

PROJECT NO. 37291

RULEMAKING RELATING TO METER	§	PUBLIC UTILITY COMMISSION
TAMPERING AND DISCONNECTION	§	
AND RECONNECTION OF SERVICE	§	OF TEXAS
FOR CUSTOMERS WITH ADVANCED	§	
METERS	§	

ORDER ADOPTING THE REPEAL OF §25.125 AND §25.126;
NEW §§25.125, 25.126, AND 25.132; AND AMENDMENTS TO §25.214
AS APPROVED AT THE APRIL 1, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts the repeal of §25.125 relating to Adjustments Due to Meter Errors and §25.126 relating to Meter Tampering with no changes to the proposed text as published in the January 1, 2010 issue of the *Texas Register* (35 TexReg 18); adopts new §25.125 relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Not Been Introduced, §25.126 relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced, and §25.132 relating to Definitions with changes to the proposed text as published in the January 1, 2010 issue of the *Texas Register* (35 TexReg 19); and adopts amendments 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 January 1, 2010 issue of the *Texas Register* (35 TexReg 22).

The repeals, new rules, and amendments will provide a deterrent to tampering through the authorization of the disconnection of electric service at the premises where such activities have occurred; prevent a switch or move-in to accounts that might be used to circumvent the disconnection at locations where tampering has occurred; require special notice by the

transmission and distribution utility (TDU) to both the retail customer and retail electric provider (REP) if it detects tampering; re-align the responsibility relating to tampering among REPs and TDUs; and allow the market to begin taking advantage of the Advanced Metering Systems (AMS) being deployed by TDUs through more timely disconnection and reconnection of customers. Sections 25.125, 25.126, and 25.132 and the amendments to §25.214 are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). The repeals, new section, and amendments are adopted under Project Number 37291.

In its Proposal for Publication, the commission stated that a public hearing would be held in this proceeding if requested. Because no request for a hearing was received, none was held.

The commission received comments on the proposed repeal, new sections, and amendments from the following: AARP; City of Houston (Houston); El Paso Electric Company (EPE); Entergy Texas, Inc. (Entergy); Electric Reliability Council of Texas, Inc. (ERCOT); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Texas-New Mexico Power Company, and Oncor Electric Delivery Company LLC., (collectively, Joint TDUs); the Office of Public Utility Counsel (OPUC); OPUC and Representative Sylvester Turner (OPUC/Turner); Alliance for Retail Markets (ARM), Reliant Energy Retail Services LLC, Texas Energy Association of Marketers (TEAM), TXU Energy Retail Company LLC (collectively, the REP Coalition); REPower LLC (REPower); Southwestern Public Service Company (SPS); Southwestern Electric Power Company (SWEPCO); Steering Committee of Cities Served by Oncor (Cities); Texas Apartment Association and Houston Apartment Association (TAA/HAA); Texas Electric Cooperatives, Inc. (TEC); Texas Legal Services Center

and Texas Ratepayers' Organization to Save Energy (TLSC/Texas ROSE); and TXU Energy Retail Company, LLC (TXU).

(1) Should the proposed rules provide TDUs the right or obligation to issue REP back-billings in excess of six months for a limited number of extraordinary cases of meter tampering or diversion (such as wiring to bypass a meter that is buried or hidden behind or beneath walls, floors or other structures, or cases of businesses that consume electricity for years with no reported usage) and, if so, what types of cases should qualify, what processes should be required before such back-billing is permitted or required, how many cases should be allowed, and should the burden of proof be different than proposed in new §25.125(e) and §25.126(f)?

Entergy stated that a modified rule related to meter tampering is not necessary. Entergy stated that the commission should not limit Entergy's ability to back-bill for egregious circumstances beyond a six month period and no limit should be imposed on the number of back-billings allowed under exigent circumstances, nor should the burden of proof upon a utility be increased before it may back-bill beyond six months. Entergy also stated that back-billing for consumption which is not the result of meter tampering should have no time limit. EPE also stated that back-billing should be allowed in all cases, not just those related to meter tampering. Entergy stated that OPUC/Turner's proposal is inequitable and inconsistent with sound public policy.

Houston stated that the situation of meter tampering would seem to justify resorting to the criminal process and restitution and/or civil suit. Houston also stated that a rule is an inappropriate mechanism to address extraordinary cases of meter tampering or diversion and

suggested such cases would be more prudently handled through a utility-initiated contested proceeding.

