intervening. However, the TDUs recommended changes to the REPs' suggested language, should the commission adopt this requirement, including that notice only be required for a material change, and that posting a notice on the TDU's website or providing notice by email to all REPs operating within its territory would be sufficient notice.

Commission response

The commission finds that there should not be many changes, if any, to the interpretations of the TDU tariff. If a TDU finds it necessary and within its rights to change the way it is applying a part of its tariff, it needs to send notice to the designated contacts for changes in interpretation at least 30 days in advance so that the REP has adequate time to prepare for the change and to file a complaint with the commission if it deems necessary. The commission therefore, amends this section to this effect. However, the commission agrees with the Joint TDUs that REPs have means through simple monitoring of commission proceedings to find out if a TDU's rates are changing. Therefore, the commission determines that there is no need for special notification for rate case changes.

Section 3.8 Form of Notice

The Joint TDUs recommended that an additional sentence be added making it clear that the "designated contact" who receives notices may be different individuals for different types of communication, to provide flexibility to the REPs and TDUs.

Commission response

The commission agrees with the Joint TDUs that the tariff should allow for multiple contacts based on the type of notice and makes the proposed changes to the tariff.

Section 3.17 Waivers

Joint TDUs recommended that the proposed sentence added at the end of this section be removed, as it is redundant with the non-discrimination language of Section 3.7. Joint TDUs also asserted that this language could be interpreted as undercutting the waiver provision. "The purpose of a waiver is to make a one time exception. However, if the proposed language is added, an argument could be made that the TDU must waive the requirement for all REPs if a waiver is granted to one." The REP Coalition responded that waivers need not be offered to all REPs if offered to one; they need only be offered to those that are similarly situated. The REP Coalition supplied additional language to clarify this position.

Commission response

The commission agrees with the TDUs that this sentence is redundant with Section 3.7, is therefore unnecessary, and should be removed. This change avoids the need for the language proposed by the REP Coalition.

Section 3.19 Public Service Notice

The Joint TDUs recommended that this section be removed from the tariff. Joint TDUs stated that the issuance of public service announcements should be handled outside of the tariff, that the term "public service notices" is overly broad as it is not defined, and, to the extent that the TDU is required to perform services, the costs of those services should be recovered from ratepayers. The REPs responded that it is appropriate that TDUs notify customers of electric grid issues.

Commission response

The commission has the authority to require the TDUs to make public notifications for many different purposes and declines to remove this section from the tariff.

Section 4.3.1 Eligibility

Joint TDUs stated that subsection (3) should be changed to reflect that the provisions of subsection (1) must be satisfied before the REP can be deemed eligible because the REP should not be considered eligible for service until the TDU has received notice that the REP has successfully completed testing. Joint TDUs added that they should be allowed two Business Days from the receipt of the executed Delivery Service Agreement from the REP to execute the agreement.

Commission response

The commission agrees that the provisions in (1) should be satisfied before the delivery service agreement is executed and that the TDU should have two Business Days to execute the agreement. The commission amends subsection (3) accordingly.

Section 4.3.2 Initiation of Delivery System Service (Service Connection)

The REP Coalition stated that they were concerned with the removal of the timeline associated with the TDU's fulfillment of requests for new Delivery System Service because a gap now exists between the time that Chapter 4 and Section 6.1.2 will each become effective. This gap is extremely problematic for REPs and Consumers. The REP Coalition commented that Section 6.1.2 may not become effective for all TDUs until 2008, and it is imperative that expectations for basic services such as service connections associated with move-ins and disconnections associated with move-outs are known and able to be communicated to Retail Customers before 2008. The REP Coalition proposed language for this section to this effect. The REP Coalition recommended that four of the most basic TDU services in Chapters 4 and 5 of the tariff be effective at the adoption of the rule and urged the commission to require expedited proceedings at the conclusion of this rulemaking in which to standardize all other TDU Discretionary Services.

In reply comments, the Joint TDUs strongly supported the approach used in the published amendments, which set forth the timelines, applicable to the standardized Discretionary Services in the Chapter 6 Rate Schedules rather than in Chapters 4 or 5. However, the Joint TDUs stated that if the service description for the move-in service were to be included here, the language

proposed by the REP Coalition is incomplete. The Joint TDUs requested the REP Coalition's proposal be rejected and the complete and detailed description be contained in Chapter 6, with the Joint TDU's suggested amendments.

Commission response

The commission desires to have the changes proposed in this tariff and in Chapter 6 effective as soon as possible but realizes that some of these changes will require TDU system changes and may require TX SET changes as well. The commission believes that standard move-ins, move-outs, meter re-reads and standard reconnects will not require such changes, and therefore finds it appropriate to include the requirements for these standard services in Chapters 4 and 5 so that they may be implemented in July of 2006. The commission agrees to leave the items that require systems and process changes in Chapter 6 but moves some of the implementation dates to a date earlier than was proposed. The commission believes that there is enough time to implement the Texas SET changes, TDU and REP systems changes, and TDU discretionary service charges by July 1, 2007, and therefore finds that July 1, 2007 is the appropriate date for the implementation of Chapter 6.

Section 4.3.3 Requests for Discretionary Services Including Construction Services

The REP Coalition commented that the term "Applicable Legal Authorities" is not the most appropriate term to use to refer to the technical requirements involved when a TDU notifies a REP that a service request has been completed. The REP Coalition recommended that "Texas SET" replace "Applicable Legal Authorities" because it is more appropriate and contains the

technical requirements for transaction processing. The TDUs disagreed, stating that "TX SET" is included in the term and the broader term is more appropriate because requirements for both requesting service and sending notification of completion of service are contained in the Retail Market Guides, which are not embraced by the term "TX SET." The TDUs added that the use of the more narrow term could be construed as limiting the ability of the commission to impose requirements.

Commission response

The commission agrees with the Joint TDUs that the term "Applicable Legal Authorities" is the appropriate term, for the reason expressed by the Joint TDUs and declines to amend this section.

The REP Coalition requested that the requirement of the proposed tariff that the transaction notifying a REP that a Discretionary Service request has been completed include the time that the service was completed in addition to the date. The REP Coalition stated that a TX SET change would not be required because the transaction already includes a date and time stamp. The REP Coalition commented that some TDUs transmit the date and the time that the transaction was generated, rather than when the work was completed. This information is important for the consumer and the commission in ensuring that service requests are completed within the required timeframes.

In reply comments, the Joint TDUs requested that this proposal be rejected. The Joint TDUs commented that the REPs do not consider that it would be enormously difficult, time consuming

and expensive to implement such a requirement due to the changes that TDUs would have to make to capture the exact time of completion in the mobile data system and transfer that information to the transactional system used to send the TX SET discretionary service order transaction (650). One TDU has estimated that it would cost $3 million to change its systems to include this information on the TX SET discretionary service order transaction. Joint TDUs added that they expected that REPs would have to change their systems for them to accept the information and use it. Joint TDUs stated that the approximate service completion time is available in the TDU's mobile data system and can be provided to the REP upon request. Joint TDUs stated that with the exception of Priority Reconnects, the timelines for provision of service in the published amendments are day-based and are not dependent upon service being provided at a specific time. Additionally, the discretionary service order transactions are currently batched multiple times daily, providing the REPs with timely notification that the transactions have been completed, and therefore what little benefit there might be to the market is significantly outweighed by the substantial cost. Joint TDUs stated that there would be additional expense for the entire market and ERCOT if transactions other than service orders had to be revised so that they could also carry the time stamp. The TDUs added that they have had few requests for this information, it is not necessary for an efficient market, and should not be required on the transactions.

Commission response

The changes proposed by the REP Coalition to include date and time on the transaction do not provide a significant benefit to the market. The commission has eliminated timeframes for all Discretionary Services so that the date is the only item that must be captured. The

exact time the service was completed is not relevant to the charges and is unnecessary. However, as the Joint TDUs noted, a REP can call the TDU to find out the approximate time the service was completed if the customer inquires.

Section 4.3.4 Changing of Designated Competitive Retailer

Joint TDUs commented that the TDU should not be prevented from charging for an out-of-cycle Meter read associated with an off-cycle switch, if a trip is made to read the Meter and estimation occurs because of a failure of the Meter equipment. Joint TDUs commented that in this event, as well as in denial of access, the TDU should be allowed to bill for the time and effort expended to accomplish the Meter Read even if an estimate is the result because the process will have been more costly to the TDU than actually performing the Meter read due to the necessity of making the estimate.

Joint TDUs commented that the market is encouraging estimates to be made for the off-cycle switches that occur in a mass transition in order to speed up the process, and that the TDU should be able to charge for the time and effort expended in making the estimate. In reply comments, the REP Coalition strongly opposed this proposal, and argued that estimating a meter read from the office or through a computer program does not warrant the fee that is to be charged when the TDU sends a truck to the location.

The REP Coalition supported the commission's changes to the section that prevent a TDU from assessing a charge for an out-of-cycle meter read in conjunction with a switch when the meter reading is estimated. The REP Coalition noted that this provision is important in light of the

market's efforts to devise a Mass Customer Transition process that can facilitate the movement of large numbers of Retail Customers in REP default situations where the volumes prohibit a TDU from completing actual meter reads. In reply comments, Joint TDUs disagreed with the REP Coalition because there is significant time and effort involved in performing such estimates, and significant costs are incurred that are not otherwise included in the rates which the TDU should be allowed to recover.

Commission response

The commission disagrees with the TDUs that the TDU should not be prevented from changing for an out-of-cycle Meter read associated with an off-cycle switch, if a trip is made to read the Meter and estimation occurs because of a failure of the Meter equipment. The commission finds that a charge should not be assessed as this matter is not within the control of the customer or REP, and it is in the best interest of the TDU to find out about the malfunctioning meter as soon as possible. However, the commission agrees with the Joint TDUs that if a trip is made and the TDU is unable to read the meter because a customer denied access to the meter, the TDU should be able to charge for the trip. The commission also agrees with the REP Coalition that charges for estimation in the office are likely different from charges associated with making a trip to the premise and therefore the commission finds that a separate charge for estimation without a trip is appropriate, and amends Chapter 6 accordingly. Since the TDUs do not currently have a separate charge for estimation that has not required a trip charge, this may be implemented when the utility implements a new Chapter 6.

The commission agrees with the REP Coalition that services performed to help effectuate timely mass transitions are an important aspect of this issue, and also agrees with the TDUs that they should be able to charge for such service. The commission finds that any charge should be based on the specific service that was performed, for the reasons discussed above, and that this charge should be assessed to the exiting REP. Whether the TDU or market determines that an out-of-cycle read or an estimation without a trip is necessary to effectuate a timely mass transition, it is the exiting REP, not the customer, or acquiring REP or POLR who has necessitated this service and who should therefore incur any charges. However, the acquiring REP or POLR may request and pay for an out-of-cycle meter read should it deem it necessary.

OPC commented that the vagueness of the definition of "Applicable Legal Authorities" may prove to help, harm or simply confuse all entities involved, and may result in confusion regarding a TDU's determination not to change a Retail Customer's REP. OPC proposed that the TDU be required to notify, with detailed rationale the Retail Customer's requested REP within 24 hours of a Company determination not to change the REP designation. In reply comments, the Joint TDUs stated that OPC's recommendation that the TDU notify the REP if a request to switch a Retail Customer to that REP is not honored is unnecessary. The Joint TDUs stated that any switch reject would be due to a REP being in default, of which the REP would already be aware. Additionally, the switch is rejected by sending a TX SET transaction to the REP, which serves as notification.

Commission response

The commission agrees with the Joint TDUs that the REP should already be aware of its default status. The commission does not believe this is confusing and declines to amend the language.

Tenaska requested that the commission revise the tariff as appropriate to require TDUs to provide historic customer usage information to a requesting POLR once it has been determined that the customer in question will be transitioned to POLR service in a Mass Drop or analogous process. Tenaska recommended that the tariff should provide that the TDUs will make the information available upon request by the POLR either in a separate transaction or through the normal TX SET process, but in any event should be required to make the information available at such a time that it is available to the POLR when it submits the switch request to ERCOT.

Commission response

The commission agrees that the POLR should be given the historical usage as soon as possible after the POLR submits a switch request to obtain the customer. The commission disagrees that this is an appropriate place to address this issue, and whether such information should be submitted before or after the submittal of a switch, because the details for this process are not specified in this tariff. Additionally, the commission notes that Tenaska currently has a declaratory order pending on this very issue at this time, and this issue is also being addressed in Project 31416.

Section 4.3.6 Identification of the Premise and Selection of Rate Schedules

The REP Coalition stated that in subsection (1), the defined term "Premises" is not appropriately used in the description of non-metered loads because non-metered loads do not fit the definition of Premises and are typically referred to as Points of Delivery. Joint TDUs responded that the term "Premises" is defined to include "related commonly used tracts," and this appropriately embraces unmetered loads, most of which are street lights on the roadways of a city, county or other jurisdiction. The TDUs added that an additional provision has been added to cover other non-metered loads, where multiple company-owned Points of Delivery may be grouped under one ESI ID.

Commission response

The commission agrees with the Joint TDUs that Premises is the appropriate term and amends the title to agree with the description.

In reply comments Joint TDUs stated that subsection (2) should be deleted because the long standing practice for TNMP, has been that when the temporary service becomes the permanent service, the same Meter is used, and the ESI ID is not changed. Joint TDUs stated that this provision does not pose a hardship for the vast majority of REPs and should not be required to be changed for the convenience of only one.

Commission response

The commission is amending this provision of the tariff to limit the circumstances in which an ESI ID may be used for temporary and permanent services at the same location. The

intention is to limit the circumstances to those in which the permanent and temporary service are similar. If an ESI ID has been used for construction of several buildings, it should not then be used as the permanent service to a single building. If the permanent meter and temporary meter are used for exactly the same premises, such as the construction and sale and then occupancy of a single house at one address, then using the same meter for temporary and permanent service would be allowed. The commission changes the tariff to reflect this intent.

Joint TDUs stated that subsection (3) relating to assigning load profiles to ESI IDs is unnecessary and should not be adopted. The REP Coalition disagreed.

Joint TDUs stated that the complex issues surrounding the role of all market participants in load profile assignment and maintenance are currently covered in the ERCOT protocols and that the obligation of various market participants should be defined there, rather than the tariffs. The REP Coalition agreed that load profile assignment and maintenance is a complex issue, the details of which are appropriately covered in the ERCOT protocols, and more precisely, the Load Profiling Guides. However, the proposed subsection articulates the TDU's obligation to identify, assign and maintain load profiles and meter reading cycles for ESI IDs, which the REP Coalition believes to be appropriate for the tariff.

Joint TDUs stated that if adopted, this language should be changed to reflect the fact that the TDU cannot provide information that it does not have and cannot ensure validity of information provided by others. Joint TDUs stated that they currently identify the initial load profile, based

on equipment installed, which determines the TDUs assignment of the initial rate code, profile type, etc, but there are factors that the TDU will not be aware of such as whether the Retail Customer will operate the Premises as a business or residence. Joint TDUs stated that it was therefore inappropriate to require the TDU to "identify, assign and maintain…the *appropriate* load profile…necessary for *accurate* settlement." Joint TDUs commented that if this provision is retained, it should be changed so that it does not inappropriately require the TDU to be responsible for, and possibly serve as the guarantor of, the accuracy of information it does not have or provide. The REP Coalition disagreed and gave excerpts from the ERCOT protocols and Load Profiling Guides to contradict the Joint TDUs' claim, and to show that the TDU plays a vital role in maintaining the appropriate load profile for all ESI IDs. The REP Coalition argued that the tariff needs to clearly delineate these responsibilities. The TDUs requested an amendment to the phrase "other information necessary for the accurate settlement of the wholesale market" to limit the TDU's responsibility for accuracy of information to information that a TDU provides. The REP Coalition proposed that the TDUs be responsible for any information required by ERCOT.

The REP Coalition supported the amendments to this section of the pro-forma tariff, and made recommendations to clarify and enhance the section.

Commission response

The TDUs have the responsibility to assign and maintain ESI IDs and since this tariff establishes requirements for TDU performance, this tariff is an appropriate place to address this matter. The commission realizes that the TDUs must get certain information

from REPs in order to accurately maintain the ESI ID and profile for ERCOT Settlement purposes. The commission notes that under Section 4.3.6, the REP must notify the TDU of changes that affect the applicability of rate schedules. Additionally, the commission realizes that it is important that the TDU be made aware of changes in a Retail Customer's electrical installation or use of Premises in order to accurately maintain the ESI ID and load profile and adopts changes to Section 4.3.6 to reflect that the REPs must also notify the TDU of any changes in a customer's electrical installation or use of Premises. The TDU, however, is responsible for accurately reporting the changes in the profile assignments.

ERCOT commented that this subsection requires the TDU to notify the REP and the Independent Organization (ERCOT) of the appropriate load profile, the initial Rate Schedule assignment and any changes or revisions to data associated with an ESI ID, including changes or revisions in the assignment of a Rate Schedule. ERCOT stated that currently the TDU sends Rate Schedule information on a transaction to ERCOT, which ERCOT forwards to the appropriate REP, but ERCOT performs no validation on the accuracy of the Rate Schedule and does not store the Rate Schedule. ERCOT commented that any requirement for ERCOT to perform such validation would require system and business process changes at ERCOT. The TDUs responded that under the proposed amendments, ERCOT is not required to perform this function.

Commission response

ERCOT is responsible for the accurate accounting of the market and may elect to use a verification process it deems necessary to accomplish its obligations. However, the

commission agrees with the Joint TDUs that in this rulemaking ERCOT is not being specifically required to perform validations of rate schedules.

Joint TDUs stated that the requirement in subsection (5) that the TDUs provide information distinguishing between multiple ESI IDs at the same service address would be very difficult to implement. To implement the requirement on a going forward basis, the TDUs would have to develop a standard set of codes for making the required distinction; transactions would have to be modified to carry the information; and ERCOT would have to modify its portal. Additionally, Joint TDUs claimed that to go back and identify the codes that should be applied to existing installations would take months. The REP Coalition requested that the commission reject these arguments because the TDUs incorrectly suggest that this requirement would mean the TDUs would have to develop a standard set of codes to make the distinction when terms such as "pool," "barn," or "sprinkler" could be used; codes would only confuse the issue; and the ERCOT web portal already has a second Address Line that could be used for descriptive information. The REP Coalition commented that the market should not ignore the opportunity to reduce the chance of enrollment errors.

Commission response

The commission finds that being able to differentiate between premises is very important to customers and REPs, who must know what premises they are enrolling and/or disconnecting. The commission finds that these changes are necessary and declines to adopt the Joint TDUs' suggested changes to this section.

Joint TDUs stated that in the second paragraph, the proposed additional language requires that all demand ratchets be reset to zero when a new Retail Customer takes service at an existing Premises. Joint TDUs did not disagree with the general concept that demand ratchets should be reset, and noted that this change would only impact TXU ED. Joint TDUs, however, did disagree with addressing such a change in a rulemaking, rather than a general rate case.

Joint TDUs stated that TXU ED's current rates were set using a level of demand billing that results from not resetting the ratchet to zero for a new Retail Customer, which means that the base rates were calculated using a higher level of demand, and thus are lower on a per-unit basis, than would have been the case had the rates been set assuming that the ratchet would be reset to zero with a new Retail Customer. Joint TDUs stated that it is improper to impose this change to billing units in a rulemaking, instead of a rate case where the concurrent impact on the associated rate would also be taken into account. They cited the Administrative Procedure Act and a Texas Supreme Court ruling in support of their argument. Joint TDUs recommended additional language to provide that the requirement to reset the demand ratchet to zero is effective only if the TDU's rates are not set based upon a different approach, but, TXU ED agreed to eliminate no later than its next general rate case, the practice of using Premises information for billing when a new Retail Customer moves into an existing Premises.

The REP Coalition responded that the commission is not changing TXU ED's rates in this proceeding, and that it is appropriate for the commission to set policy in a rulemaking such as this. The REP Coalition stated that it did not disagree that such a change in policy may affect TXU ED's revenues, but no utility is guaranteed a specific rate of return, only an opportunity to

earn a reasonable rate of return. The REP Coalition stated that if a change in commission policy affects revenues, such that the TDU no longer has an opportunity to earn its authorized rate of return, the utility can file a rate case.