The REP Coalition strongly opposed extending the six-month back-billing limitation for any types of meter tampering and cautioned against adoption of a rule that suggests there is a category of meter tampering that transcends “regular” meter tampering. The REP Coalition commented that all tampering is aimed at stealing electricity and that the six-month period proposed in the new rule is a reasonable limitation for all such back-billings, regardless of whether the tampering, diversion, or bypass is “extraordinary” by some subjective standard.

The REP Coalition said that without a reasonable limitation on the time period with which back-billing can be based, a TDU would have a financial incentive to maximize the time period it estimates that meter tampering has occurred. The REP Coalition said that such an incentive exists because a TDU collects the back-billed amount from the REP automatically, regardless of the length of the back-billing period or the amount of electricity consumption which is the basis for the back-billed amount; as a result, extending the allowable period for back-billings increases a REP’s financial exposure and risk of bad debt. The REP Coalition said that placing a reasonable limitation on the time period for back-billings will provide a better incentive for TDUs to promptly discover and investigate all instances of meter tampering, including bypass and diversion; this in turn will limit the extent to which electricity theft occurs. Furthermore, the REP Coalition said that the use of the six-month limitation for back-billings based on meter tampering is reasonable in view of the settlement timelines used by ERCOT. The REP Coalition argued that extending the six-month time limitation for back-billing could potentially encourage

the TDU to maximize its use of any special circumstances exception and would leave the determination of whether such an exception applies to the subjective judgment of a TDU. The REP Coalition warned that this could unavoidably result in disputes between the TDU and the REP with respect to whether the exception applies, causing more problems than it will resolve. The REP Coalition emphasized that in cases where the act of meter tampering is judged to be egregious or calculated, mandatory disconnection of service and/or the initiation of civil/criminal proceedings are more reasonable and effective responses than the special circumstances exception advocated by the Joint TDUs, which would give TDUs unlimited flexibility when it comes to back-billing charges related to “hidden diversion.”

Cities, the REP Coalition, OPUC/Turner, and TXU argued in favor of a six-month limitation on back-billing. Cities agreed with the REP Coalition that there can be no possible guarantee of the elimination of all uncollectable debts associated with meter tampering, as customers that tamper are generally unwilling to pay back-billed amounts. Further, Cities and the REP Coalition said that as the time period from the onset of meter tampering to its discovery increases the likelihood of collecting related back-billed amounts from customers’ decreases.

OPUC/Turner commented that it is the utility’s responsibility to monitor and stop meter tampering at the earliest possible date. They argued that allowing for an extended back-billing period would discourage the utility from taking steps to ensure early detection of meter tampering. OPUC/Turner said that only instances in which a utility has successfully prosecuted a case of meter tampering should be eligible for an exception to a six month back-billing limitation.

Joint TDUs, EPE, Entergy, SPS, and SWEPCO commented that there are instances where the time limit for back-billing related to meter tampering should be longer than six months. Joint TDUs stated that some tampering/diversion cannot be detected by the TDU within six months, and with the deployment of advanced metering systems (AMS) there will be fewer employees in the field to detect meter tampering. Joint TDUs explained that a six-month back-billing limitation should not be imposed for cases of meter tampering/diversion where there is no apparent break of the meter seal, the tampering/diversion is not visible to the naked eye, and where the tampering/diversion could not be discovered without moving some part of the TDU's equipment. Joint TDUs also said that a special circumstances exception should allow them to back-bill in excess of six months in cases of hidden diversion, such as splicing into the underground service conductor, the service conductor in the attic, or attaching a switch in or behind the electrical panel. Joint TDUs said that back-billing customers in excess of six months should require the same burden of proof, whether it is a 'typical' case of meter tampering or one involving diversion which cannot be easily detected. Joint TDUs said there should be no limitation on the number of cases in which back-billing in excess of six months should be allowed. Joint TDUs and Entergy agreed that customers engaged in meter tampering will view any limitation on the period for back-billing as an opportunity to obtain more "free electricity" and SPS stated such limitation would be likely encourage electricity theft and diversion.