Commission response

The commission concludes that it is appropriate for the commission to set policy in rulemakings and that the existing policy is problematic for some customers. Therefore, changes are necessary. However, the commission understands that TXU ED's current base rates were set based on the assumption that the demand ratchet is not reset for a new customer. Therefore, the commission finds it appropriate for the TDU to discontinue this practice no later than the conclusion of its next general rate case and makes changes to the proposed tariff to reflect this.

Joint TDUs commented that in the last paragraph, language should be added to make it clear that a change in Rate Schedule will not be applied in the billing cycle in which the change is requested, when the Billing Determinants are not available to bill under that new rate. Joint TDUs stated that this is correctly stated in Section 4.8.1.5, and that this section should be consistent with that section.

Commission response

The commission concludes that it is appropriate to clarify this language consistent with Section 4.8.1.5.

The REP Coalition recommended that the tariff require the TDUs to provide the REP 60 days notice once it is determined that a Retail Customer is no longer eligible to receive service under its current rate schedule to allow the REP time to communicate with the Retail Customer and ensure they understand the change and the impacts to their monthly bills. The TDUs responded that this proposal should be rejected because the requirement would force billing of a Retail Customer on an incorrect rate, could increase cancel/rebills, and would conflict with the overall rate design scheme for transmission and distribution service that was adopted at the initiation of the deregulated market, which recognizes a difference in the applicability of Rate Schedules based on usage. Joint TDUs stated that REPs have been aware that Retail Customers may become eligible for a different rate, based on their usage, from the implementation of the market, and 60 days notice should therefore not be required.

Commission response

The commission agrees with the Joint TDUs and declines to amend the proposed language.

The REP Coalition proposed that notice be sent with a TX SET 814_20 transaction at least two Business Days prior to the ESI ID being billed to the REP by the TDU on the new rate schedule in order for the REP to have sufficient time to process the rate change transaction prior to receiving an invoice based on the new rate schedule. The REP Coalition stated that if the transactions are processed out of sequence, a processing error and/or invoice rejection could occur, delaying billing to the Retail Customer or payment to the TDU. Joint TDUs responded that this is already required by ERCOT protocols and need not be stated in the tariff.

Commission response

The commission agrees this is more appropriately addressed by the ERCOT protocols or ERCOT market guides.

The REP Coalition noted that the last sentence of Section 4.3.6 appears to have been deleted in error, and recommended that language be reinserted that addresses situations where a change in facilities or Rate Schedule requires a different billing methodology. The Joint TDUs agreed that the language in the existing tariff should be reinserted in the last paragraph to make it clear that a change in Rate Schedule will not be applied in the billing cycle in which the change is requested, when the Billing Determinants are not available to bill under the new rate.

Commission response

The commission agrees that the last sentence appears to have been deleted in error and is reinstating the language.

Section 4.3.7 Provision of Data by Competitive Retailer to Company

Joint TDUs recommended that certain language that was added to Section 4.11.1 in the published proposal be relocated here, and that Section 4.11.1 refers to its inclusion in this section. The REP Coalition disagreed because the REP Coalition opposes the additional proposed language in Section 4.11.1 that suggests a TDU will need updated Retail Customer data in order to verify a Retail Customer's identity, regardless of what option the REP has chosen for TDU communications.

Commission response

The commission agrees with Joint TDUs and relocates parts of Section 4.11 here.

Sections 4.3.9.1 Critical Care Residential Status, 4.3.9.2 Critical Care Industrial Customer of Critical Load Public Safety, and 4.3.9.3 Other Company Responsibilities

Joint TDUs recommended that the provisions in Sections 4.3.9.1, 4.3.9.2, and 4.3.9.3 not be adopted because they create confusion with regard to §25.497 regarding Critical Care Customers. Joint TDUs stated that these requirements are similar, but not exactly the same and it is not clear whether this language is intended to change the requirements, and if so what the TDU is expected to do to satisfy the new requirements. If the intention is to modify the requirements in the Customer Protection Rule, then the rule itself should be changed. Otherwise, the tariff should simply reference §25.497, or use the same wording. Joint TDUs stated that at a minimum, the tariff should make it clear that the TDU's duties are set out in the Customer Protection Rule, and reference §25.497. The REP Coalition responded that the provisions are clear, but should be strengthened as they proposed in initial comments.

The REP Coalition argued that the pro-forma tariff is the appropriate vehicle to address a TDU's responsibilities in qualifying and renewing designation of critical care customer. The REP Coalition, however, is concerned that the new language essentially paraphrases §25.497 without adding the necessary detail or clarity that requires the TDUs to affirmatively evaluate whether a Retail Customer actually meets the critical care requirements as opposed to qualifying Retail Customers as critical care based simply on the submission of an application. The REP Coalition stated that the new Section 4.3.9.3 which directs TDUs to "fulfill any other responsibilities

pursuant to PUC SUBST. R. §25.497" is unnecessary since they are already required to comply with commission rules. The REP Coalition recommended that this section be revised to clarify the commission's expectations of the critical care qualification process.

Consumers commented that Section 4.3.9.1 omits the time limits of the TDU to evaluate an application and determine a Retail Customer's eligibility for critical care status, and does not address the process for a Retail Customer to appeal a decision made on critical care status. Consumers stated that it is essential that there are no mistakes regarding the status of critical care customers, and the tariffs should be revised to assure that the responsibilities of both the TDUs and the REPs are unambiguous. The REP Coalition responded that they had no objection to the Consumers' language providing clarification on timelines and appealing TDU decisions regarding critical care qualification.

Joint TDUs responded to additional language proposed by both the REP Coalition and Consumers' and stated that the language of the proposed rule, and modifications proposed by Consumer Commenters that duplicate rule provisions in the tariff are unnecessary, and will create additional difficulty if the provisions ever need to be changed. The TDUs reiterated their request that the language be stricken and that modifications be addressed through amending §25.497.

Commission response

The commission disagrees with the Joint TDUs that the proposed changes in this section should not be adopted. While the Customer Protection Rules outline some of the process,

more detail is necessary in the tariff to set out the TDU's responsibility to investigate the critical care/critical load applications. The commission also disagrees with the REP Coalition that the reference to §25.479 should not be included in the tariff and declines to make that change. The commission agrees with Consumers that the rule should include a time limit and a process for appeal and changes the rule accordingly.

Consumers stated that exculpatory language excusing TDUs from legal responsibility for their injurious actions should not be permitted in any government approved tariffs. OPC responded in support of these comments. Joint TDUs noted that Consumers did not propose a language change. Joint TDUs stated that the limitation of liability provision found elsewhere in the current tariff, which no party has proposed be changed, has been in place for decades and has been upheld by the Supreme Court.

Commission response

The commission finds that the exculpatory language in this section is appropriate and declines to amend the language.

Section 4.3.13 Customer Requested Clearance

The REP Coalition also recommended that the commission include specific timeframes for field completion in the tariff. The TDUs disagreed that the timelines and descriptions for standardized Discretionary Services should be included in Chapter 4, and noted that the proposed language does not contain sufficient detail.

Commission response

The commission agrees with the Joint TDUs' argument and is adopting the tariff language that was included in the proposal that was published for public comment.

Section 4.3.13.1 Move-Out Request

Joint TDUs and REP Coalition commented that language needs to be changed to reference successful execution of a "move-out" transaction, rather than mere disconnection, as the triggering event for the REP no longer having responsibility for the Retail Customer. Until the move-out is successfully completed by both the TDU and ERCOT, the REP is still the "REP of Record" and is responsible for all charges incurred for the ESI ID on a going forward basis. Joint TDUs added that the REP is still responsible for the applicable charges during the time that they were the "REP of Record." Joint TDUs gave examples of when the original REP should be billed, such as if tampering is discovered, and it takes days to investigate and repair the damage. Joint TDUs stated that under current market rules, and other provisions of the tariff, the REP can challenge any charge as not being properly billed to the REP. Joint TDUs added that inappropriate billing has not been a problem in the market. Joint TDUs stated that if the concern is that REPs will have difficulty collecting these charges after they have lost the Retail Customer, they can be protected through a deposit, or contractual arrangements with their Retail Customers. Joint TDUs proposed language to make it clear that the REP is responsible for these charges.

Commission response

The commission agrees with the REPs and TDUs that the REP is responsible for any Delivery Service provided to a Point of Delivery until a move-out is effectuated. The commission also agrees that the REP of Record is responsible for charges requested and incurred before the final bill and that the final bill should not be delayed as the longer it is delayed the less likely the REP is to be able to collect from the customer. The commission notes that tampering discovered while the REP is the REP of Record means that the charge has been incurred during the time that the customer is being served by the REP. Therefore, if the TDU discovers at the final meter read that tampering has occurred, tampering charges are appropriately billed to the REP even in situations when the investigation results in a bill that is issued after final invoice. The commission declines to make the change requested by the REP Coalition, and clarifies that the REP is responsible for charges incurred during the time that they are the REP of Record. This section has been amended to Section 4.3.12.1.

Consistent with the commission's decision to include standard move-in, move-outs, re-reads and reconnects in Chapters 4 and 5, the commission adds the timeline for reconnections to Section 4.3.12.2.

Section 4.4.1 Calculation and Transmittal of Delivery Service Invoices

Joint TDUs proposed that the timeline for transmittal of the invoice be extended from within three days of the scheduled meter read date to three days from the actual meter read date. Joint TDUs argued that this would allow ample time for the TDUs while also insuring that the REPs

receive timely invoices based upon actual Meter reads. Joint TDUs stated that this would apply when the meter could not be read on the scheduled meter read date.

The REP Coalition strongly opposed the Joint TDUs' request and stated that the TDUs are requesting to send the invoice at their convenience rather than within three days of the scheduled date of the meter read. The REP Coalition stated that this would allow deviation from the published meter reading schedule with no consequence to the TDU and could harm REPs. REPs do not control when an "actual" meter read takes place, would never know when to expect the meter read or invoice, and the practice could result in REPs not being able to bill the end-use customer timely.

Commission response

The commission agrees that a REP needs timely information to bill customers each month. In any month that the TDU cannot read the meter and transmit an actual meter reading to the REP, it must send an estimate within three days of the scheduled meter read date so that the REP may timely bill its customer. The commission declines to make any changes to the rule to reflect the TDUs' suggestion.

The TDUs requested that a parenthetical be added to this first paragraph stating that the company shall separately identify the Delivery System Charges and Billing Determinants to the extent the transaction allows them to be reported on the electronic invoice. The REP Coalition did not oppose this request.

Commission response

The commission agrees that Billing Determinants should be reported to the extent the electronic transaction allows them to be reported. This is consistent with §25.479(c)(1)(L) which requires the REP to provide Billing Determinants on the customer's bill if available to the REP on the standard electronic transaction. However, should the REP have a question about the bill, it should be able to contact the TDU to get any additional information necessary to reproduce the bill. Therefore, the commission agrees to change the rule to reflect this.

Joint TDUs stated that it is important to make clear that the REP may not reject an invoice as invalid merely because it has not received other associated transactions such as the 867 transaction, which reports monthly meter readings. Joint TDUs recommended that the portions of Section 4.4.8 dealing with the dispute process be moved to this section and included as the last two paragraphs as having it in one place will make it clearer and will prevent confusion between disputes about invoice validity and other types of disputes.

Commission response

The items for which a REP may reject an invoice are contained in the TX SET standards and the commission sees no reason for them to be addressed here also, as proposed by the Joint TDUs.

Section 4.4.3 Invoice Corrections

The REP Coalition stated that it believes that the issue of invoice corrections, or what has commonly been referred to as "Back-billing" of unbilled or underbilled charges is a key task to be accomplished in this rulemaking. The REP Coalition does not believe the amendment currently proposed in the tariff fully addresses the current incompatibility. The REP Coalition stated that it strongly believes that the period available to a TDU to issue a bill or to correct an underbilling must fall within a period significantly shorter than the 180 day period available to the REP in order to ensure that the REP has adequate time to receive the charges and bill the customer. To ensure allowing the REPs 30 days to process TDU cancels/rebills, the REP Coalition recommended a reference to 150 days, which is the number of days in which billing corrections may take place and still allow the REP 30 days to bill its customer. Texas ROSE and TLSC agreed. The Joint TDUs disagreed with the REP Coalition's recommendation and insisted that the limitation be changed to reference billing cycles instead of months or days so that the process may be automated.

Commission response

The commission agrees with the REP Coalition that TDUs should have 150 days to bill a REP, so that the REP may have 30 days to bill its customer. The Customer Protection Rules specify a limit, expressed in a number of days, on back-billing. Therefore the automated process developed for this back-billing should be expressed in a number of days, rather than billing cycles.

The REP Coalition also requested inclusion of clarifying language to insure that situations which the TDU fails to timely issue a bill fall within its proposed 150-day allowance. Additionally, the

REP Coalition proposed to clarify that the TDU may not include underbillings for adjustments prior to 150 days of the date the invoice was issued or should have been issued. Without these changes, the REPs posited that the tariff may not afford the REP a reasonable opportunity to recover costs associated with an underbilling even if the TDU bears sole responsibility for the underbilling. Joint TDUs disagreed and acknowledged that at market open there were some chaotic circumstances in which the TDU "no-billed" an account, but stated that this rarely occurs today. Since the TDUs are responsible for supplying usage to ERCOT as well as the REP, if a bill is not issued, it is most likely because the REP has not been properly recognized as the REP of Record in the electronic systems in the market. Joint TDUs also argued that since the REP is in a position to recognize that a problem exists, because it is expecting a bill for the customer, it should be responsible for alerting the TDU if a bill is not received, so that the problem can be timely resolved. Joint TDUs suggested that as a precondition to treating a failure to bill as an underbilling, the REP should be required to notify the TDU if it has failed to receive a bill for one of its customers for two or more consecutive months.

Commission response

The commission agrees with the REP Coalition, that it is the TDUs' responsibility to issue timely bills. The commission agrees to make the changes to the tariff suggested by the REP Coalition. The commission also adds a section on estimated billing to clarify that if an invoice is estimated it must also be trued up within the same amount of time. This is consistent with the commission's decision to require the TDU to obtain actual meter readings.

Joint TDUs stated that in the current market design, the credit is not applied to the re-billed invoice, but instead it is returned with a credit 820 transaction. Therefore, Joint TDUs suggested that payments should be applied as provided by Applicable Legal Authorities rather than "to the rebilled invoice." The REP Coalition agreed with this change.

Commission response

The commission agrees and makes changes to the tariff as suggested by the Joint TDUs.

Joint TDUs opposed the requirement to pay interest on overcharges as they believe that costs will be enormous for each TDU compared to the miniscule amounts of interest that TDUs believe will be paid. Joint TDUs explained that the average TDU bill per residential ESI ID is approximately $30 per month. Even if the overcharge is double what it should have been, the TDUs argue that the interest will only be $0.227. Joint TDUs believe that it will cost far more than this to calculate and render the bill. Joint TDUs stated that if the commission decides to require payment of interest on overcharges, that it could not be implemented by June 2006 and it should not include a requirement of paying interest on the correction of estimates resulting from the Retail Customer's failure to provide access to the meter.

The REP Coalition urged the commission to reject the Joint TDUs' recommendation to delete the interest requirement. The REP Coalition pointed out that the Joint TDUs didn't explain why it would cost so much to implement and noted that upon unbundling of the electric market, the requirement to pay interest on overcharges was brought forward from §§25.28(c)(3) to 25.480(d)(3), so the net effect to the customer remains unchanged. However, since the provision

was not brought forward into the tariff, the TDUs aren't required to pay interest even if they are the cause of the overbilling. In addition, the REPs stated, the interest calculation downplays the potential magnitude of the issue as $0.227 for a $30 error, when considered in the aggregate could equate to significant impacts to REPs. Moreover, commercial and industrial bills which can be 1,000 times larger than residential bills, make interest on over-billed amounts even more significant. The REP Coalition insisted that TDUs should not benefit from their errors in over-billing REPs and REPs should not be required to take the financial brunt of TDU errors.

Commission response

In §25.480, the commission does not require a customer to pay for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred. (The 180-day limit does not apply if the customer tampered with the meter.) Additionally, REPs are required to pay interest on an overbilling even if it is the result of the TDU's error. Therefore, the commission finds that the TDU should be allowed to invoice the REP for the past 150 days, so that the REP has an opportunity to bill its customer for any amount it is invoiced by a TDU. The commission concludes that the arguments of the REP Coalition and Suez are compelling and that interest be paid on overbilled charges. The interest that a REP must pay on overbillings to residential customers in the aggregate and commercial customers can make interest charges a significant amount of money, and for this reason, TDUs that correct an erroneous bill should be required to pay interest, regardless of the class of customer or the amount of the refund. The rule that is being adopted reflects this conclusion.

Consumers stated that from a consumer perspective, invoice corrections and in particular unexpected increases going back up to six months are troubling. They recommended limiting any backbilling to a customer to 30 days. They stated that this would put the onus on the TDUs to get the bills right and get them delivered to REPs in a timely manner. Joint TDUs stated that this is unrealistic as TDUs read nearly six million meters a month and mistakes are going to occur. The TDUs did not believe that thirty days would allow sufficient time for errors to be discovered and resolved.

Commission response

Prior to retail competition, the utilities had six months to find an underbilling error and rebill the customer. In the Customer Protection Rules, the commission continues to allow the customer to be rebilled within 180 days to correct an underbilling. The commission believes that 180 day allowance for the REP to rebill a customer and 150 days for a TDU to rebill a REP are appropriate limits. The commission disagrees with Texas ROSE and TLSC. Thirty days is not enough time to discover errors and to correct them.

Section 4.4.5 Remittance of Invoiced Charges

Joint TDUs suggested the addition of language to make it clear that the original payment deadline applies to an invoice that is rejected by a REP if it is ultimately determined that the invoice originally sent was valid and that the REP should not have rejected the invoice. The REPs argued that this proposal appears to permit TDUs to hold the REP in default or subject the REP to late payment penalties following resolution of an invoice dispute in the TDU's favor, which would result in a "loser pays" provision that does not belong in the tariff.

Commission response

The commission agrees that making this suggested change could result in a REP being subject to a late penalty or a default if the dispute is not resolved in its favor. This would likely have the result of fewer invoice disputes, as REPs would likely not want to take the chance of being in default in order to dispute an invoice. While the commission does not want to encourage frivolous disputes, it also does not want to discourage REPs from filing disputes when they have been wrongfully invoiced. The commission declines to make the change suggested by the TDUs. However, the commission notes that the REP does not get additional time to pay if the dispute is not resolved in its favor. In order to avoid penalties under the tariff, payment should be made promptly (within one Business Day) upon the resolution of the dispute. The commission amends Section 4.4.8 to include effectuating language.

Section 4.4.6 Delinquent Payments

The TDUs suggested the term validated invoice be changed to the defined term "Valid Invoice."

Commission response

The commission agrees to this change.

Section 4.4.8 Invoice Disputes

Joint TDUs recommended that the 20 Business Day period for initiating dispute resolution procedures be reduced to 10 Business Days so that the resolution can be handled expeditiously.

The REP Coalition opposed this suggestion due to the importance of ensuring accurate billing. The REP Coalition stated that REPs extensively review TDU invoices and this requires a considerable amount of time. The REP Coalition noted that the timeline to initiate the dispute does not directly impact the expediency of the TDU's investigation.

Commission response

The commission believes that 20 Business Days is a reasonable time to discover an error and initiate a dispute. Therefore the commission does not agree to change the rule as the TDUs proposed.

Section 4.5 Security Deposits and Creditworthiness

Joint TDUs stated that all participants in the market are allowed to collect upfront security deposits as a condition of doing business: ERCOT charges QSEs, energy suppliers require up-front deposits from REPs, and REPs require deposits from customers. Therefore, the TDUs concluded that they are the only party left unprotected. Joint TDUs stated that the showing of minimum financial wherewithal required by the REP certification rule does not protect the TDU. Joint TDUs stated that despite multiple REP bankruptcies and departures from the market leaving unpaid TDU bills, the TDUs have collected no funds allegedly available under the REP certification rule. Therefore, they proposed that the tariff be amended to allow the TDU to collect security deposits from REPs as a condition of doing business, with the implementation of this requirement delayed until the REP certification rule is amended to allow them to do so. In the alternative, language should be added to the tariff removing the barrier in the existing tariff that would prevent collection of a deposit in case a decision was made during reconsideration of

the REP certification rule to provide for such deposits. That way, the tariff would not have to be reopened to remove the barrier if a decision were made to allow deposits in another proceeding. Finally, the TDUs noted that there may be other mechanisms used separately or in conjunction with a security requirement that could meet the goal of not having the TDUs unprotected in the event of a REP default. For example, the TDUs suggested a rider might be approved that would let the TDUs collect a bad debt expense arising from REP defaults.

Commission response

The commission agrees with the TDUs that this tariff should not prohibit the TDUs from collecting a deposit if the commission decides in the future to allow for the TDU to collect deposits. Therefore, the commission agrees to insert the TDU's proposed language that may allow for deposits in the future if §25.107 is amended to allow that option. However, the commission finds that the tariff is not the appropriate place to require REPs to provide security deposits, and declines to include such language as requested by the TDUs.

The REP Coalition supported the addition of language to specify the methodology for determining the deposit amount necessary to provide security for the payment of transition charges since each TDU has its own approach and the REP is unable, in many instances, to duplicate the calculation to verify its accuracy.

Joint TDUs strongly urged that the changes related to transition charges (TCs) be rejected as the changes attempt to change the requirements in the financing orders. Joint TDUs stated that changes proposed in the first paragraph would ignore parts of the financing order that state that

notice must be given by REPs to Retail Customers. The proposed change in the second paragraph detailing how the TC charge is to be calculated could result in deposits being far smaller than intended under the financing orders. Joint TDUs state that this would be a material change that could be viewed negatively by bond rating agencies. Joint TDUs urged the commission not to take any action that would violate the irrevocable nature of a financing order, thereby ensuring the continued viability of the existing bonds and the rating agencies' views of subsequent bonds to be issued. Joint TDUs pointed out that §25.108(d)(11)(B) provides that the commission may impose standards that are different from the financing order "only where the commission received prior written confirmation from each rating agency that rated the transition bonds authorized by that financing order that the proposed modifications will not cause a suspension, withdrawal or downgrade of ratings on the transition bonds." Joint TDUs stated that since there has been no determination that the proposed changes are among those that could be changed, and that the rating agencies have not been requested to assess the impact of the changes, and that §25.108(d)(11)(A) states that REP standards in the financing order take precedence over REP standards in a commission rule, unless the standards in the financing order have been modified, then the changes in the tariff would not be effective.

Commission response

The commission agrees that the integrity of the ratings on the transition bonds should be protected and at this time chooses not to introduce additional regulatory risk by making changes that could degrade the ratings of the bonds. However, the commission recognizes that there is a problem for the REPs as they cannot check to ensure that they are paying a fair deposit. Therefore, the commission finds that the TDUs need to be able to explain

their calculation of deposit amounts in a way that the REP can recalculate its own deposit to ensure that it is being charged fairly.

Section 4.5.1.3 Form of Deposit

Joint TDUs stated that one of the ways a REP can meet the proposed security requirements is to have an investment grade bond rating. The TDUs suggested that the rule be modified to state, "if the credit rating of the provider of the surety bond, affiliate guarantee, or letter of credit or the REP is downgraded below the BBB- or Baa3 (or equivalent) the REP must provide a deposit in accordance with this tariff within ten Business Days of the downgrade."

Commission response

The commission disagrees that the change proposed by the TDUs is necessary because this section requires a REP to post a deposit of a surety bond, affiliate guarantee, letter of credit, cash or cash equivalent and it requires that the providers of the surety bond, affiliate guarantee or letter of credit meet the requirements of BBB- or Baa3. To the extent a REP has provided one of these itself, it is required to meet these credit requirements according to the proposed language. Therefore the change proposed by the TDU is not necessary. If it has relied on another entity to provide the affiliate guarantee, surety bond or letter of credit, then that entity, not the REP is required to meet these requirements.

Section 4.5.2 Credit Reporting

The REP Coalition supported the proposal to promptly correct any erroneously reported information to the national credit bureaus as the language largely mirrors the existing

requirements for REPs in §25.481(c)(3). TDUs suggested eliminating this requirement as there are no national credit bureaus that maintain credit information on businesses (including REPs).

Commission response

The commission is not aware of any credit bureaus for businesses and therefore removes the requirement.

Section 4.6.1 Competitive Retailer Default

The REP Coalition disagreed with the proposed revision to Section 4.6.1 (3) because it implies that if a REP is no longer certified as a REP it is automatically in default with the TDU, which may not be the case. Joint TDUs disagreed and stated that the tariff has always provided that if a REP loses its certification, it is in default and this is the correct result. A REP that is not certified should not be allowed to take service under the tariff and the tariff correctly reflects that default can occur not just as a result of failure to make payments, but also for failing to abide by the tariff or failing to maintain its certification.

Commission response

The commission agrees with the Joint TDUs and declines to make the changes proposed by the REP Coalition.

Section 4.6.2.1 Default Related to Failure to Remit Payment or Maintain Required Security

The REP Coalition agreed with the replacement of the term “lock box” with “dedicated account” provided that it is clear that a dedicated account allows for the current types of electronic transfer

of funds available with the lock box controlled by the TDU. Joint TDUs stated that it is their understanding that any bank account accepts electronic transfers.

Commission response

The commission agrees with the REPs that the term "dedicated account" is an appropriate description and makes no amendments to the language as proposed.

Joint TDUs suggested that Competitive Retailer be substituted for "REP" in Section 4.6.2.1(5)(B).

Commission response

The commission agrees that this change is helpful as it includes an opt-in entity as a possible entity for the defaulting REP to transfer the customers to if the opt-in was willing to serve the customers.

The REP Coalition suggested adding language to clarify that Section 4.6.2.1(5)(A) applies to Retail Customers of the REP in default.

Commission response

The commission agrees and makes the proposed changes to the tariff.

Section 4.6.2.3 Default Related to De-Certification

Joint TDUs stated that the commission should never allow a REP that has lost its certificate to retain its customers. If the commission wants a REP to continue to provide service, its certificate should not be terminated and if the commission is desirous of having flexibility to transfer customers to another REP rather than the POLR, the rule should state that the customers will be transferred to another REP.

Commission response

The rule does not specifically address the transfer of a REP's customers if the REP is decertified, but simply refers to §25.107, which suggests that this issue would be resolved in a decertification proceeding. The commission finds that this matter should be determined in connection with a decertification rather than the tariff and declines to make the amendment suggested by the TDUs.

Section 4.7.1 Measurement

Joint TDUs recommended that certain changes in terminology in this section introduced uncertainty and that the original language be used. Joint TDUs preferred that the original language be adopted, permitting charges to be based on calculations from measurements from Meters or estimation or as calculated for tampering.

Joint TDUs recommended the phrase "unless otherwise determined by the commission" in the first paragraph be deleted because pursuant to legislation residential customers are not eligible for competitive metering and the commission does not have the authority to order otherwise.

Commission response

The commission declines to make this change as its proposed language does not give the commission authority it does not possess. Legislative changes on competitive metering have previously been enacted and could be enacted again, and the proposed language will save resources by obviating the need to change the tariff in the future if the law changes.

Joint TDUs requested that it be clarified that unless an Interval Data Recorder (IDR) customer chooses a meter owner that the meter shall be owned by the TDU.

Commission response

The commission agrees and changes the tariff accordingly.

Section 4.7.2 Meter Reading Schedule

The REP Coalition argued that the language of "meter reading schedule" and "scheduled meter reading date" could be confusing or interpreted differently among TDUs. The REP Coalition recommended the use of "scheduled meter reading date." Joint TDUs did not oppose using the term "scheduled meter reading date." Joint TDUs recommended changing the reference from herein to Applicable Legal Authorities. Joint TDUs also recommended that the obligation to provide the meter reading to the registration agent be based on actual meter read date or scheduled meter read date whichever is later.

Commission response

The TDU has the responsibility to read the meter in a timely, predictable manner so that the REPs can bill customers in a timely manner and customers with access issues know when to expect the TDU. Therefore, the commission has added a definition for meter reading schedule that contains the requirement of the TDU to read the meter within two days of the scheduled meter read date.

The commission disagrees with the TDU proposed change to change "herein" to Applicable Legal Authorities. The commission also disagrees that "whichever is later" is an appropriate timeframe. The TDU must read the meter or send an estimate within two days of the scheduled meter read date.

Joint TDUs recommended that the phrase "Company shall provide the reason for the estimation and the estimation method used" be deleted. The requirements should be stated in Section 4.8.1.4 where the focus is on the provision of data rather than meter reading as is the focus of this section. In addition, the Joint TDUs did not think that they should be required to explain the method of estimation on the transaction.

Commission response

The commission agrees to move the requirement to provide the reason for estimation to Section 4.8.1.4. The commission also agrees that the transaction is not the best place to detail the exact method of estimation. If a REP has a question about the method of estimation it is free to contact the TDU for an individual explanation.

Joint TDUs reported that the percentage of estimated meter readings in the ERCOT market is very small. TDUs reported that 35,876,722 meter readings were performed by the TDUs during the first half of 2005, only 0.61% of which were estimated. Of the estimated reads, approximately 44% were the result of the Retail Customer's failure to provide the TDU with access to the meter as a result of locked gates, barbed wire, animals, etc. Joint TDUs agreed that the process proposed in the published rule could result in the resolution of some access problems and a corresponding reduction in the need to estimate. However, Joint TDUs stated that the extremely small proportion of estimated meter reads, combined with the likelihood that the proposed access resolution process will further reduce the number of estimates, means that the commission should carefully consider costs and administrative burdens prior to adopting a complex and cumbersome reporting and enforcement mechanism regarding estimates. In addition, Joint TDUs argued, the commission should consider whether a proposed enforcement mechanism has the potential for increasing, rather than reducing customer complaints.

Additionally, Joint TDUs recommended that a distinction be made between estimates that are the result of denial of access to the meter and estimates that are made for other reasons. When an estimate is not caused by an access issue, and therefore, not caused by the Retail Customer, a three month limit on consecutive estimates may be appropriate. In such instances, the TDU should be able to read the meter and chronic failure to perform the task should be subject to a reasonable performance standard. However, Joint TDUs stated that the limit should only be applied to consecutive estimates because when estimates are not consecutive, there are no large amounts to be corrected once an actual read is obtained. In these circumstances, one of the major reasons for limiting estimates is not applicable. In addition, Joint TDUs stated, record

keeping for tracking non-consecutive estimates would have to be done for each customer and each Premises and would be particularly difficult and expensive. Finally, Joint TDUs stated, that the requirement that the TDU use reasonable diligence and comply with Good Utility Practice can be relied on for enforcement in the unlikely event that a TDU is perceived to be abusing estimates on a non-consecutive basis.

Commission response

The commission does not agree that it should focus solely on resolving the access problem, because the commission does not believe that access issues are the only problem. The commission notes that the TDUs have represented that 0.61% of meter reads are estimated and that this is not a high number. However, if that is an accurate percentage, it translates into approximately 219,000 estimations in the first half of 2005, only 96,000 of which were because of the apparent fault of the customer. Even under the assumption that many of these estimations are consecutive for a number of months on one meter, these estimations can result in thousands of unhappy customers to whom the REPs and commission's Customer Protection Division must respond. Additionally, the commission regularly receives complaints from customers whose bills have been estimated for multiple months for other issues that the TDU should have taken care of long before they became complaints. Some of these types of complaints stem from meters that aren't functioning and aren't replaced for months, the TDUs inability to locate its own meter for multiple months in a row, or other TDU issues. Therefore, the commission finds that it is appropriate to address the general problem of estimations within the tariff. However, the commission does agree with the TDUs, that estimates resulting from access issues should be

treated differently than estimates that are not caused by the Retail Customer's denial of access. The commission also agrees that the requirements should only be applied to consecutive estimates due to the difficulty in tracking non-consecutive estimates, and because the requirement that the TDU use reasonable diligence and comply with Good Utility Practice can be relied on for enforcement in the event that a TDU is determined to be abusing estimates on a non-consecutive basis. Furthermore, the commission finds that it is appropriate to add an exception that estimations performed to help effectuate timely mass transitions should not could towards the limit. The commission amends this section accordingly.

Rather than applying a numeric limit on estimates resulting from access issues, Joint TDUs recommended that the commission focus on the process for resolving the access problem. Joint TDUs stated that the proposed process was a step in the right direction as it appropriately involves the REP at an early stage, the TDU supplies the REP with information about why the estimate was necessary and the REP has the primary responsibility for contacting the Retail Customer to provide information about the access problem and the potential consequences if it is not resolved. TDUs stated that the process will likely be ineffective if it does not provide an incentive the Retail Customer to take action. Joint TDUs reasoned that there is no incentive for the customer to incur the cost of moving the meter, installing a remote meter, moving a gate, building a dog pen, or implementing another solution other than the threat of disconnection. Joint TDUs argued that disconnection is an onerous consequence particularly for a customer who has been paying the bill and is likely to result in a vigorous complaint. Additionally, Joint TDUs argued that it may not be possible to disconnect the customer if there is no access to the meter as

the Retail Customer's cooperation is required in order to implement any of the proposed fixes. To provide an incentive to the Retail Customer to resolve the access issue, as well as recover the costs incurred by the TDU in attempting to resolve it, the Joint TDUs proposed that an Inaccessible Meter fee be charged to the REP monthly, if after receiving notice and having been given an opportunity to correct the problem, the customer fails to implement a solution. This charge, proposed as one of the Standard Discretionary charges, would be different for residential and commercial customers, the TDUs proposed. Joint TDUs stated that access issues are not the fault of the TDU and the TDU should be allowed to continue to estimate until the access issue is resolved. Joint TDUs stated that the TDU is required to provide a meter read either actual or estimated, so that the REP can bill its customer and so that the wholesale market can be settled. If a limit on allowed estimation results in the failure to provide a reading, the market will have to deal with Unaccounted For Energy and REPs will not have the information needed to bill their customers. Finally, if the commission deems it necessary to adopt a limit on the number of estimates resulting from access issues, at least six consecutive estimates should be allowed in the hope that resolution will have occurred prior to that time.

Commission response

Estimated meter readings are a problem for REPs and for Retail Customers. The commission agrees that the problem is more pronounced when the estimates are consecutive, as the customer may receive a very large bill. TDUs do not have the same incentive to read the meter as they had in the past as they simply continue estimating and billing the REP for the charges. While the commission finds that the customers have a duty to provide access to the meter, similarly the TDU has the obligation to install a meter

for which it can obtain a reading or require the customer to provide access. Therefore, the commission solution will allow for differentiation of access issues between cases in which the customer has control and cases that are beyond the customer's control. For issues that are not within the control of the customer such as storms, TDU workload issues, TDU inability to locate the meter, mislabeling of the meter etc., the TDU shall not in any case estimate and bill a meter read more than three consecutive times.

Estimations for access issues that are within the customer's control, such as the customer having a locked facility or a dangerous dog, shall generally follow the provisions in the proposed tariff. A customer who fails to provide access in a given month according to the meter reading schedule will be provided a door hanger by the TDU and will be contacted by the REP. Both of these contacts will list the Retail Customer's options, which are to provide access, to have the meter relocated, have a remotely-read meter installed, or be disconnected. The second consecutive month, the customer will again have the same options. By the third month, the customer will no longer have the option to simply provide access and must elect one of the options that provides a permanent solution. If the customer does not choose, the REP will make the choice on behalf of the customer. If neither party chooses an option the TDU will choose the option to implement. The TDU will have 60 days to implement the solution. The commission believes that this plan will provide proper incentives to the TDU and Customer and requires both the REP and TDU to help the customer understand the seriousness of the situation. For non-residential critical load customers, the TDU may charge a fee and continue estimating until a solution has been implemented. The commission amends this section accordingly.

Due to the amount of work required to effectuate the requirements of Sections 4.7.2.1 and 4.7.2.2, the commission sets an implementation date for these sections of no later than July 1, 2007. However, TDUs and REPs should work towards earlier implementation of these requirements to the extent possible, including increased communication between the TDUs, REPs and customers regarding access issues, the information needs related to those issues, and prompt resolution of the access issues and directs TDUs and REPs to begin working towards the fulfillment of these requirements as soon as reasonably possible. As part of this earlier implementation, each TDSP shall provide to each REP in its service area a spreadsheet listing premises with two or more consecutive estimates resulting from denial of access and the reason for denial.

Joint TDUs stated that the proposed door hanger is unnecessary since the TDUs will have provided the reason for the lack of access to the REP and the customer will have been contacted by the REP. The TDUs predicted that the door hanger would be a time consuming and expensive approach to informing the customer and likely to have little success, as some customers enter through a garage and some types of premises have no front door at all. In apartment complexes, row houses or shopping centers, Company personnel will have to spend significant time finding the correct door. The REP Coalition supported the door hanger and REP notification. However the REP Coalition did not feel that the three options should be presented after three months of access problems rather that the door hanger should also list the options. The TDUs argued that the REP's proposed requirements for the door hanger are better directed

toward the information supplied by the REP. Additionally, the TDUs noted that the REP should not wait three months before informing its customer of its options for resolving an access issue.

Commission response

The commission believes that the door hanger is an important part of the notification of the customer of an access problem. Certainly some customers may not receive it, but many will and will be able to rectify the problem. The commission does understand that in some non-residential facilities there is no door. Where there is no door, the TDU can leave the door hanger at a point of ingress. If none is available, the TDU may choose not to leave the notification at the scene and must notify the REP of the inability to leave the door hanger. The commission finds that the door hanger should clearly communicate the customer's options, and that this, and communication between the REP and the customer, also clearly communicating the customer's options, will each play an essential role in ensuring the customer is notified at least once each month, and in most cases twice each month, that action is required. The commission believes that this combination will prove the best way to ensure that the customer understands the importance of taking action, and being prepared to make a choice by the third month if the problem has not been resolved.

Joint TDUs recommended that the cost of installing a remote meter or moving the meter as well as the inaccessible meter charge be billed to the REP rather than directly to the Retail Customer. They stated that installation of a remote meter is currently billed to the REP and there is no rationale for treating this discretionary service differently than other non-construction Discretionary Services. Joint TDUs reported that the TDU does not have the billing information automated in its system so it will not be able to produce an automated bill. The REP Coalition did not feel that the relocation of the meter was a viable option due to high costs involved with a relocation and that it will always be more cost effective to pay for the installation of a remotely

read meter than to pay the cost for an electrician to rewire the building and the TDU to install a new service to accommodate a new meter location. The REP Coalition did not believe that an option with significantly higher costs should be presented as a reasonable option and stated that it should be deleted. Joint TDUs disagreed with the proposal of deleting the option of moving the meter, as more options are better, and this may be the only option that permanently solves the problem.

Commission response

The commission agrees with the TDUs that the installation of a meter should be billed as any other discretionary service charge, and amends that tariff accordingly. The commission also agrees with the TDUs that it is better to present to a customer with more options and declines to amend the rule to remove this option.

The REP Coalition proposed that after three months of denial of access to read the meter in a calendar year or after three consecutive months of denial of access, the TDU should disconnect service to the Retail Customer. Joint TDUs strongly disagreed with this proposal and stated that it is a curious departure from the REP Coalition's claimed desire for a positive customer experience. TDUs argued that even though REPs do not discuss their reason for recommending this change, it appears that they prefer disconnection over helping to work out a solution or incurring any expense or charge associated with resolving the access problem, even though they can bill the customer for the charges. This places the responsibility for choosing or ordering disconnection solely on the TDU perhaps to avoid responsibility for the customer's likely displeasure and complaints and the charges for the disconnection or reconnection. The Joint

TDUs argued that the REP Coalition proposal ignores the fact that in many cases disconnection can not occur if the TDU cannot access the meter. Joint TDUs concluded that disconnection is the least effective, harshest tool available for resolving access issues and in many cases is not an available option anyway. Access issues need to be resolved by the REP working with the TDU and the customer. In the TDUs' view, there should not be an automatic three month limit on permissible estimates, and disconnection should only be used as a last resort.