EPE stated that the commission should recognize the differences between the ERCOT and non-ERCOT regions of the State and preserve the ability of non-ERCOT utilities to back-bill for the full period for which the meter tampering can be shown. EPE stated that the time period for

back-billing should not be limited in cases of substantiated meter tampering. However, EPE said that if the commission were to impose a limit on vertically-integrated utilities, the limit should be narrowly tailored. EPE stated that such a limit should apply only to meters that are physically read on a monthly basis and in situations in which meter tampering was readily discovered by utility personnel. EPE also said that the proposed rules should specifically permit utilities to issue back-billings in excess of six months in the case of meter tampering not reasonably discoverable by utility personnel. For example, EPE said there should be no six month back-billing limit in cases of bypass such as unauthorized electric lines buried or hidden behind or beneath walls, floors, or other structures during or after construction to avoid detection of electricity theft. EPE said that if the utility can show such tampering has occurred using a normal burden of proof, then the utility should be able to back-bill for the entire time period in which the tampering occurred.

SPS and SWEPCO also opposed the six-month back-billing limitation for meter tampering. SPS stated that the burden of proof in meter tampering cases lies with the utility. Therefore, the utility should not be penalized for proving theft by its customer; rather, the utility should be allowed to recover all revenue it can prove it lost as a result of meter tampering. SPS said that adopting back-billing time limits is dangerous public policy and would have an opposite effect of the intended purpose – rather than deter theft, the new rules would encourage it. SWEPCO stated that the electric utility should be able to bill the customer for consumption over a period in excess of six months, if the investigation so justifies. SWEPCO believed that the process of gathering evidence and documentation resulting from a tampering investigation should determine the appropriate back-billing period and no arbitrary limitation for recovery of losses associated

with theft should be imposed. Further, SWEPCO suggested the commission should consider differences among customer classes before establishing any back-billing limitation uniformly across all classes.

SPS and SWEPCO disagreed with OPUC/Turner's suggestion that "only instances in which the utility has successfully prosecuted the case would be eligible for an exception to the six month back-bill limitation." SPS stated that the utility carries the burden of proof and should be allowed to back-bill customers who are caught stealing for the entire period it can prove meter tampering occurred. SWEPCO stated that back-billing limitations proposed by OPUC/Turner would result in socializing the costs associated with the consumption of "free" electricity.

The Joint TDUs disputed the REP Coalition's arguments that there should be no back-billing for meter tampering beyond six-months. Joint TDUs said the commission should not rely on the REPs' past experience of collecting back-billings beyond six months, because the proposed rule will give REPs the additional tool of preventing the customer from switching REPs until payment of charges for meter tampering has been made. Joint TDUs said that under the proposed rule, REPs will have a much greater advantage in collecting back-billing and that the level of uncollectable back-billing should be reduced. The Joint TDUs also noted that if back-billing beyond six-months is allowed, REP's would receive an additional financial advantage: they would get to keep all energy charges collected from customers for periods more than six months because the ERCOT settlement process does not require a REP to resettle wholesale power costs beyond six months. Joint TDUs also disputed OPUC/Turner's comments that an across-the-board six-month back-billing limit would incent TDUs to promptly discover and

investigate all instances of meter tampering. Joint TDUs stated that they already have enough incentive to timely pursue claims of meter tampering because tampering unfairly reduces their revenues. Furthermore, they said imposing a six-month back-billing limit would not affect the timeliness of their investigations, because the TDU conducts its initial investigations based on when it discovers the tampering, and when the investigation is initiated the TDU does not know if the tampering began more than six-months earlier.

The Joint TDUs agreed in part with the REP Coalition and Houston that for particularly egregious offenses, civil litigation or criminal prosecution will be available. However, Joint TDUs said that if the back-billing is limited to six months then the amount at issue will be much smaller, making both civil litigation and criminal prosecution much less likely. Joint TDUs said that removing the cap in egregious cases is necessary in order to assist in prosecution at least some of the time.

Commission Response

The commission adopts language in §25.126(b)(4) to allow a TDU to directly back-bill the customer in cases the TDU finds appropriate. The TDU shall collect back-billing for both TDU wires and energy charges based on the ERCOT-wide bus average hub price, for periods beyond six months. This will allow the REP to continue to bill the charges for the first six months. The TDU is allowed to retain the wires charges, and shall retain 50% of the energy charges collected, and shall pay the remaining 50% to the REP for the period of time it was the REP of record (ROR). The commission requires the TDU to provide the energy charges to the REP, pursuant to a method agreed to by the REP and the TDU. The

commission clarifies that the TDU is able to effectuate a disconnect for non-payment in this instance, and shall notify the ROR of the disconnection.