Commission response

In the Texas retail electric market, the REP is responsible for power costs incurred to serve a customer, so the REP should have the ability to have the service disconnected, if the customer does not cooperate adequately in resolving access problems. Therefore, the commission believes that the tariff should include a disconnection option after three consecutive months of inability to obtain access. The commission does not believe that three instances of inability to obtain access within a year is sufficient basis for disconnection. The inaccuracy of an estimate in one month will be corrected by obtaining an actual meter reading in a subsequent month.

The REP Coalition stated that since the customer could switch REPs at any time during the three month process, the process should be coordinated by the TDUs since the new REP won't know if it is the first, second or third time the meter has been estimated.

Commission response

The commission agrees that this is an issue and one that should be worked out in the stakeholder process. One remedy for this might be to have the transaction indicate the number of consecutive estimates for denial of access. This would allow any new REP to have access to that information. In any case, ERCOT or the TDU will need to record the estimates, however that is transmitted to the REP.

Joint TDUs recommend changes to the tariff to make clear that the Company has the right to disconnect the Retail Customer for failure to provide access to the meter or other company equipment.

Commission response

The commission has indicated that one of the options to remedy the repeated failure to provide access to the Meter is disconnection. The tariff specifies in Sections 4.3.10, and 5.3.7.2, that the TDU may suspend Delivery Service to the Retail Customer for the failure to provide the TDU with reasonable access to Company's facilities located on Retail Customer's Premises after a reasonable opportunity has been provided to remedy the situation. The commission does not see a need to add other changes as proposed by the TDUs.

Joint TDUs recommended that the proposed change to high/low validation process refer to Company's internal validation process since the terminology more accurately describes the entire process of which the high/low evaluation is only one part. The REP Coalition agreed that

a meter read that fails the validation process one time does not necessarily indicate that there is a problem with the meter reading. The REP Coalition stated that it is also possible that the meter reading might fail only one level of the validation screening process but not the entire process. The REP Coalition recommended that the TDU not be required to automatically re-read the meter for a one time fail of the validation process. However, if a meter reading fails the validation process in consecutive months, the REP Coalition believed that the TDU should be required to perform a re-read of the meter. Joint TDUs argued that even when there are consecutive evaluations, the readings may not "fail" validation and a re-reading may not be required. Whether a re-read should be required must be determined by the TDU on the basis of an evaluation process, not on some mechanical application of whether evaluation has occurred more than once.

Commission response

It is very important that the REPs receive timely and accurate meter readings in order to bill customers. There are too many instances where meter readings are being sent with zero usage or very high usages. This leaves the REP unable to bill its customer either on time or accurately. This is not acceptable for the retail market therefore, the commission agrees to change "hi/low validation" to "the validation" and details that the company should implement a validation procedure that prevents zero or very high readings unless the company has reason to believe that is correct and can provide that reason to the REP.

ERCOT stated that currently it does not perform a comparison of a scheduled meter reading date to the actual meter reading date. ERCOT reported that it also does not report on the number of

annual or consecutive occurrences of estimated meter readings sent by the TDU or on the receipt timeliness of the 867_03 (Monthly usage) transactions in accordance with the assigned TDU meter reading schedule. ERCOT stated that any new requirements for ERCOT related to these functions would entail the need for system and business process changes at ERCOT.

Commission response

The commission expects that many changes will be needed to systems and processes for both ERCOT and market participants in order to implement these new terms and conditions not limited to the changes ERCOT mentions here. The commission will leave this to the stakeholder process.

Joint TDUs also proposed changes to reflect that IDRs should not be subject to limitations on the number of allowed estimates as an "estimate" is performed to fill in minor gaps in data transmitted by an IDR and there may be multiple gaps in a day, if each one of the instances is treated as a separate estimate, an numeric limit on estimates is likely to be violated for each premise with an IDR.

Commission response

The commission agrees and makes changes to the rule to reflect this.

4.7.4 Meter Testing

Joint TDUs stated that they believe that consistent with PURA §38.052(a)(1) a free meter test should be based on whether the meter test has been performed in the previous four years, not on whether the customer has requested a test in the previous four years.

Commission response

The commission believes that PURA §38.052(a)(1), which states "a consumer may have a meter or other measuring device tested by an electric utility once without charge…" provides the commission latitude to interpret and to apply consistent with the statute and with customer's expectations. The commission interprets this to imply that it is the customer's request that triggers the TDU to perform the free test, not the TDU testing the meter on its own accord or for a prior customer. Therefore, the commission declines to make the requested change.

Joint TDUs suggested that the requirement that the company report who performed the test and where it was performed should be conditioned with the words "upon request" or the information will require a system changes and a TX SET change so that the information can be carried on an electronic transaction. Joint TDUs believe that if it is done, the only type of information that would be made available on the electronic transaction would be whether the test was performed by the Company or contractor and whether it was performed in the field or laboratory. It is unclear what value this information would have. Joint TDUs stated that they currently make this information and more available upon request and that is their preferred approach.

Commission response

The commission disagrees with the Joint TDUs that the only information that would be provided would be whether the test was performed by the Company or contractor and whether it was performed in the field or laboratory. The comment field for the transaction carries over 4000 characters and the commission believes that the TDUs could report more information on the transaction than is reported above. The Joint TDUs should be able to provide basic information on the transaction such as whether the meter was within tolerance or not within tolerance, date and place the test was performed and if the customer or REP would like more detailed information, they can contact the TDU directly and the TDU shall provide that information directly to the REP or customer without charge. Therefore, the commission makes changes to the tariff to allow additional information to be provided to the customer upon request at no additional charge.

The REP Coalition supported the clarifying amendments requiring the TDU completion of requested meter tests within 10 Business Days for self-contained meters and no more than 30 calendar days for other types of meters. The REP Coalition recommended that the commission add a requirement to communicate the results of the tests back to the REP or customer within this timeframe as well to ensure that the process is closed with the customer. Joint TDUs argued that this would shorten the already-tight time allowed for testing and should not be adopted.

Commission response

The commission agrees with the REPs that the test report should be received within the timeframe specified within the tariff. This should not be burdensome because the TDU has

already performed the test within the timeframe, and it only needs to send the results. The commission adopts changes to the tariff to reflect this.

Consumer Commenters stated that when a customer questions the accuracy of its meter, the TDU sends its field personnel to conduct a test, and that the customer is not given the option of having the test conducted by someone independent of the TDU. Consumers argued that the system of self-policing meter accuracy should be changed. They suggested that if the TDU is unable to provide the customer with a satisfactory explanation and propose a solution to what the customer perceives as inaccurate billing, the customer should be able to hire an independent company to test the meter and if the independent test finds that the customer was right, the TDU should be required to pay the costs of the tests and reimburse the customer any estimated over charges because of the metering problem. The TDUs disagreed and stated that testing is regulated by ANSI standards which fully protect the Retail Customer. Because there is no evidence that TDUs are improperly performing meter tests, or reporting inaccurate or false results, better education by REPs is required to help Retail Customers understand why their bills are high, rather than having outside contractors perform meter tests.

Commission response

The commission agrees with the TDUs that meter testing is required to be done within a set of standards established by an independent standards board, ANSI. The commission requires these standards be followed by TDUs. The "Independent" companies that Consumers propose should test the meters are not regulated by anyone. Further, the commission is not aware of any certification standards or organization in place to insure

that meter tests would be properly conducted. Therefore, the commission does not make changes to the tariff to implement the Consumer's suggestions.

Section 4.7.5 Invoice Adjustment Due to Meter Inaccuracy

TDUs recommended that the term application of interest be deleted because it is not applicable. The REP Coalition recommended that the commission delete the requirement that proper correction be made of previous measurement data readings in order to work with the new language proposed by the commission.

Commission response

The commission declines to make the changes recommended by the TDUs because it believes that interest should be paid in situations where the meter is inaccurate because that is an error. To eliminate any confusion, the commission adds an additional provision in Section 4.4.3 for meter inaccuracy as an error that must be corrected and on which interest must be paid.

Section 4.8 Data Exchange

Joint TDUs commented that language should be added to reflect current practice, which is that charges apply to a request for historic data older than the most recent 12 months.

Commission response

The commission agrees that charges are applicable if a request is made for data older than 12 months and makes the suggested changes to the tariff.

Section 4.8.1 Data from Meter Reading

The REP Coalition stated that the current language restricts the TDU from providing a customer's PIN number for on-line access to anyone other than the customer. The REP Coalition expressed the belief that it is important for a non-residential customer to have the ability to give the TDU permission to release the customer's PIN number to the REP and to alleviate security concerns, the TDUs should have expiring PIN numbers. Joint TDUs stated that it is a simple matter for the customer to provide the PIN number to the REP if the customer wants the REP to have access. Additionally, it allows the Retail Customer who is the owner of the data to remain in control of access to the data. Joint TDUs expressed concern that if a REP were allowed to obtain the PIN from the TDU, the TDU could be liable for inappropriately or incorrectly releasing the PIN. Therefore, the TDU would have to insist upon verifiable authorization from the Retail Customer before releasing the PIN to the REP and this would put the TDU in the position of having to receive, review and retain the authorization and invent a system for making PIN numbers expire on a variety of dates to coincide with the customer's request.

Commission response

The commission agrees with the Joint TDUs that it is easier for the customer to give its PIN to whomever it wants to have use of the PIN. The commission is not convinced that the current system requires fixing, particularly if it would require the TDUs to create a complicated system to keep track of customer authorizations and PIN numbers when the customer has the ability to do it.

Joint TDUs did not support the requirement to provide congestion management zone and loss designation codes on the TDU's web portal. Joint TDUs explained that this has been considered to be competitively sensitive information and is sent to the REP of Record only. Joint TDUs also argued that this is being reconsidered in Protocol Revision Request 312 which is currently pending before ERCOT and any change to a nodal market would also require further consideration. In addition, because the requirement is for the TDU to provide congestion management zone and loss designation codes if ERCOT doesn't, there will not be enough time for the TDU to implement the changes by the time this tariff is to take effect. Joint TDUs stated that as currently written, the reference to Applicable Legal Authorities correctly reflects that other requirements that will govern how information is made available.

Commission response

The commission agrees with the TDUs that there may not be enough time to implement this before this tariff goes into effect. The commission also did not see any comment filed to support this proposal. Therefore, the commission agrees that this change should continue in the stakeholder process and move forward on that timeline, and amends the proposed rule to remove this requirement.

Joint TDUs stated that the obligation to provide historical usage within three days should be conditioned on receipt of the request and the obligation to maintain data should refer to data for "Premises" and not "Customer."

Commission response

The commission agrees that the obligation is based on the "receipt." The commission also agrees that this information is captured based on Premises and that is consistent with the commission's Customer Protection Rules. Therefore, the commission adopts the Joint TDUs' suggested changes to this part of the tariff.

Additionally, Joint TDUs stated that not all TDUs could provide access to load data for non-residential customers through a web portal by June 2006 as system changes are required for some TDUs that will take more than the allotted time to complete.

Commission response

The commission finds that TDUs already have the requirement to provide this data to advanced metered customers and does not believe that these changes should be difficult for the TDU to implement in a timely fashion. Therefore the commission makes no change to the tariff.

Section 4.8.1.1 Data Related to Interval Meters

Joint TDUs commented that the term "applicable market rules" should be changed to "applicable legal authorities."

Commission response

The commission agrees and makes the changes to the tariff as suggested by the TDUs.

Section 4.8.1.2 Data Reported by Volumetric (kWh) Meters

Joint TDUs asked that the requirement to include time for meters other than IDR be deleted as only IDR meters contain time information.

Commission response

The commission finds that the TDU should know when it read the meter both at the end of the last period/start of the current period and the end of current period (current reading). However, the commission did not receive comments stating that this was important the market, so the commission amends the tariff as the TDUs requested.

Section 4.8.1.3 Out of Cycle Meter Reads

Joint TDUs suggested changes to ensure correct and consistent use of terminology such as "out of cycle switch" and "out of cycle meter read."

The REP Coalition urged better definition of the timeframe for a TDU to complete a request for meter re-reads. The REP Coalition argued that the TDUs should be required to submit the meter re-read information within five Business Days of the requested date because usage and billing disputes are the most common customer complaints. Joint TDUs responded that the solution to these problems and complaints is customer education, not speeding up meter reading. Joint TDUs stated that the number of Meter re-reads requested has skyrocketed since deregulation and tends to peak during high-usage summer months or after REP rate increases indicating a failure on the part of some REPs to properly manage customer expectations surrounding these issues. If

timelines are to be included, Joint TDUs stated that they are properly placed in Chapter 6 rather than in this section as proposed by the REP Coalition.

Commission response

The commission determines that correct meter readings are vital to the Competitive market. Without timely and accurate meter reading information, a REP cannot issue a timely or accurate bill. Currently, some REPs receive meter readings that contain zero usage for a known active meter or usage is reported that leaves a residential customer with a bill in the tens of thousands of dollars. The commission has required that the TDU establish a validation system that should eliminate these types of meter readings from being sent to the REP. That will likely reduce the amount of meter re-reads requested by REP. Therefore, the commission determines that the TDU should perform and report meter re-reads within five days of the requested date, and amends this section accordingly. The commission disagrees with the TDUs that the timeline should be in Chapter 6 and declines to move this requirement to Chapter 6 for a later implementation date.

The REP Coalition stated that not all TDUs take the next step of cancelling and rebilling invoices that result when a re-read indicates the monthly meter read was in error.

Commission response

The commission determines that TDUs should promptly send a corrected invoice and meter reading transaction when a meter re-read indicates that the monthly meter reading was in error.

ERCOT pointed out that this section requires that beginning and ending meter reading dates provided to both REPs match, in the case of a switch. ERCOT stated, that it does not currently report on whether the beginning and ending meter reading dates provided to both REPs match and that adding such requirements would entail the need for system and business process changes at ERCOT.

Commission response

The commission determines that TDUs' systems should be programmed in such a way that the meter read for each retailer would not overlap. The commission has taken ERCOT's comments into consideration and finds that there may be more costs than benefits associated with this proposed change. Therefore the commission agrees to remove the requirement that meter reading dates should match.

Section 4.8.1.4 Estimated Usage

The REP Coalition supported the language affirming than an estimate shall not equal zero for a known active meter. Joint TDUs recommended that language be added to make clear that an estimate of zero or an estimate that is more than double the prior month's actual usage is permitted only when there is a valid reason for the estimate. There are instances in which the actual Meter Read for an active meter is zero and for such meters, zero is also an appropriate estimate, the same is true for meter readings that are more than double the previous actual meter reading.

Commission response

The commission concludes that there may be instances when an actual Meter Read for an active meter would be zero such as seasonal businesses or hunting cabins and therefore an estimated meter reading would also be zero. Similarly, meter readings that are more than double the previous actual meter readings may be correct. However, the commission believes that TDUs should have estimation methods that differentiate between unusual readings that are likely to be correct and readings that are likely incorrect. Similarly, these estimates should not be done without careful thought from the TDU and the TDU should be able to provide its reason for the estimation upon request.

Joint TDUs stated that the method for performing an estimate should not be provided on the invoice because all TDUs use industry accepted, nationally recognized procedures for estimating, providing enough detail on the transaction to adequately describe the procedure would be impossible and codes would not be sufficient if developed and the REP would still not be able to replicate the estimate. Joint TDUs suggested that the REPs call the TDU to request an explanation regarding a particular estimate if more detail is needed.

Commission response

The commission determines that the TDU should provide an explanation regarding a particular estimate upon request. The commission determines that this does not require a change to the tariff.

The REP Coalition and Suez supported the proposed allocation method for smoothing usage over the entire estimation period. Suez stated that this estimation practice leads to unexpected fluctuations in the consumption billed to the customer. Additionally, the customers whose price is dependent on an index of the current market cost of electricity may be paying an amount significantly different per unit of electric energy than they would have if the usage had been properly allocated to the time period in which it was actually consumed.

Joint TDUs argued that the proposed requirement that rebilling be smoothed will cause an increase in the number of cancel/rebills. To decrease the impact, the TDUs recommended a 25% threshold be included in the provision. Joint TDUs clarified that this means that any over or under-estimated usage should be spread over the entire estimation period only if the difference between the corrected total aggregate usage of the periods to be cancelled and rebilled and the estimated total aggregated usage for those same periods is greater than 25% of the estimated total aggregated usage for those periods. In addition, smoothing should not be required when the estimate results from the Retail Customer's failure to provide access. The REP Coalition opposed the TDUs' suggested 25% limitation on corrections and urged the commission to retain the requirement as proposed.

Suez strongly disagreed with the TDU proposal and noted that adding a 25% threshold for rebilling will compromise the integrity of Texas' competitive retail electricity market by placing a contrived barrier on the ability to allocate electric energy consumption accurately. Suez also believed that such a threshold would impact the ability of REPs to satisfy consumers by providing risk-managed products and services designed to create budget certainty and price

stability would be impeded. Since risk premiums would be factored into REP's procurement of energy to serve their customers, Suez commented that this might impose an additional financial burden on the REP that they would have no means of managing. Suez provided an example of one customer that received an estimated meter read and then an actual bill. The difference between the two was less than 25% so it would not have been recalculated under the TDU proposal, however the amount of the difference was approximately $23,000.

Suez stated that it does not seem reasonable to penalize a customer by not allowing for the rebilling of erroneous estimated meter readings, if for example, the reason for the meter access issue is out of the hands of the customer such as mislabeling of the meter location by the utility, a problem that currently is reported as a meter access issue.

Commission response

The commission agrees with Suez and the REP Coalition and finds that consecutive estimates should be trued up as soon as possible. The commission finds that when an Actual Meter Reading is taken after two or more consecutive months of estimation, the estimates shall be trued up and smoothed over the entire usage period regardless of the difference between the estimated and actual invoices. Estimates, especially overlapping months where the rates changed can be harmful to the customers. Therefore the commission declines to make the changes suggested by the TDUs.

The REP Coalition recommended a modification that would make it clear that any adjustment made by the TDU to an actual meter read (except for missing IDR intervals) that is used for

billing purposes is in fact considered an estimated meter read. The REP Coalition reported that sometimes for various reasons the TDU decide to adjust an actual meter read for billing purposes yet still reports that meter reading as an actual. Joint TDUs strongly disagreed with this recommendation and illustrated instances in which an adjustment is made to an actual reading but no estimate results, such as Power Factor adjustments, meter multipliers, and loss adjustments for Premises metered on the secondary side if the customer is a primary voltage customer. The TDUs stated that if these adjustments were considered estimates then these customers would have estimates every month.

Commission response

The commission understands that sometimes adjustments are made to actual meter readings that should not require a meter reading to be considered an estimated meter reading, such as factoring in a meter multiplier or similar reason. However, the commission determines that outside of these types of examples, TDUs should not alter actual readings and still report them as actual. TDUs shall clearly report all alterations of actual data and be able to clearly document its method of estimation if requested. The commission does not believe that additional changes to the tariff are necessary.

Section 4.8.1.5 Meter/Billing Determinant Changes

Joint TDUs suggested that this section be broken up in to two separate sections; one for meter changes and one for Billing Determinant changes to make clear that the language permitting a change to be effective at the next billing cycle applies to all Billing Determinant changes, not solely to a change in meter and metering equipment.

Commission response

The commission does not believe this change is necessary and declines to make the proposed changes to the tariff.

Section 4.8.2 Data for Unmetered Loads

The REP Coalition recommended that this section be amended to require that for points of delivery that are added or removed from an existing account off cycle that the usage for the account be prorated for each additional point of delivery, as it is not reasonable to require that a customer or REP pay for a full month of service when points of delivery are added at various times during the billing period. Additionally, the REP Coalition felt that in the case of an off-cycle enrollment, the usage values for each account should be prorated. Joint TDUs stated that this section of the existing tariff was not changed and Joint TDUs recommended it remain unchanged. Joint TDUs reported that the most common unmetered loads that are added off-cycle are streetlights. The current procedure is to bill for the number of streetlights that are on the account at the end of the billing cycle. The TDUs noted that although some streetlights will be charged a full month's usage, other streetlights won't be charged at all, so a rough balance exists. Joint TDUs reported that the current charges are low (less than $25 for most types of luminaries that are owned and maintained by the utility and $10 month for customer-owned lights), and the REP proposal is too complicated for what tends to be relatively minor change.

Commission response

The commission agrees with the TDUs that the costs to track this likely do not outweigh the benefits and the current procedure should remain unchanged.

Section 4.8.3 Adjustments to Previously Transmitted Data

The REP Coalition recommended amendments that would address timeframes within which the TDU must make adjustments, requiring the TDU to transmit replacement data within one Business Day of when the original SET transaction is cancelled. TDUs stated that no substantive changes were made to the existing tariff language in this section and these requirements should continue to be handled through the market process, where all adjustments to previously transmitted data are discussed.

Commission response

The commission finds that requiring the TDU to resubmit replacement data within one Business Day of when the data was cancelled is reasonable as the TDU will likely have the corrected data when it cancels the original. Furthermore, the REP will need corrected data as soon as possible because it needs to send a corrected bill to its customer. The commission amends the section accordingly.

Sections 4.9 Dispute Resolution Procedures and 4.10 Service Inquiries

Joint TDUs requested the exclusion of the submission of a "proposed resolution" and requested to change the timeline from the ten Business Days to "as soon as possible". Joint TDUs stated

that ten Business Days is not always sufficient time to advance an investigation to the stage where a proposed resolution is available.

Commission response

The commission disagrees with the proposed changes suggested by the Joint TDUs. The TDU has an obligation to investigate and resolve disputes in a reasonable timeframe. The commission notes that completion of the investigation may be important to responding to a complaint at the commission, which will have a short timeframe. The REPs need some certainty from the TDU investigations so that they can close out their complaints. Therefore, there should not be a delay in investigation or proposing a resolution.

The REP Coalition urged a reduction in the number of days for a TDU to respond to informal complaints made with the commission from ten days to five. Joint TDUs replied that five Business Days would be too restrictive a timeframe to allow complete investigation of many problems.

Commission response

The commission believes that ten Business Days is a reasonable timeframe for response to informal complaints, and makes no changes.

Joint TDUs recommended eliminating all changes to Section 4.9.2, because the changes could be construed as limiting rights available to the TDU and REP elsewhere, for example the right to seek revocation of certification for a REP that defaults on its obligations.

Commission response

The commission agrees that the language is vague and will make the changes suggested by the TDUs.

Section 4.11.1 Notification of Interruptions, Irregularities, and Service Requests

Joint TDUs supported the modification of this section, to make clear that all REPs, including Option 1 REPs, must provide and update general contact information for the Retail Customer. The TDUs stated that "home phone" should be changed to "telephone" because many Retail Customers are businesses rather than homes. Joint TDUs also stated that it would be helpful to state explicitly that the information must be provided via a TX SET transaction designed for this purpose. Joint TDUs also suggested that this requirement would be more appropriately located in Section 4.3.7 and that a reference to that section and its requirements would still be included in this section.

The REP Coalition opposed the addition of a language requirement that REPs provide updated Retail Customer information to the TDU to enable the TDU to verify a Retail Customer's identity regardless of what communication option a REP has chosen, and recommended that the paragraph be deleted. The REP Coalition argued that the TDUs already receive Retail Customer information with every enrollment transaction, Option 2 and 3 REPs send updates to this information on the standard 814_PC transaction, and Option 1 REPs should not be required to provide any additional Retail Customer information to the TDUs. The REP Coalition also opposed similar language further in the section that intimates that the TDU will need updated Retail Customer data to verify a customer's identity, and recommended that this section be

revised to reflect current market processes. The Joint TDUs responded that the REPs often provide incomplete or incorrect information on the original enrollment, such as listing "retail customer" or "Mickey Mouse" in place of the customer's name. Joint TDUs commented that very few Option 2 and 3 REPs actually provide updates on the 814_PC, and there is no rationale for excluding Option 1 REPs from providing customer contact information updates. The TDUs argued that the recent difficulties in performing mass transitions have demonstrated the need for the TDU to have correct, updated information on customers, and that this information is needed in order for the TDU to help resolve access issues. The TDUs recommended that the tariff specifically refer to this transaction, or that it be made clear in the Preamble that the commission intends for all REPs to use this transaction to update the customer information.

Commission response

The commission agrees with the TDUs that the TDU may have need for accurate and updated customer information. This will be particularly important in the implementation of the access solution the commission has adopted. The TDU will likely need customer information in some areas to leave door hangers at the proper door or point of ingress. Additionally, the commission is currently evaluating its options for provider of last resort and mass transitions and has proposed that ERCOT be responsible for maintaining customer information, which would likely also require updates from the REP. The commission agrees with the TDUs that this should be done on the appropriate TX SET transaction rather than another method, and that all REPs including Option 1 REPs be required to update customer information to the TDUs. The commission has incorporated these findings into Section 4.3.7.

Section 5.2 Limits on Liability

OPC commented that this provision limits the Company's liability to a Retail Customer, and should also expressly limit the Retail Customer's liability to the Company. Joint TDUs responded that reciprocal provisions are not necessary because the Retail Customer is not exposed to the same type of liability as the TDUs. Joint TDUs stated that no changes should be made in these provisions without studying the potential impact on costs and without careful study of the wording that would be used, and that OPC did not suggest any language to assess.

Commission response

The commission agrees with the Joint TDUs that the Retail Customer is not exposed to the same type of liability as the TDU. The provisions of this tariff are not intended to limit the liability of the parties for damages except as provided in the tariff. It is unclear to the commission what liability the Retail Customer has that OPC proposed to limit, and OPC did not propose language to effectuate its suggestions. Therefore, the commission declines to amend this section.

5.3.1.1 Initiation of Delivery System Service Where Construction Services are not Required

Joint TDUs commented that the last lines of this section should be deleted to make it comparable to Section 4.3.2.1, the parallel provision in Chapter 4, and because the obligations surrounding a move-in are described in the applicable Rate Schedule and should not be repeated here. Joint TDUs also recommended that the reference be to Chapter 6 rather than a particular section of Chapter 6.

Commission response

The commission agrees and amends the section accordingly.

The REP Coalition commented that the time deadline for connection of new service without construction has been removed from Chapter 5 and replaced with a reference to Chapter 6. The REP Coalition reiterated their concern in response to Section 4.3.2.1 and recommended language to modify the specific timeline for connection of service. Joint TDUs responded that the obligations for providing Discretionary Services should be stated in the applicable Rate Schedules in Chapter 6.

Commission response

Consistent, with the commission's response to the comments regarding Section 4.3.2.1, the commission desires to have the changes proposed in this tariff and in Chapter 6 effective as soon as possible but realizes that some of these changes will require TDU system changes as may require TX SET changes as well. However, the commission agrees that the connection of new service without construction will not require such changes and therefore amends this section to include the time deadline. The commission also makes changes to this section for consistency with Section 4.3.2.1.

Section 5.3.2 Requests for Construction Services

Joint TDUs commented that the proposed new paragraph at the end of this section requires the TDU to contact the designated person within two Business Days of a request for construction

service. Joint TDUs believe that a more reasonable timeframe is five Business Days because the TDU personnel responsible for making the initial contact with the Retail Customer necessarily spend a great deal of time completing construction service appointments in the field, and this work may limit the time they have available to make initial contacts. Joint TDUs stated that flexibility to accommodate high volume periods of requests and scheduling is needed to ensure satisfactory customer service. The REP Coalition disagreed and stated that it is unacceptable for a Retail Customer to wait five days to be contacted by the TDU, and that Joint TDUs did not explain why the amount of time personnel spend in the field preclude the personnel from making a phone call.

The REP Coalition stated that the standardization is important for Retail Customer to know when to expect contact from the TDU to initiate discussions on construction service requirements. Joint TDUs responded that putting a timeframe around the TDU's obligation to respond to the Retail Customer regarding a construction service request is unnecessary micromanagement which should not be included in the tariff. Joint TDUs stated that the current practice is to respond to these requests as soon as possible, and Joint TDUs are not aware of any complaints about TDU response times to these requests. Joint TDUs stated that the requests are for very customer specific services for which replies may vary significantly, and the Retail Customer will be in contact with the TDU from the beginning, and the expectation will be communicated by the TDU.

Commission response

The commission agrees with the REP Coalition and declines to amend this language.

Section 5.3.3 Changing of Designated Competitive Retailer

OPC reiterated its arguments from Section 4.3.4 regarding the vagueness of the definition of "Applicable Legal Authorities," and regarding TDU notification to a REP regarding a TDU's determination not to change REP designation with detailed rationale.

Commission response

Consistent with the commission's response to comments regarding Section 4.3.4, the commission does not believe the term Applicable Legal Authorities is confusing and declines to make the suggested change. The commission agrees with Joint TDUs' comments on Section 4.3.4 regarding the need for REP notice. Since the REP should already be aware of its default status, the TDU need not notify the REP of the reason that the switch was rejected.

Sections 5.3.4 Switching Fees and Switchovers and 5.3.5 Identification of the Premise and Selection of Rate Schedules

Joint TDUs stated that for the reasons discussed in their comments on Section 4.3, the proposed language should be modified so that the requirement to reset ratchets will not impact TXU ED until no later than its next general rate case.

Commission response

The commission concludes that it is appropriate for the commission to set policy in rulemakings and finds that the existing policy is problematic for some customers and that

changes are necessary. However, the commission understands that TXU ED's current base rates were set based on the assumption that the demand ratchet would not be reset. Therefore, the commission finds it appropriate for the TDU to discontinue this practice no later than the conclusion of its next general rate case and makes changes to the proposed tariff to reflect this.

Joint TDUs recommended that the language be made identical to that inserted in Section 4.3.6. Joint TDUs recommended language rewording the final paragraph to make it clear that the Retail Customer is to notify the REP of factors that could affect the applicability of a Rate Schedule, both before initial selection of the schedule, and if factors subsequently change. Joint TDUs stated that without this rewording, the language is self contradictory, referring to a "known change" that would affect "initial selection."

Commission response

The commission agrees and amends the section accordingly.

ERCOT commented that this subsection requires the TDU to notify the REP and the Independent Organization (ERCOT) of the appropriate load profile, the initial Rate Schedule assignment and any changes or revisions to data associated with an ESI ID, including changes or revisions in the assignment of a Rate Schedule. ERCOT stated that currently the TDU sends Rate Schedule information on a transaction to ERCOT, which ERCOT forwards to the appropriate REP, but ERCOT performs no validation on the accuracy of the Rate Schedule and does not store the Rate

Schedule. ERCOT commented that any requirement for ERCOT to perform such validation would require system and business process changes at ERCOT.

Commission response

The proposed amendments to the tariff do not require ERCOT to perform validation of rate schedules.

OPC commented that a residential customer might not reasonably be expected to be aware of a change in the Retail Customer's electrical installation that may affect the applicability of a rate schedule, and suggested language regarding reasonable belief. Joint TDUs disagreed and stated that this change would make the rule ineffectual, and should not be adopted. Joint TDUs stated that Retail Customers must be responsible for informing their REP of factors that could affect their electrical service, because in many instances, neither the REP nor the TDU will otherwise have access to this information.

Commission response

The commission agrees with Joint TDUs that the customer is in the best position to know of changes that may affect the rate schedule and declines to delete this requirement.

The REP Coalition stated that as in the discussion in Chapter 4, the REP Coalition supports the language regarding ESI ID maintenance, with the modifications recommended in Section 4.3.6. Joint TDUs responded that in accordance with their comments on Section 4.3.6, they disagreed

with these proposed changes. However, Joint TDUs agreed that the language in Section 5.3.5 should mirror the language of Section 4.3.6.

Commission response

The commission makes modifications to this section to provide for consistency with Section 4.3.6, for the reasons set out in the discussion of that section.

Section 5.3.7.2 Noticed Suspensions not Related to Emergencies or Necessary Interruptions

OPC commented that notice to the Retail Customer, presumably from the REP, is implicitly required in this section to allow for reasonable opportunity to remedy of the situation, and recommended that the rule or adoption preamble clearly state that direct notice to the Retail Customer is required. OPC also noted that subsection (5) is another example where "Applicable Legal Authorities" may be vague in a way that arguably permits suspension under circumstances not anticipated by the commission.

In reply comments, Joint TDUs noted that Staff, Joint TDUs and the REP Coalition did not recommend substantive changes to this section, and it should be approved as shown in the published amendments. Joint TDUs commented that if OPC is proposing that the REP be required to provide notice to the Retail Customer, Joint TDUs do not oppose that because it reflects the current practice. However, if OPC is suggesting the TDUs give notice, then Joint TDUs oppose the recommendation because the market has been designed for the REP to be the sole contact with the Retail Customer for electric service, with few exceptions. Joint TDUs added that the TDUs do not currently have updated contact information for Retail Customers.

In reply comments the REP Coalition stated that the purpose of the section is to require the TDU to provide notice to both the Retail Customer and the Retail Customer's REP under various circumstances.

Commission response

The commission agrees with the Joint TDUs that the tariff should be approved as shown in the published amendments. Chapter 5 of this tariff governs the relationship between the TDU and Retail Customer. Therefore, the commission does not agree to place a requirement on the REP-Retail Customer relationship in this section. In this section, the TDU only has the requirement to notify the REP of the Retail Customer in this section.

Section 5.3.7.4 Prohibited Suspension or Disconnection

Joint TDUs stated that this section of the existing tariff is understood as written by those operating in the market, and could simply be left as is. Joint TDUs stated that any attempt to rewrite it should be done carefully, to avoid misinterpretation. Joint TDUs commented that it is unclear in the published amendments where various requirements fit, and to what they apply. Joint TDUs commented that it is very important that the final paragraph not be read as a subheading under subsection (D), which is not its meaning in the existing tariff.

Joint TDUs commented that if this section is going to be reorganized, each subsection should be written to stand on its own, in order to allow a reader to look a subsection for all of the needed information. Joint TDUs stated, that under this approach, the exception for "dangerous

conditions, clearance requests or move out requests" is repeated in the two subsections to which it applies, which are those related to the unavailability of Company personnel to reconnect during extreme weather. Joint TDUs noted that this exception is unnecessary in the other two subsections regarding non-pay, and therefore this exception is not needed.

Joint TDUs stated that the final paragraph should be denoted as a separate subsection (E), which will make clear that it is not a part of subsection (D), which is how it could be construed under the rule amendments as published.

Commission response

The commission agrees with the TDUs that it is important that (2) not be read as a subheading under (D) and agrees that it is more appropriately placed under (E). The commission makes changes to clarify the section.

Section 5.3.8 Disconnection of Service to Retail Customer's Facilities

Joint TDUs stated that the title of this section should be changed to reflect the fact that the content now deals with "reconnection" as well as "disconnection." Joint TDUs stated that the language detailing the specifics of the service should be deleted, because they are contained in Chapter 6 and this section should merely reference Chapter 6. Joint TDUs also suggested reordering of words in the second paragraph for clearer meaning. Joint TDUs removed "or reconnection" from before "non-payment" and suggested "or reconnection thereafter" be placed after "Retail Customer."

Commission response

The commission agrees with Joint TDUs and amends the section accordingly.

Section 5.4.8 Access to Retail Customer's Premises

The REP Coalition recommended that In Writing be capitalized. Joint TDUs stated that this was not necessary.

Commission response

"In writing" is not a defined term, and therefore it is not appropriate for the term to be capitalized.

OPC argued that the last sentence may preclude access to a non-company owned meter by the owner of the meter. However, Joint TDUs pointed out that this was considered during the rulemaking on Competitive Metering and Sections 5.10.2 and 5.10.5 already provide customers with the necessary rights associated with non-Company-owned Meters.

Commission response

The commission notes that the sentence to which OPC refers is referring to access to Company's facilities, and is not referring to facilities or equipment that are not owned by Company. The commission agrees with TDUs that matters relating to non-Company-owned Meters are addressed in Section 5.10, and therefore declines to make changes to this section.

Section 5.5.4 Change in Retail Customer's Electric Load

OPC suggested adding a requirement that the customer be noticed of the maximum capacity of the Delivery System facilities serving a Retail Customer before any penalty would apply for damage to Company's facilities from use of delivery system in excess of such maximum. Joint TDUs disagreed and stated that the purpose of this section was to ensure that the Retail Customer tells the TDU prior to making significant increases in load or demand and at that time, the TDU will tell the customer whether the facilities are sufficient to handle the increase. The TDUs argued that OPC's suggestion would turn this requirement on its head, and would require the TDU to continually update all customers of the capability of the Delivery System used to serve them and that adding that this could potentially be interpreted as affecting the careful balance of liability for various issues contained in the tariff.

Commission response

The commission agrees with the TDUs and that to continually update all customers of the capability of the Delivery System used to serve them would not be practical. The commission disagrees with OPC's comments and reiterates that if a customer damages the system, it is responsible for paying.

Section 5.5.5 Power Factor

Joint TDUs recommended that the ERCOT Standard Power Factor "shall be the same value as required of the Company in ERCOT Protocol 5.2.1" and that customer facilities be required to be consistent with this standard. The REP Coalition noted a discrepancy in this section since the lead in paragraph of Section 5.5.5 states that the Power Factor requirement is set at 95%

however, the formula used to determine the Power Factor Adjusted kW when the minimum 95% requirement is not met refers to the ERCOT Standard Power Factor which is currently set at 97%. The REP Coalition strongly urged the commission to maintain the 95% level. The REP Coalition provided examples that TXU, AEP Texas Central and AEP Texas North had all recently implemented Power Factor billing in their service territories based on the current 95% level and many customers have already made or are in the process of making significant investments to correct their Power Factor to 95%, a change would require additional expense to increase their Power Factor to 97% or pay an additional amount based on the Power Factor adjustment formula. Joint TDUs argued that the current standard set by ERCOT is 97% and the only reason that these same customers were not required to purchase equipment to correct their load to 97% was because the 95% standard was hard coded into the tariff. Additionally, Joint TDUs stated that not all eligible customers are currently Power Factor metered and many customers have not yet purchased any equipment to correct their Power Factor and it is imperative that these customers are not caught in the same situation. TIEC disagreed with the TDU approach. TIEC stated that this change would require some customers to make significant investments without which the customer will face a financial penalty. Further, if such a move is necessary, TIEC reported that implementation would take considerable time (12-18 months) and customers would need sufficient time to install facilities before the new billing treatment would be appropriate. Joint TDUs stated that if the REPs prevail on this point, Joint TDUs are caught in a catch 22 since the current standard Power Factor provision can only be changed in a rulemaking regardless of what happens in a TDU's rate case. If the change doesn't get made now, Joint TDUs are precluded from making any change in their rate case and this proposed

change is necessary to increase the efficiency of the ERCOT transmission and distribution system.

The REP Coalition stated that changing the minimum Power Factor constitutes a change in rates to the end-use customer and the REP Coalition believed a Power Factor change is more appropriate for a rate case proceeding, not this rulemaking. Joint TDUs disagreed that it was a rate change, but agreed it does affect billing in the same manner as occurs when a customer demands more power and energy and neither instance constitutes a rate change.

Commission response

The commission agrees with TIEC and the REP Coalition that the standard Power Factor remain at 95% as approved in the TDU tariffs. The commission finds that customers need stability when being required to build facilities. As the ERCOT Power Factor is now set at one value, it could change yearly or even more frequently as protocol revision requests are approved. The commission finds that this situation is too dynamic for customers and that the value should not be the ERCOT protocol value but the standard 95% value.

Joint TDUs also proposed that if the facilities do not meet this standard or if facilities were found to be causing Delivery System problems for other Retail Customers and the customer failed to correct the problem after sufficient notice, the TDU be permitted to install the necessary equipment to correct the problem and require the customer to reimburse TDU for the cost. TIEC disagreed on the inclusion of the term “causing Delivery System problems for other Retail Customers” as it potentially raises the Power Factor standard for some customers to an

unspecified level and leaving it solely to the utility to judge what system "problems" are. TIEC argued that reliability issues caused by other customers' operations are adequately dealt with in Sections 5.4.1 (which requires that a customer's facilities not cause impairment of TDU's Delivery Service to other Retail Customers or others), 5.5.1 (requiring load balance), and 5.5.2 (which bars operation of equipment that adversely affects Delivery Service to other Retail Customers or that may be detrimental to the Delivery System). Joint TDUs responded that other provisions in the tariff could allow the TDU to require the Retail Customer to modify its use of the delivery system, the proposed language makes it more clear that a customer Power Factor can cause problems for other customers that would require the Retail Customer causing the problem to take corrective action. The REP Coalition stated that it did not object to this provision provided the TDU will no longer assess the Power Factor adjustment once the customer reimburses the TDU for correction equipment.

Commission response

The commission agrees with TIEC that "Causing Delivery System problems for other customers" is accounted for elsewhere in the tariff however, Section 5.5.2 is the only section which discusses the ability of the TDU to require the installation of equipment to reasonably limit the adverse effect on other customers. The commission concludes that the language in other sections of the tariff does not adequately address what happens when the customer fails to comply with the TDU's request, and finds that the language in Section 5.5.2 is a necessary element for resolution. The commission notes that similar language exists in the current tariff which allows the TDU to require the customer to arrange for installation of appropriate equipment, or at the customer's option, to reimburse the

company for such installation. The commission does share TIEC's concern that the TDU not have the latitude to establish Power Factor requirements that are higher than needed to meet the standard in the tariff, and therefore clarifies that the fix will correct the problem to the commission's standard Power Factor of 95%.

Joint TDUs also noted that one TDU had a different formula for Power Factor calculations and added a provision for the Power Factor to be calculated differently if it appeared differently in Company's specific tariff.

Commission response

The commission declines to amend the tariff as proposed as it could perpetuate the non-standardization of Power Factor calculations among the TDUs but agrees to allow the affected TDU until its next general rate case to comply with this formula.

CRMWD stated that in the past it has suffered through the misapplication of the Power Factor adjustment as allowed in Section 5.5.5 of the tariff as some TDUs use a Power Factor set one month and apply it to a kW established during the 4-CP interval set months before. CRMWD stated that this leads to artificially high kW demand values and consequently artificially high TDU charges. For example, CRMWD represented that one of its pump station accounts typically operates during the summer months and is idle during the winter. The Power Factor during the winter may be as low as 6% but when that is applied to the average kW set during the 4-CP intervals a kW is calculated that is physically impossible and produces inappropriate charges when the delivery system did not actually experience anywhere near the kW load

calculated. CRMWD suggested changes to make clear that the Power Factor should be the Power Factor measured during the same 15 minute interval as the ERCOT peak as this would prevent a TDU from using a high kW demand set coincident with the ERCOT peak and a Power Factor set during an interval with different demand conditions. Joint TDUs responded that the TDUs are currently applying the Power Factor provision exactly as written however, the TDUs have seen that by applying the formula exactly as written, unintended consequences sometimes result. Therefore, Joint TDUs have proposed changes in this rulemaking that specifically address CRMWD's concerns. These changes, the TDUs stated, ensure that the Power Factor used in the power adjustment formula is directly related to the kW used in the calculation.

TIEC suggested that changes be made to the billing formulas to allow for recalculation of Power Factor adjusted billing demands once any identified shortcoming has been corrected to ensure that both the customer and the utility have the proper incentives to timely correct any Power Factor issues without unduly harming the customer or unjustly enriching the utility. Joint TDUs argued that this is contrary to the concept of cost causation and cost recovery for the TDU, the Joint TDUs stated that the Joint TDU's proposal is consistent with the current billing provisions contained in the tariff in that the effects of a Power Factor that is outside of the standard may have an impact on billing for up to 11 months.

Joint TDUs recommended adding a new subsection (3) to read "Power Factor Adjusted Monthly NCP kW demands will be used in determining the Billing kW under the applicable tariff schedule."

The REP Coalition pointed out that the Joint TDUs recommendation to add subsection (3) would subject the customer to Power Factor adjustments on all rates and riders that are based on billing demand.

Commission response

The commission believes that the formula proposed by the TDUs will address the problems expressed by CRMWD and therefore the commission adopts the formula proposed by the TDUs with the exception that the 95% Power Factor that the tariffs currently contain, be inserted where the ERCOT Standard Power Factor has been proposed by the TDUs.

Joint TDUs recommended including the phrase "or leading as measured at the meter." The REP Coalition suggested this should be rejected as this is a new requirement because it could prove problematic for some customers, leading Power Factors are not common occurrences and are beneficial to the TDUs operating the system in aggregate because they help increase a lagging Power Factor on the system.

Commission response

The commission agrees with the REP Coalition and determines that leading Power Factors should not be included in this section.

Section 5.5.6 Testing of Retail Customer Equipment

The REP Coalition supported this proposed change as it will provide customers with an opportunity to conduct much needed testing of new equipment without establishing a new peak

demand that will follow them for the next 11 months. Joint TDUs recommended a phrase be added making it clear that the Company can bill for the actual usage (kWh and kW) that occurs during a test. They stated that while it is appropriate that the demand created by a pre-approved test not be used to set ratchets or otherwise affect future billing, it is also appropriate that in the billing cycles where the testing occurs that the actual usage (kWh and kW) from the test is accounted for and paid for.

Joint TDUs recommended language be added to make it clear that there may be charges associated with services the Company provides to assist in the test such as resetting the meter, and that the charges will be billed to the REP.

Commission response

The commission agrees that the customer should be responsible for any charges incurred due to additional services provided by the Company during the testing, and agrees that the customer should be responsible for usage (kWh and kW) in the test month. The commission also agrees with commenters that the demand set during a test should not be used in the calculation of any demand ratchets. The commission amends this section accordingly.

OPC suggested that a comparable benefit be given to Retail Customers not testing equipment. Joint TDUs responded that if OPC's concern is that customers doing tests are not required to pay for their actual demand and usage, the Joint TDUs' proposed language should eliminate the concern. The Joint TDUs continued that if it is the basic concept with which OPC disagrees,

Joint TDUs do not see how or why customers who do not test equipment should be given some sort of benefit.

Commission response

The commission is not clear as to OPC's concern. The commission notes that this benefit is only applicable to customers testing equipment because they are the customers who would be harmed by the resetting of demand because of a test. The commission is unaware of a comparable benefit that could be given to other customers not testing equipment and notes that OPC did not propose language to address its concern. Therefore, the commission declines to amend this section to address these comments.

Section 5.7.1 General

TIEC stated its belief that where a Retail Customer either makes a Contribution in Aid of Construction (CIAC) or pays for certain facilities that are then owned and operated by the utility, the pro-forma tariff should mandate that subsequent Retail Customers bear an appropriate share of those costs if appropriate. TIEC commented that this protection may not be necessary in all instances, but where Retail Customers pay for facilities that ultimately serve others, the tariff should require an appropriate reimbursement of the initial costs. TIEC pointed to their discussion in comments on the Staff Strawman for additional details. In reply comments, Joint TDUs stated that Staff has correctly determined based on comments submitted in response to Question 3 in the Staff Strawman that TIEC's position is without merit. Joint TDUs stated that existing company-specific tariff provisions for the calculation of the CIAC already take into account the expected future load growth from additional Retail Customers to be served from the

facilities to be installed; and provide for appropriate balancing of cost to install facilities and cost to serve future load growth and reflect appropriate cost causation principles. Joint TDUs pointed to their discussion in comments on the Staff Strawman for additional details.

Commission response

The commission agrees with Joint TDUs that to the extent that existing company-specific tariff provisions take into account expected future load growth from additional retail customers from the facilities to be installed, there is no need to address it here. The commission declines to amend this section.

Section 5.7.3 Processing of Requests for Construction of Distribution Facilities

Joint TDUs commented that in the title of this section, the term "Distribution" should be changed to "Delivery System" because it is a defined term and accurately references the facilities addressed in this section.

Commission response

The commission agrees and amends the title accordingly.

Joint TDUs stated that the ten day timeframe for providing an estimate of time for construction and cost of construction is unrealistic for large, complicated projects. Joint TDUs stated that in such an instance, the Retail Customer and the Company should be allowed to agree on a different deadline for provision of this information. Joint TDUs recommended that language should be added to the last sentence to make this clear.

Commission response

The commission agrees and amends this section accordingly.

Section 5.7.7 Temporary Distribution Facilities

Joint TDUs commented that in the title of this section, "Distribution" should be changed to "Delivery System" because "Delivery System" is a defined term and accurately references the facilities addressed in this section.

Commission response

The commission agrees and amends this section accordingly.

Section 5.7.8 Removal and Relocation of Company's Facilities and Meters

Joint TDUs recommended changing the references of "Section 6.1" to "Chapter 6" because the Facilities Extension Policy for some TDUs in found in Chapter 6, but not in Section 6.1 Rate Schedules.

Commission response

The commission agrees and amends this section accordingly.

Section 5.7.9 Dismantling of Company's Facilities

Joint TDUs stated that the cooperation between the Retail Customer and the Company is highly necessary in scheduling the removal of outdoor lighting. Joint TDUs gave the example that

when a shopping center is renovated; the parking lot lights need to be dismantled at a time that will not interfere with other work that is occurring. Joint TDUs commented that the phrasing in the published rule would require all of the work to take place on the date requested, which is a single day, and which could be impossible if it is a large job. Joint TDUs added that the TDU should be allowed some flexibility with regard to when it performs this low priority service, and therefore the section should be rephrased to provide that the work will be done within 30 days of the day the request is received by the Company or at another mutually agreeable time.

The REP Coalition supported the language in the proposed tariff which specifies the timing for removal of outdoor lighting as well as the prohibition from charging for outdoor lighting removals initiated by the TDU. Joint TDUs disagreed with the REP Coalition and responded that there is no need to provide deadlines for these services in the tariff and the proposed language does not cover the wide variety of services that could be required.

Commission response

The commission understands that cooperation between the Retail Customer and the Company may be necessary in certain circumstances, but disagrees with Joint TDUs that "within 30 days of the day the request is received," "or another mutually agreeable time" are appropriate service standards for this service. These suggestions do not give the Retail Customer any assurance that the requested service will be completed in a timely manner, and do not give any consideration to the date that the Retail Customer has already determined to be acceptable to their schedule. The commission does agree, however, that

the language should contemplate the fact that some services may take longer than a day to complete, and has added language to that effect.

Section 5.8.1 Billing of Delivery Charges

The Joint TDUs stated that the first sentence should be deleted because it is duplicative of the last sentence, and that the reference to Delivery System charges should be changes to Delivery Service Charges. Joint TDUs stated that they understand that any services requested by the REP or customer as well as tampering charges or any other charges attributable to a time when the REP was the REP of Record will be charged to the REP pursuant to this language. The REP Coalition strongly disagreed, stating that customers expect to receive one complete final bill from their REP, not a bill for final usage and then a subsequent bill for discretionary charges. The REPs concluded that since there should be no discretionary charges associated with activity at a meter after issuance of the final meter read, it is not unreasonable to expect the TDU to make sure the invoice for final usage includes all other outstanding charges for that ESI ID.

Commission response

The commission agrees with the Joint TDUs that the sentences are duplicative, and that the reference should be amended, and amends the section accordingly. The commission reiterates its response to Section 4.3.13.1 regarding the billing of tampering charges.

Section 5.9.1 Company Remedies on Default by Competitive Retailer

Joint TDUs stated that this section is unnecessary in the tariff, and if its purpose is to alert the Retail Customer to the fact that a transfer could occur it should appear in the Customer Protection Rules rather than in the tariff.

Commission response

The commission disagrees that this section is unnecessary. The section communicates to the customer that the failure of their REP to abide by the tariff may result in the customer being transferred to another REP. Therefore, it is appropriately located in the tariff.

Section 5.10.2 Retail Customer Responsibility and Rights

Joint TDUs suggested the first paragraph should be revised to conform with Section 4.7.1, they also suggested some other clarifying language.

Commission response

The commission agrees that the first paragraph should be revised to conform with Section 4.7.1, but does not agree with the specific language proposed by Joint TDUs, as discussed in the commission response to Section 4.7.1. The commission agrees with the clarifying change in the second paragraph and amends the section accordingly.

Section 5.10.5 Non-Company Owned Meters

The REP Coalition supported the proposed language that provides that if the changing of a meter causes changes to settlement profile, the settlement profile will change at the next billing cycle.

Joint TDUs agreed and suggested language to reflect recent changes in PURA that allow only commercial and industrial Retail Customers required by the Independent Organization to have an IDR meter to have a non-company owned meter.

Commission response

The commission disagrees that this change is necessary. The law on this has changed the last two legislative sessions and it is burdensome to continue changing the tariff based on these changes. What is written in the tariff does not violate PURA, therefore the commission declines to make the changes as suggested by Joint TDUs.

Section 5.11.1 Service Inquiries

The REP Coalition supported this requirement. Joint TDUs did not support the requirement and stated that if included, the number of days should be changed from two to five Business Days to respond to a customer inquiry.

Commission response

The commission agrees with the REP Coalition and declines to amend the section.

Section 5.12.2 Response to Reports of Interruptions and Repair Requests

Joint TDUs stated that this section should not require notification to the REP because there is no existing market transaction through which this could be done in all instances. Therefore, to implement this requirement, the market would have to create a transaction to notify REPs. Joint

TDUs added that REPs have pre-authorized the charges, and the invoice clearly indicates any charge that is made for this type of service and this should be sufficient notice to the REP.

Commission response

The commission agrees with the Joint TDUs that the REP has pre-authorized the charges but disagrees that an invoice many days later is sufficient notice to the REP, as the REP, for customer service reasons may have need of the information to report findings to the customer, or to follow up with the customer. Therefore the commission finds that notifications should be given to the REP and declines to make the change.

Implementation Issues

The REP Coalition stated that it was pleased with the commission's move toward standardizing basic Discretionary Services among all TDUs for the ultimate benefit of end-use customers. The REP Coalition urged the commission to approve the timelines proposed in Staff's original strawman rule for four basic TDU services including move-ins, move-outs, reconnections, and meter re-reads for standard implementation across all TDUs on the effective date of the commission's adoption of the revised tariff. This action would ensure that REPs and customers receive the long-awaited benefits of standardization of the most basic customer services within six months of the commission's adoption of the revised tariff, or by June 15, 2006 per the commission's proposed date for TDUs to make their compliance filings reflecting the revised tariff. In reply comments, the REPs added that as the market matures, it is important that certain efficiencies be attained. If REPs are to offer valuable competitive services to Retail Customers

in a way that fosters healthy economic competition, they must be able to count on consistent and standard services from transmission and distribution suppliers.

The Consumers stated that customer service is improved by reducing customer confusion and providing uniformity among service areas. The REP Coalition responded in agreement and requested that the commission adopt the REP Coalition recommendation to require standard Discretionary Services throughout all TDU territories in this proceeding.

The Consumers stated that keeping customer service representatives fully informed and trained is a challenge in any industry. The Consumers stated that REPs serving Retail Customers in multiple TDU service areas should not have to train staff on service area specific tariff provisions unless it is unavoidable. When service standards are the same across service areas it reduces confusion for the Retail Customer. The Consumers added that after two and a half years of working on these tariff revisions they come as no surprise to the industry and they should be operating with the intention of making these changes next year.

The TDUs commented that the proposal to standardize the highest volume/most frequently utilized Discretionary Services represents a significant change for the Texas retail electric market and if implemented will have a far-reaching impact on the TDU's operations and costs. The TDUs stated that they did not oppose the move to standardize services, if the commission decides that the benefits outweigh the costs, but added that it should be noted that although the REPs claim that consistency will benefit Retail Customers, REPs are not required to offer all

Discretionary Services to Retail Customers, and not all Discretionary Services are currently offered by REPs. The TDUs stated that the benefits to the market remain unclear.

The REP Coalition disagreed, and stated that parties have shown the benefits of standardization throughout this rulemaking and such benefits clearly outweigh the associated implementation costs. The REP Coalition added that the commission itself has already identified some of the benefits of standardization, one of which was outlined in its underlying policy goals reflected in the 2003 Scope of Competition Report. Additionally, in discussing the initial tariff rulemaking, the commission recognized that "standardized tariffs are intended to reduce a REP's cost of entry into the market." The REP Coalition gave additional examples that REPs will be better able to manage their operational costs and Retail Customers' expectations when they can rely on consistency among TDUs for these services; Texas consumers will gain more confidence that deregulation is working because their REPs will be able to provide better customer service; all REPs will be in a better position to offer all of the Discretionary Services if the they are standardized among the TDU territories; and all REPs will be in a better position to enter each of the TDU service territories, thereby increasing competitive offers in the Texas market. The REP Coalition added that the TDUs provided no support for their statement that not all REPs offer all available Discretionary Services, and that if it is true, it ignores that the Texas retail market is competitive, and REPs are not obligated to offer all Discretionary Services to their Retail Customers which is an aspect by which REPs can differentiate themselves, and REPs offer different service, products and incentives as they are able and willing. The REP Coalition stated that TDUs are not subject to competition, but instead provide the infrastructure for REPs to be able to offer retail electric services. Additionally, REPs may not offer all available Discretionary

Services to Retail Customers because those services are not standardized across all TDU territories. In order for a REP to offer consistent, uniform service to all Retail Customers, they may be forced to offer the "lowest common denominator" of services that exist among the TDU territories in which they do business.

Joint TDUs stated that standardization should be limited to the highest volume/most frequently utilized Discretionary Services, such as Move-ins and disconnections. The REP Coalition agreed with the Joint TDUs that the standardization of these services, in addition to the standardization of Move-outs, Standard Reconnects after Disconnection, and Meter Re-Reads are high priority and should be standardized first. The REP Coalition proposed that these be standardized by June 15, 2006.

Joint TDUs generally agreed with the Discretionary Services proposed for standardization in the published rule and the timelines and service guidelines applicable to them, provided that the changes recommended by the TDUs are adopted. Joint TDUs argued however that "Non-Standard Meter Installation" and "Outdoor Lighting" should not be included as standardized services since they are not high volume, commonly utilized services, and do not lend themselves to single descriptions, with a single, standard charge. The REP Coalition disagreed that other services should not be standardized because they are of great importance to Retail Customers and are commonly used. The REP Coalition proposed a schedule for the various services and timelines by which the REP Coalition believes standardization can be achieved, which the REP Coalition stated would address the Joint TDUs' comments that request implementation of the

most frequently used services first, and opportunity for subsequent proceedings to implement and standardize all other Discretionary Services.

Joint TDUs commented that the proposed standardized Discretionary Services will require significant time to implement and the TDUs must be allowed to recover the costs associated with implementation as well as the costs of providing the services. ERCOT commented that any provisions that would require changes to ERCOT systems, business processes or the TX SET retail market transaction system may require projects to be initiated with funding allocated through the ERCOT project prioritization process. The REP Coalition acknowledged that there may be instances in which market processes, protocols and guides may need revision to accommodate tariff changes, but the REP Coalition assessment of the required changes to transactions concluded that the changes would be minimal and would not themselves compel a new TX SET version release. The REP Coalition stated that even if unforeseen changes are subsequently identified, there is already a placeholder on the ERCOT project prioritization list for changes to implement revisions to the tariff and are designated as mandatory with the highest priority. The REP Coalition recommended that the commission reject the TDU's position that no date certain be included in the tariff for implementation of changes.

The TDUs argued that the rates for the standardized services must reflect the costs incurred by all TDUs and therefore must be utility specific, and that the published proposal correctly reflects that implementation will occur on the basis of individual utility rate cases. The TDUs recommended the inclusion of language to make it clear that the new service requirements will not be effective until the market and internal system and process changes necessary for

implementation also have been accomplished, and noted that it is possible that these will not be completed until after a TDU rate case. The REP Coalition agreed that TDUs should have a reasonable opportunity to recover costs, and stated its belief that its implementation proposal recognized an appropriate timeline. The REP Coalition stated that the four basic services that are already common among all TDUs could be standardized sooner without revision, and the other services can be standardized through expedited Discretionary Services proceedings by September 1, 2006. The REP Coalition also agreed with the TDUs that the changes should not be implemented on a piecemeal basis which the REP Coalition believes will be the result if the commission's current timeline for these changes is adopted.

The TDUs stated that it is important that prior to implementation and the rate cases, the commission make known its expectations with regard to how compliance will be enforced with regard to specific requirements and strict timelines contained in the description. This is necessary in order for the TDUs to project the staffing and equipment, and therefore the cost of providing these services. The TDUs added that they recommend that 100% compliance in every instance not be the standard, and that compliance be assessed over time, on the basis of performance metrics. The REP Coalition responded that TDUs do not need to wait until performance measures are established before they initiate proceedings to standardize Discretionary Services because performance measures account for extenuating circumstances under which a TDU is not able to perform a service within the expected timeframe. The REP Coalition argued that when TDUs initiate these Discretionary Services proceedings, staffing should be designated to meet a performance standard of 100% under ordinary circumstances, but

that a performance standard of slightly less than 100% must be adopted in order to recognize unusual conditions that may periodically occur.

The TDUs recommended that the numbering and titles of Chapter 6 be expanded to included two subheadings under Sections 6.1.2.1, 6.1.2.1.1 "Standard Discretionary Services" and 6.1.2.1.2 "Company Specific Discretionary Services." The TDUs stated that this will provide a place for those Discretionary Services that will remain company specific and that also will be billed to the REP. Additionally, the TDUs recommended that the language proposed under "i" that requires uniform application of TX SET codes be moved to Section 6.1.2.1.1, the subheading that is applicable to the Standard Discretionary Services. The TDUs commented that the language does not apply to the company specific services, for which uniform TX SET codes may not exist, and that the language addressing implementation is better located in §25.214. The TDUs commented that if it remains here, it should also be included in the rule, and should be relocated because it is currently only applicable to the Standard Discretionary Services.

In reply comments the TDUs supported the approach specified in the proposed amendments for implementation of the standardized Discretionary Services, including putting all requirements in the Chapter 6 Rate Schedules rather than in Chapters 4 and 5, and implementing the new Rate Schedules pursuant to a TDU rate case.

Outside of the immediate implementation of the four basic TDU services, the REP Coalition suggested that standardization of all other Discretionary services as proposed by the commission in Chapter 6 should be initiated by the TDUs by September 1, 2006. The currently proposed rule

requires TDUs to initiate a proceeding to approve Discretionary Services charges by June 30, 2007, if the TDU has not initiated a full rate case prior to that date. The REP Coalition stated that under the proposed timeline it is likely that standardization of the remaining Discretionary Services will not occur throughout the market until 2008, more than two years from now, and more than four years from the time this project was initiated. While the REP Coalition is pleased that the proposed rule contains a date certain when TDUs must initiate a proceeding, it encouraged the commission to shorten the timeline, to enable customers and REPs the opportunity to begin taking advantage of the new standardized service offerings and the efficiencies to be gained through such standardization.

The TDUs stated that while the proposal to standardize the highest volume Discretionary Services represents a significant change for the Texas retail electric market and will have far reaching impact on the TDUs operations and costs, the TDUs do not oppose this move if the commission believes the benefits of standardizing some Discretionary Services outweigh the costs.

The TDUs responded that the claims by REPs that standardization has been unreasonably delayed are misleading. First, there is already an unprecedented amount of standardization with regard to TDU services based on existing tariff and transactional requirements that are in place in the market. Second, considering the myriad of issues raised and the detail involved in developing language changes to the current 69 page tariff as well as the huge impact on the market that changes will cause, this rulemaking has proceeded in a timely manner.

The TDUs also disagreed that the service completion requirements for the four basic, everyday services should be imposed as of June 15, 2006. The TDUs are unclear as to which services the REP Coalition proposes be standard as some contain standard, priority or same day service. Secondly the TDUs argued that the REP Coalition's arguments in support of their proposal are inconsistent. If implementation will be easy because few changes are required then standardization is not desperately needed. The TDUs stated that these services are already offered by all TDUs and are provided under standard timelines established by the transactional market, and adoption of timelines in the tariff will not result in any significant change in the level of standardization that exists in the market today. The TDUs continued that despite REP's claim to the contrary the REPs are proposing significant changes to the current standard reconnect requirement stated in the Customer Protection Rules. That would make the timeline for reconnection more stringent than what is currently in effect in the market today.

Additionally, the TDUs furthered, if the REPs are proposing immediate implementation of the timelines for priority move ins and same day after hours reconnects, the TDUs either do not have standard provisions for or in some cased do not offer these services. Changes such as these would require hiring, training additional personnel, changing processes and acquiring additional equipment, all of which would increase costs and the charges to be applied and would have to be considered in a rate case. The published amendments correctly recognize that service expectations and charges are linked and that because rates will have to change if the timelines and other service descriptions change, all of the changes should be made in the context of a rate proceeding. The TDUs stated that implementation of some of the timelines now, and others later, in different portions of the tariff would be confusing and unwieldy. The REP Coalition

restated its intended proposed changes and dates for standardization in reply comments. The REPs proposed that Standard move-ins, move-outs, standard reconnect after disconnect for non-pay and meter rereads should be standard by June 15, 2006. The REPs proposed the following charges be standardized through PUC proceedings initiated by September 1, 2006: priority move-ins, customer requested clearance, disconnect for non-pay, same day reconnect after disconnect for non-payment, meter test charge, out-of-cycle meter reads associated with a switch, service call charge, security lighting repair, security light removal, street light removal, tampering, and broken meter seal.

The TDUs stated that the REPs' claim that immediate implementation is needed for a REP to be able to tell its customer with certainty when basic services will be provided by the TDU is disingenuous. The TDUs argued that that in the market as it exists today, REPs can communicate to their customers the standard expectations for when TDU services will be provided based on the timelines applicable to the transactional system. The TDUs stated that while they don't achieve 100% performance, the REPs recognize that even under the proposed tariff, 100% compliance at all times would also not occur and would not be expected even after timelines are added to the tariff.

The TDUs argued that for the other Discretionary Services that the REPs proposed, new TX SET releases will be necessary, completion of which will take a significant amount of time. Some of the proposals will require ERCOT protocols or market guide revisions. Similarly, changes to TDU and REP processes will be required and the degree of what is required and how quickly it can be achieved will only be known some time after final adoption of the tariff. Requiring a rate

filing no later than September 1 and an effective date of four to six months later could result in implementation of the new tariff provisions before the market has made the changes necessary to properly implement those provisions. The commission should make clear that none of the changes mandated in this rulemaking are to be implemented through manual, rather than electronic processes, and that none of the services must be offered or timelines met until such time as all of the requisite details have been accomplished. Secondly, the TDUs argued, the performances measures must first be adopted as there will be cost differences between achieving a 90% performance metric as opposed to achieving a 95% performance metric.

Therefore, the TDUs recommended, that instead of implementing any of the revised tariff provisions immediately, or stating a date certain in the rule for either the effectiveness of certain provisions or the filing of TDU rate proceedings, the commission instead open an implementation docket immediately upon conclusion of this rulemaking, pursuant to which an implementation schedule can be adopted and progress monitored. Additionally, even if a new rate case has been completed, the commission should ensure that the new service requirements will not become effective until market and internal and system and process changes necessary for implementation have been accomplished.

Commission response

The commission desires to have the changes proposed in this tariff and in Chapter 6 effective as soon as possible but realizes that these changes will require TDU system changes and may require TX SET changes as well. The commission believes that standard move-ins, move-outs, meter re-reads and standard reconnects will not require such

changes, and therefore finds it appropriate to include the requirements for these standard services in Chapters 4 and 5 so that they may be implemented in July of 2006. The commission agrees to leave the items that require systems and process changes in Chapter 6 but moves some of the implementation dates to a date earlier than was proposed. The commission believes that there is enough time to implement the Texas SET changes, TDU and REP systems changes, and TDU discretionary service charges by July 1, 2007, and therefore finds that July 1, 2007 is the appropriate date for the implementation of Chapter 6. The commission agrees with the Joint TDUs that an implementation proceeding should be established to follow the implementation of changes from this rule and set dates for TDUs to file tariff cases for approval of modified discretionary service charges (if the TDU has not filed a rate case with the new effective Chapter 6 Discretionary Services at a time which could be approved and in effect on July 1, 2007).

Chapter 6

Normal Business Hours

The Consumer Commenters stated that electricity is an essential service and it is unacceptable for an electric provider to have working hours that prevent working customers from being able to contact them when they are not working. They proposed that at a minimum, the TDUs should be required to be open for normal business hours from 7:00 a.m. to 7:00 p.m. Monday through Friday.

TDUs stated that the consumers misunderstood the provision in the proposed rate schedules concerning hours that the company shall be open for normal business. The TDUs stated that

TDU personnel currently receive and respond to trouble calls at all times and will continue to do so and this work is not part of the normal business that this language is intended to cover. It is unnecessary and would not be appropriate to expand normal business hours from 7:00 a.m. To 7:00 p.m. as "normal" TDU business hours should correspond to a "normal" eight hour work day.

The TDUs recommended that the statement regarding normal business hours be changed to reference the defined term Business Day rather than Monday-Friday, this will incorporate holidays that fall on weekdays.

Commission response

The commission agrees with the TDUs that because the company is available for emergencies and trouble calls at any time that it is unnecessary to require the TDU to be open from 7:00 a.m. to 7:00 p.m. The commission also agrees with the TDUs that holidays that fall on Business Days should be excluded from the normal business hours, but holidays should be included in emergency hours. The commission also finds that emergencies aren't restricted to weekends and holidays but to all time periods and changes the language to clarify that.

Move-In

The Consumers commented that under the tariff a priority move-in request only has to be processed the same day if the request is receive by noon, and argued that if a Retail Customer is paying a charge to have new service connected it should be connected the same day. The

Consumers recommended that noon be changed to 7:00 p.m. The TDUs responded that this proposal is not practical because an order received at that time cannot be processed, dispatched and completed that late in the day.

Commission response

The commission agrees with the Consumer Commenters that the time should be extended but also agreed with the TDUs that 7:00 p.m. could be unreasonable in certain situations such as when the TDU must drive a long way to the premises. Therefore, the commission agrees to change noon to 5:00 p.m. to give the TDU more time to receive the transaction and to make it consistent with same day reconnects.

The REP Coalition strongly supported the commission's two-tier approach for move-in charges to give Retail Customer the flexibility to schedule services with sufficient lead-time for a standard charge or on a priority basis when time is of the essence. However, as currently defined, Retail Customers can either request two or more Business Days in advance, or on the same day, which leaves a gap for Retail Customers who call for service one day in advance. The REP Coalition recommended that the description of a Priority Move-In be modified to include next day service as well as same day service to eliminate the gap. The REP Coalition added that the word "Days" appears to be stricken from the description of a Standard Move-In and should be reinserted.

The TDUs responded that with several conditions, the TDUs did not object to this proposal. These conditions include that the request be coded as a Priority Move-In because if it is not, it

will be treated as a Standard Move-In request and the requested date will be moved to the second Business Day; and the service will only be provided on a Business Day. The TDUs responded that the REP Coalition's proposed tariff language removes this requirement and would allow a REP to send a Priority Move-In request on a Saturday, requesting that service be completed either that day or on Sunday, and argued that the TDU should not be required to provide Priority Move-In service on weekends or holidays, when the TDUs are available for emergency reconnections. The TDUs argued that they should be allowed the entire following Business Day to complete the work, both if the service is requested for the following day, and when the request is for service the day of the request, but the request is received after noon. If a noon deadline for working the order applies to requests that come in after noon of the previous day, but not to other orders to be worked the following day, the variety of service options will be bewildering and services will be difficult to schedule. Additionally, the TDUs argued that their processes are set up to schedule work by the day, not by the hour, and scheduling some Move-Ins to be completed by noon will result in inefficiencies and increased costs.

Commission response

The commission agrees with the TDUs, that move-in service should be for Business Days rather than weekends or holidays and amends accordingly. The commission agrees that to receive priority service, the REP must send a move in that is coded "priority" as priority will now cover same day and next day requests and notes that this is already included.

Standard Move-In

The TDUs stated that the first sentence should be deleted to conform to the format used for "Priority Move-In." The REP Coalition disagreed with this suggestion.

Commission response

The commission agrees with the Joint TDUs that the two services should conform. We have made changes to both priority service and standard service to ensure that these services work together.

The TDUs commented that additional detail should be added to describe fully what will occur when orders are received after 5:00 p.m., on a non-Business Day, less than two days prior to the requested date or when the requested date is not a Business Day. In reply comments, the REP Coalition agreed with this suggestion.

Commission response

The commission agrees with the Joint TDUs and makes the changes to Chapter 6.

The TDUs stated that the timeline for Standard Move-In should only apply to situations in which all preparatory work has been completed, including installation of a meter if required and only after required permits have been granted. The TDUs noted that when a meter does not exist at the Premises, different equipment and personnel are required to install it, connections to underground transformers or installation of service drops may be required, and this work cannot be completed under the Move-in timeline. This is anticipated in Section 4.3.2.2, which correctly

refers to the process for Move-in without construction service, only after completion of construction service, and therefore there should only be one charge applicable to a Standard Move-in, rather than one for "pre-existing" and another for "new." The REP Coalition agreed with the language regarding required permits, but disagreed that the Standard Move-in timeline should not apply where the only remaining activity is installation of a meter, because it is no more complex than un-sleeving a meter for a reconnect after a disconnection for non-payment if all other construction services have been performed. The TDUs added that service should not be available when other services are required, or other issues have to be resolved prior to the Move-In. The REP Coalition stated that consistent with their comments under Standard Move-in, the Priority Move-in timeline should apply in situations where the sole remaining activity is the installation of a meter.

Commission response

The commission understands that it may take more time to perform a move-in if a meter installation is required because of the work that the TDU must do such as setting the meter and checking the voltage. The commission also understands that the TDUs use different terminology for meter installation and that it encompasses different services for different TDUs, and that coming to common terms is part of the standardization process. The commission finds it reasonable to expect a TDU to complete a move-in on a new premises that does not require inspections and permits, or other construction work, to be done within a set timeframe that the customer and REP can count on, and that if all other work has been done, the last work for a meter installation should be done within this timeframe. However, because of the extra work required, the commission agrees that it is not

appropriate for Priority Move-In service to apply to situations in which there is not an existing meter, and amends the language accordingly.

Priority Move-In

The TDUs stated that in lieu of the last sentence, additional detail should be added describing what will occur if the request is received after noon but before 5:00 p.m., or after 5:00 p.m. on a non-Business Day. The TDUs proposed language to state more clearly how the service will be provided. In reply comments, the REP Coalition agreed with this suggestion.

Commission response

The commission believes that if the request is received before 5:00 p.m. then the request should be completed by the end of the following Business Day. The commission clarifies the priority language.

Move-Out

The REP Coalition supported the commission's proposed approach to charges for Move-outs including bundling the cost of a move-out with the cost of a move-in and the service performance standard that requires TDUs to disconnect service on the requested date if two or more Business Days notice is provided. However, the REP Coalition recommended the addition of language in the description of the move-out to allow TDUs to reschedule a move-out when two or more Business Days notice is not provided. The TDUs responded in agreement to this recommendation. The TDUs noted that the REP Coalition is supportive of the proposal to recover the costs associated with a move-out, as part of the charge for the move-in. The TDUs

stated that they do not object to this approach, but find it curious that the REPs claim the "basic" standardized service can be implemented immediately upon conclusion of this rulemaking, given their support of this change to how the charge is structured, and that none of the TDUs currently have charges designed this way. The TDUs added that changing the charges can only be accomplished in a rate case, in which costs can be appropriately allocated and charges developed to cover them.

Commission response

The commission agrees with the Joint TDUs and the REP Coalition and makes the changes proposed by the Joint TDUs.

Disconnect for Non-Pay Charges

The REP Coalition recommended that the phrase "or Company" be deleted from the first sentence of the "Disconnect for Non-Pay" description of service because one could infer that the REP will be billed for a disconnection associated with a TDU's decision to disconnect a Retail Customer for non-payment of charges billed to the Retail Customer by the TDU. The REP Coalition stated that clearly, a TDU that decided to disconnect for charges billed by the TDU directly to the Retail Customer pursuant to Section 5.3.7.2 should be responsible for the cost to execute their own disconnect. The TDUs disagreed and stated that this charge should be applicable whether the disconnection results from failure to pay amounts owed to the REP, or failure to pay amounts owed to the TDU. Further the TDUs stated that to make this clear, "requests from Competitive Retailer to" needs to be deleted because when the disconnection

occurs as a result of failure to pay amounts owed to the TDU, the disconnection will not have been requested by the REP.

Commission response

The commission agrees with the REP Coalition that if the TDUs have made an agreement with the customer, and the customer has not fulfilled its obligations and the TDU subsequently decides to disconnect the customer, that the charges for disconnection (and reconnection) should be billed directly to the customer under the TDU contract with the Customer, rather than to the REP. The commission amends the language to prohibit charging the REP under this circumstance.

The REP Coalition commented that the requirement to send the disconnect request at least two Business Days prior to the requested date is particularly troublesome because of the potential for negative Retail Customer experience that this could cause. The REP Coalition stated that with a two Business Day lead-time between the time the disconnect order is sent and the first day that the TDU could potentially work the order, there is an increased risk that the Retail Customer pays but the pending disconnect order is not cancelled in time to prevent disconnection of service. The REP Coalition added that most TDUs schedule the day's workload at the beginning of each Business Day, and therefore the additional Business Day contemplated by the proposed rule is not particularly significant from an operations standpoint, and the only thing this requirement does is increase the risk that a Retail Customer is disconnected in error because of the length of time the TDU is holding the pending disconnect order. The REP Coalition

therefore recommended that the lead-time required for a disconnect for non-pay order be reduced to one Business Day.

In reply comments, the Joint TDUs disagreed because the shorter the notice time, the greater the likelihood that the Retail Customer will be disconnected, which is always a negative Retail Customer experience. Joint TDUs commented that the fact that some Retail Customers pay during the two day notice period and avoid disconnection is a positive outcome for the Retail Customer and the TDU workload, and the REP Coalition appears to be attempting to reduce their exposure to bad debt. Joint TDUs added that there is minimal risk that the disconnect will be worked even though the Retail Customer has paid the bill no matter how many days of notice are given, as long as the REP timely sends the appropriate transaction when payment is received because any pending disconnect will be cancelled. Joint TDUs also disagreed with the REP Coalition's assertion that allowing just one day's notice for disconnects for non-pay would not be particularly significant from an operations standpoint for the TDUs because the timeframe for working the disconnects would be decreased, and therefore the number of disconnects and associated reconnects would increase because Retail Customers would have less time to pay their bills. Additionally, with two days notice, the TDU will have the flexibility to forecast workload more accurately and efficiently deal with the peak. Joint TDUs commented that the published amendments appropriately balance the need for certainty about when the disconnect order will be worked and the need of the TDU to efficiently plan and execute field work.

Commission response

The commission agrees with the Joint TDUs and understands that if the disconnection is sent and a subsequent reconnect is sent, the pending disconnection is automatically cancelled. The commission believes that with the two days notice, the TDU will have the flexibility to more accurately schedule its workload. The commission also notes that to allow maximum time for reconnect orders to be received the TDUs should not disconnect early. The commission declines to change the rule to accommodate the request of the REP Coalition.

The TDUs commented that the "Note" that was proposed for the Section on "Reconnect After DNP" reflecting the requirement that disconnection of a residential customer will not occur on a Business Day preceding a holiday is more appropriately located in this Section, and that the word "TDU" in the "Note" should be changed to "Company" to conform with terminology used elsewhere in the tariff. The TDUs added that there should be two separate charges, one applicable to a disconnect at the Meter, and the other applicable to a disconnect at a premium location, such as the weatherhead, pole, secondary box, etc. The TDUs commented that this is a distinction that is recognized in the section on Reconnect for Non-Pay, and the same difference in costs will arise for the disconnection.

Commission response

The commission will change the TDU to Company in the Note and adds the two separate charges proposed by the Joint TDUs.

Reconnect for Non-Pay Charges

The Consumers stated that they have previously opposed charges for priority reconnects, and that it appears that "Same Day Reconnect" is the new name for priority reconnects, which they believe is a discriminatory practice. The Consumers stated that if there are two Retail Customers disconnected for non-payment and they both pay their bills at the same time they should be reconnected within the same standards of timing. The Consumers argued that people who cannot afford to pay a priority fee should not have their reconnection further delayed for someone who can afford to pay an extra reconnect fee for priority scheduling, and this practice discriminates against the poor and should be prohibited. The Consumers added that the very existence of same day reconnect fees will lead some consumers to believe that they will have to wait longer if they do not pay the priority fee, even if it may not be necessary to accomplish the same day reconnect since some TDUs are on average able to perform reconnects much more quickly. The Consumers stated that having a same day reconnect is a misrepresentation to consumers that will result in consumers being charged more than they should be for reconnection services. The Consumers commented that they have no issue with offering after-hours reconnection for Retail Customers who are unable to arrange payment within the timeframe needed to be reconnected during the regular work day. The REP Coalition stated that their understanding is that it becomes more difficult for TDUs to reconnect service on the same day when orders are received later in the day, but stated that their belief that these Retail Customers should have the opportunity to request a same day/after hours reconnect if they are willing to pay the additional charge for TDUs to complete these reconnects on overtime.

The Consumers commented that once a Retail Customer pays its bill, reconnection should occur the same day and certainly within 24 hours, and that the commission should eliminate the 48 hour standard. The Consumers stated that the purpose of the standard is to make sure that all Retail Customers are protected, even the ones who pay late Friday afternoon because that is when they got paid. The Consumers argued that a standard that represents the lowest standard for the industry protects no one, and recommended standard reconnect requests received by the Company prior to 5:00 p.m. should be reconnected no later than the close of that field operational day; standard reconnect requests received between 5:00 p.m. and 7:00 p.m. should be reconnected by noon the next field operational day; and standard reconnect requests received by Company after 7:00 p.m. should be considered received the next business day. The Consumers also recommended that "same day" be changed to "after hours" consistent with their comments. The TDUs responded stating that they do not oppose doing away with priority reconnection if the commission so chooses, but it is important that the standard service not be converted into what is in essence priority service by adopting the timeline proposed by the REP Coalition for all reconnects. The REP Coalition stated that they were in general agreement with the comments of the Consumers in regards to the commission's approach to reconnections after disconnect for non-payment, particularly the 48-hour outside limit to reconnect service. The REP Coalition stated their belief that the 48-hour provision was put in place as a backstop for Retail Customers when unpredictable conditions prevent the TDU from reconnecting service earlier.

The REP Coalition supported the commission's attempt to provide more certainty of Retail Customer reconnect times as well as a standard service offering for Same Day Reconnect, but stated that the commission's proposal does not go far enough because too much latitude is

provided, particularly in instances where the TDU has received a reconnect order early enough in the day. The REP Coalition noted that the reconnect provisions contained in the Customer Protection Rules make a distinction between orders received before 2:00 p.m. and those received after that time, and require the TDU to reconnect service that day if possible, but no later than the end of the next utility field operation day. The REP Coalition stated that this provision was included to provide the TDU with flexibility to move orders to the following day only in situations such as storm conditions or unusually heavy workload that should only occur a few times per month. The REP Coalition stated that aside from those situations, the TDU should be expected to complete all reconnect orders received by 2:00 p.m. on the same day. The REP Coalition stated that they would support performance measures that would not contemplate 100% compliance 100% of the time to account for such situation. The TDUs responded that the REP Coalition was incorrect in its claims that its proposed timeline for reconnection of service after disconnect for non-pay is consistent with the Customer Protection Rules, and that it is much stricter than the current market timeline, and the timeline required in the rules. The TDUs commented that the Customer Protection Rules provide that the reconnect must be completed by the end of the next field operational day, but in no instance longer than 48 hours after the request is received, which is also the requirement in the proposed amendments. The TDUs continued, stating the REP Coalition's proposal would require the reconnect to be completed by the end of the same day if the request were received by 2:00 p.m., which would make it the priority reconnect a standard reconnect, and would greatly impact TDU operations and costs. The TDUs added that the commission fully considered the issues surrounding this timeline during the proceeding for the Customer Protection Rules, and there is no need to revisit the same questions

again. In reply comments, the REP Coalition stated its belief that its proposal is a good compromise between the commission's published rule and the proposal of the Consumers.

Commission response

The commission does find it appropriate to have a distinction between a standard reconnect and a same day reconnect. There are differences in the level of service and those who are willing to pay for the faster service, should have the opportunity to pay for it. The commission agrees with the TDUs that the REP Coalition's proposal is stricter than the current Customer Protection Rules. However, the commission finds that a requirement that a reconnect order received by 2:00 PM CPT on a Business Day be completed that day will benefit customers, and does not conflict with the Customer Protection Rules. Therefore the commission agrees to make this change. The commission notes that the REPs should send reconnects as promptly as possible following the customer's payment, and re-establishment of credit, if applicable, to ensure that a customer's disconnect order is either not executed, or the customer is reconnected as promptly as possible.

The REP Coalition proposed that any order received by the TDU prior to 7:00 p.m. CPT (5:00 p.m. CPT on non-Business Days) should be worked that day because a Retail Customer who is in an emergency and is willing to pay for the assurance of having service reconnected that day should be able to do so. The REP Coalition stated that these timeframes mesh well with the timeframes in which a REP has to transmit reconnect requests, but also allow the REP the ability to set expectations with its Retail Customers as to expect service reconnection, and provides an option for Retail Customers who call later in the day the ability to have service reconnected the

same day at a different rate. The TDUs responded that this proposal is unreasonable, and that indeed the 5:00 p.m. deadline contained in the published amendments is also not feasible because the TDU needs orders to be received no later than 2:00 p.m. if they are to be worked that same day. The TDUs argued that it is not possible to receive, process, dispatch, travel and execute orders upon shorter notice, particularly in rural areas where travel time can be significant; nor should it be required that that such orders be worked through midnight. The TDUs also disagreed with the language proposed by the REPs that priority reconnects could be ordered for any day, including holidays and weekends, because the TDUs do not think that priority service should be available on non-Business Days. The TDUs stated that the only time standard or priority reconnects should be worked on non-Business Days is when the 48 hour requirement in the Customer Protection Rules requires it, which is consistent with the published amendment. The TDUs added that the description of this service should expressly state that the request must include the appropriate priority code, and has suggested language be added to the Rate Schedule to accomplish this.

The REP Coalition added that to address the TDU's concerns that the customer protection rule requiring reconnection not later than 48 hours after receipt would result in TDUs performing work on non-Business Days, the REP Coalition recommended language to more narrowly define the circumstances in which this charge will apply. The REP Coalition stated that this specification will allow REPs to accurately quote a reconnect price to the Retail Customer at the time the reconnect is requested.

The TDUs stated that the second sentence should be changed to reference more clearly the charge that will be applied to a reconnection performed on a day that is not a Business Day, and that the title of that charge should be "Non-Business Day Reconnect," both in this sentence and in the itemization of charges.

Commission response

The commission agrees with the TDUs that a 7:00 PM timeframe would not be practical, and therefore declines to make the change requested by the REPs. The commission does not agree to specify the method of transmission of the priority code in this tariff but notes that the tariff requires a differentiation of standard and same day reconnects. The commission does agree to add weekend day in addition to holiday to reflect that the TDU will reconnect service on non-Business Days as well as holidays if necessary and to allow for appropriate charges for weekends and holidays.

Meter Re-Reads

The REP Coalition noted that this discretionary service does not have a corresponding performance standard to define the timeframe in which the TDU should complete the re-read and stated that it is necessary for REPs to set customer's expectations appropriately. The REP Coalition reasoned that five Business Days was a reasonable time. The TDUs stated that if this is adopted, the term "date of the request" should be changed to "receipt of request."

Commission response

The commission agrees that a re-read should be done within five days and agrees this should be effective sooner rather than in 2007. The commission agrees with the REP Coalition that this should be placed in the body of the tariff as current re-read charges should continue to apply. The commission agrees with the TDUs that the timeline should begin upon the TDU's receipt of the request.

Non-Standard Meter Installation Charges

The TDUs recommended that these services remain in the Company specific portion of Chapter 6 rather than being simplified into standardized services because they are not high volume frequently utilized services and by their very definition are "non-standard." There is a wide variety of non-standard meter equipment and new equipment is being developed, and not all equipment is available in each TDU service territory, which means that the work associated with installing these meters varies and may change and the charges should not be simplified as stated in the proposed amendments. The TDUs therefore, recommended that this entire section be deleted, or if it remains, the changes recommended by the TDUs should be adopted. The TDUs recommended language putting "standard advanced metering equipment" into lower case and removing the specification "via telephone" for information transmittal.

The REP Coalition noted that the proposed rule does not contain timelines associated with requests to install Off-Site Meter Reading, Automated Meter Reading, or IDR Equipment, and that these timelines are necessary to set Retail Customers' expectations for the completion of requested services. The REP Coalition therefore proposed the inclusion of a 30 calendar day

performance standard to define the timeframe in which TDUs should complete advanced meter installation requests.

In reply comments, the TDUs reiterated their request that this not be in the standardized services, and added that there is a high degree of variation and specificity related to these services as is made clear by the provisions recently approved by the commission in the AEP TCC tariff, Docket No. 28840. The TDUs added that as technology develops in this area, any specific standards adopted as part of the rule may quickly become obsolete, hindering the Retail Customer's ability to customize its approach, which may negatively impact the Retail Customer experience. The TDUs stated that providing standard timelines for installation of this equipment makes no sense, and the work requires close coordination with the Retail Customer; construction by the Retail Customer is often required; software may need to be installed; and the work may need to be done more than 30 days in the future. The TDUs stated that the equipment would rarely be installed just on the basis of receipt of an electronic transaction from the REP without coordination with the Retail Customer, and that the timetable for completing the work will be developed based on coordination between the TDU and the Retail Customer. Therefore, the rationale that timelines are necessary so that the REP can "appropriately set customers' expectations" is faulty. The TDUs added that if a timeline is included it should be tied to the "receipt of the request or as otherwise agreed to by Company and Retail Customer" rather than the "date requested" as proposed by the REP Coalition.

Commission response

The commission believes that customers should be able to receive certain non-standard meter installations within a 30 day timeframe as proposed by the REPs, as the Customers and the REPs should have an expectation of when the service should be completed. The commission agrees with the TDUs that there will be many other types of metering services that may be available in the future and the customer should be able to receive those services as well. Therefore, the commission concludes that these basic non-standard services should remain in this tariff with a 30 day installation timeline and that each TDU should have additional Discretionary Services for other metering services that are not included in this description and as indicated in the rule adoption, timelines should be proposed for additional services when the services and rates are proposed.

Interval Data Recorder (IDR) Equipment Installation

TDUs suggested striking "access interval load data via telephone to a central location" to "transmit interval load data to a central location."

Commission response

The commission agrees with the TDUs that the transmission does not always have to be via telephone but that the communication method should be at the option of the customer having the meter installed and that the customer should not have to pay additional charges to the TDU for receiving communications in a different manner.

Service Call Charge

The REP Coalition did not understand the rationale for the distinction between outage investigations that occur during normal business hours and those that occur outside of normal business hours because TDUs are required to have staff available to respond to outages during all times of the day. The REP Coalition stated that the cost for a TDU to respond to an outage during normal business hours should not necessarily be different than the cost to respond at any other time. The TDUs argue that the cost for maintaining crews after hours is much higher and the cost of using such a crew to respond to an inside trouble call is also greater.

Commission response

The commission disagrees with the REP Coalition that there is no difference in responding to an outage call during the day or in the middle of the night as crews are generally more expensive when dispatched at night, on weekends or holidays and this associated cost should be borne by the customer who requested the service. The commission declines to make a change in the rule associated with this suggestion.

The REP Coalition furthered that if the commission is attempting to address erroneous outage calls that require the TDU to respond to calls on the customer's side, a more appropriate charging mechanism would be based on the number of erroneous calls made by the customer in a finite period of time. The TDUs do not agree with the REP Coalition proposal and stated that the cost is incurred the first time the trip occurs, just as with subsequent trips and were the costs included in base rates, all customers would bear costs that are incurred at the behest of only one customer. Further, keeping track of calls to bill on the second occurrence would be impractical

and a system would have to be built to tract the calls and the results of the call and the information retained for 12 months. Additionally, the TDUs provided that the ability to tract the calls by customer as opposed to ESI ID does not exist and a manual system would have to be developed to perform this tracking at a cost that would far outweigh the value of being able to track this information.

Commission response

The commission agrees with the TDU that the costs should be billed to the customer who requested the TDU services rather than borne by all customers. There is a cost associated with the TDU visit to the premise and it should be borne by the customer. If the response is made during non-business hours, then the customer should be required to pay the additional charges associated with a non-business hour visit.

Outdoor Lighting Charges

The TDUs recommended that these charges not be included as standardized Discretionary Services, but instead remain in the Company Specific portion of the tariffs. The TDUs noted that they are not high volume/frequently utilized services, and the descriptions found in the existing TDU tariffs are far more detailed and complex that those proposed and more correctly reflect the variety of situations that are involved. The TDUs recommended that this entire section be deleted, or the title of the section should be changed to "Company-Owned Lighting Charges" because the TDU is only responsible for repairs to its own facilities, not all outdoor lighting. The REP Coalition requested that the commission reject the request to delete the section because these are some of the most important service requests from a Retail Customer's

perspective because of the security concerns associated with outdoor lighting, including both guard lights and street lights.

Commission response

The commission agrees with the REPs that these services are important to the Retail Customer and that service should be performed as expected. Additionally, while the commission is not opposed to coordination, there needs to be a timeline to ensure appropriate TDU performance. Therefore, the commission declines to amend this section.

Security Lighting

The TDUs stated that this should not be included in the Standardized Discretionary Services portion of the tariff, but if retained, the title should be "Bulb and Photocell Replacement" because repairs other than bulbs and photocell replacement should be covered in the Company specific portions of Chapter 6. However, if included as a standardized service, the charge for these repairs should be "as calculated" and there should be no time-limit stated.

In reply comments, the TDUs referred to the discussion above. The commission assumes that the following is the discussion to which they were referring. The TDUs stated that if this section is not deleted, timelines should not be included because the work requires close coordination with the Retail Customer to coincide with or avoid other construction work; or it may need to be done more than 30 days in the future. The TDUs stated that work would rarely be performed just on the basis of receipt of an electronic transaction from the REP without coordination with the Retail Customer, and that the timetable for completing the work will be developed based on

coordination between the TDU and the Retail Customer. Therefore, the rationale that timelines are necessary so that the REP can "appropriately set customers' expectations" is faulty. The TDUs added that they do not agree with standardizing this service, or including a timeframe in the description of the service, but if one is included it should be tied to the "receipt of the request or as otherwise agreed to by Company and Retail Customer rather than the "date requested" as proposed by the REP Coalition.

Commission response

The commission agrees with the REP Coalition that a timeline should be included for these services and make the suggested changes to the tariff.

Street Light Removal

The TDUs commented that Street Light Removal should not be included in the Standardized Discretionary Service portion of the tariff; however, if it is retained, the reference to Section 5.6.8 should be changed to a reference to Section 5.7.8. The TDUs added that the charge for this service should be "as calculated" because of the wide variation in the type of service that may be required. The TDUs gave the example that lights served by overhead conductors are less expensive to remove than lights served by underground wiring, which is more difficult to remove or cap.

In reply comments, the TDUs referred to the discussion above. The commission assumes that the following is the discussion to which they were referring. The TDUs stated that if this section is not deleted, timelines should not be included because the work requires close coordination

with the Retail Customer to coincide with or avoid other construction work; or it may need to be done more than 30 days in the future. The TDUs stated that work would rarely be performed just on the basis of receipt of an electronic transaction from the REP without coordination with the Retail Customer, and that the timetable for completing the work will be developed based on coordination between the TDU and the Retail Customer. Therefore, the rationale that timelines are necessary so that the REP can "appropriately set customers' expectations" is faulty. The TDUs added that they do not agree with standardizing this service, or including a timeframe in the description of the service, but if one is included it should be tied to the "receipt of the request or as otherwise agreed to by Company and Retail Customer rather than the "date requested" as proposed by the REP Coalition.

Commission response

The commission agrees with the REP Coalition that a timeline should be included for these services and makes the suggested changes to the tariff.

Tampering

The TDUs recommend that language be added to the description of this charge, indicating that the charge will be billed to the REP who was the REP of Record at the time the tampering occurred. If the tampering occurred when there was no REP of Record, it will be billed to the Retail Customer.

Commission response

The commission agrees with the TDUs that tampering discovered while the REP is the REP of Record means that the charge has been incurred during the time the customer is being served by the REP and therefore the REP is the appropriate party to invoice.

The REP Coalition recommended that the broken meter seal charge only be applied in situations where consecutive breakages have occurred, as this is more indicative of potential tampering. The REPs offered that there have been countless times when customers have been charged for a broken meter seal when the customer maintained that there never was a seal in place. The REP Coalition maintained that if the investigation of the broken meter seal uncovers tampering, then the cost of the investigation will be included in the tampering charge. If tampering is not found, they recommended, then the customer should not be charged for the investigation, rather it should be considered a cost of doing business for a TDU. Therefore, the REP Coalition recommended a tampering charge be applied only if the meter seal is broken in two or more consecutive months.

The TDUs stated that they support the section as proposed. They stated that the REP Coalition incorrectly argued that the charge for a broken meter seal is related to tampering and the investigation. The TDUs reported that it could be the result of a repair performed by an electrician for example. The TDUs argued that the rationale for the charge is to cover the cost of replacement, regardless of why it is needed, not to cover a tampering investigation. Also, the cost is incurred when the work is performed for the first meter seal break, as well as subsequent

breaks and as discussed with service calls above keeping track of meter seal breaks to bill on consecutive occurrences would be costly and impractical.

Commission response

The commission agrees with the TDUs that a broken meter seal is not the same thing as a tampering investigation. The commission also agrees that keeping track of consecutive offenses for such a small charge is not a prudent use of resources and declines to amend the tariff as proposed by the REP Coalition.

Inaccessible Meter Charge and Disconnect Charge

Joint TDUs proposed a new charge to be imposed when the TDU is unable to gain access to the Meter located on the Retail Customer's property as a result of denial of access. The REP Coalition strongly urged the commission to reject the TDUs suggested changes. The TDUs also recommended that the disconnect charge related to failure to provide access to the meter be "as calculated" rather than a set fee, because such disconnections may be complicated and the charge should vary depending on the work required to be performed.

Commission response

The commission agrees that the customer has the responsibility to provide access to the meter. The commission believes the TDUs should have the incentive to read the meter if at all possible. Instituting the inaccessible meter charge could weaken the incentive for the TDU to try to get the meter reading as they stand to benefit financially if they cannot. The commission declines to institute this charge in the rule as proposed but does agree to

institute a charge for critical load customers who fail to provide access as for those customers the commission finds a charge to be an appropriate incentive. The commission agrees that a disconnection performed because of an inaccessible meter may have complications and the charge should be "as calculated."

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.203 which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052 and §39.203.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU), and to standardize the terms of service among TDUs. A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.

(c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified. TDUs may add to or modify only

Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff; however the only modifications the TDU may make to 6.1.2.1 are to insert the commission-approved rates. Additionally, in Company specific discretionary service filings, Company shall propose timelines for discretionary services to the extent applicable and practical. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.

Figure: 16 TAC §25.214(d)(1)

(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by June 15, 2006.

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 §25.214 relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 20th DAY OF APRIL 2006.

PUBLIC UTILITY COMMISSION OF TEXAS

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PAUL HUDSON, CHAIRMAN

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JULIE PARSLEY, COMMISSIONER

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BARRY T. SMITHERMAN, COMMISSIONER

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