The commission agrees with Cities, the REP Coalition, OPUC/ Turner, and TXU that a six-month limitation on back-billing should be imposed for tampering charges and back-billings that are passed through the REP on to the customer. The commission agrees with the REP Coalition that meter tampering is aimed at stealing electricity and that the six-month period is a reasonable limitation for back-billing to the REP, regardless of whether the tampering, diversion, or bypass is “extraordinary” by some subjective standard. The commission agrees with commenters that there can be no possible guarantee of the elimination of all uncollectable debts associated with meter tampering. In this instance, the commission does not agree with the Joint TDUs that there should not be a limitation on back-billing due to tampering, or that any limitation on back-billing will send a signal that tampering is an opportunity to obtain more “free electricity” and will likely encourage electricity theft and diversion.

The commission does find that a limitation on back-billing is unnecessary for utilities outside of ERCOT, because those utilities are fully integrated and have the billing relationship with customers.

The commission finds that as the time period from the initiation of meter tampering until its discovery increases, the likelihood of collecting payment for all of the stolen electricity decreases. The commission agrees with OPUC/Turner that it is the utility’s responsibility

to monitor and stop meter tampering at the earliest possible time. Furthermore, the commission finds that prompt discovery of meter tampering by business customers is just as important as prompt discovery of meter tampering by other customer classes, and therefore the commission declines to adopt SWEPCO's request for language that would allow longer back billing periods for different customer classes.

The commission notes that new §25.125(e) and §25.126(f) adopt a new burden of proof in meter tampering cases. Previously, a utility was required to prove meter tampering "by the customer" occurred. Under the new rules, a utility must only prove that "meter tampering occurred," and the utility is not required to prove exactly who tampered with equipment. Because meter tampering often occurs in locations that are under the customer's control and the meters are read monthly, there is often insufficient evidence to determine who did the actual tampering. However, the commission finds that a customer who actually receives unbilled electricity as a result of meter tampering has benefited from "unjust enrichment" and it is reasonable for the customer to pay for the benefit received, regardless of who engaged in meter tampering. Therefore, these new rules allow the utilities and REPs to recover lost revenues by back-billing the very customers who received the benefit of meter tampering, subject to the limitations within the rules.

(2) For a customer whose premise has a switch-hold placed on it pursuant to new §25.126(g) and whose term, rate, or contract expires during the duration of the switch-hold, what guidelines or limitations, if any, should be placed on the electric rates or plans offered to or imposed on the customer during the remainder of the switch-hold?

The REP Coalition commented that the imposition of a switch-hold pursuant to the new rule should have no impact upon the applicability of the contract expiration requirements in §25.475(e). The REP Coalition said that the customer with a switch-hold (a “flagged customer”) should not have the right to switch to another REP at the time of contract expiration until satisfying the obligation to pay the back-billed amounts and other charges stemming from meter tampering. The REP Coalition explained that once the payment obligation is satisfied, the switch-hold is lifted and the customer is free to take service from another REP. The REP Coalition stated that the REP has the discretion to condition the flagged customer’s ability to take service under another retail product upon satisfaction of the customer’s obligation to pay any outstanding balance consisting of back-billed TDU charges and meter repair/restoration charges. The REP Coalition proposed that at the time of the contract expiration, if the flagged customer has not met the payment obligation, the REP may exercise its discretion to preclude the customer from moving to a renewal product and at such time the REP must place the flagged customer on its default month-to-month renewal product. The REP Coalition maintained its view that to apply the disclosure rule is not unreasonable or discriminatory to customers, given that the customer is free to switch to another REP or take service pursuant to another retail product offering once the obligation to pay meter tampering-related charges is satisfied.

Houston agreed with the REP Coalition that the imposition of a switch-hold pursuant to the new rule should have no impact upon the applicability of the contract expiration requirements in §25.475(e). Houston stated that it is against any special guidelines or limitations placed on electric rates or plans offered to the customer during the remainder of a switch-hold. Further, Houston said the customer should have the option to obtain the same rates or plans that are

offered to the REP's other customers. Houston said that the customer should be given the opportunity to repay back-billed amounts that exceed double the amount of the customer deposit over a period that is no shorter than six-months.

While OPUC/Turner strongly opposed the use of a switch-hold, they commented that in the event that a switch-hold is authorized by the commission, a customer that has been prevented from exercising its right to choose a provider should be moved to a plan with a discounted rate. OPUC disagreed with the REP Coalition's contention that a REP has discretion whether or not to offer a different competitive product to a flagged customer whose contract expires while the account has a switch-hold in place. OPUC stated that customers in such circumstances should not be moved to a default product. OPUC said that a default product is not meant to be used as a punishment, but that is exactly what it would amount to in this situation because the price per kilowatt-hour (kWh) for a default product is always higher than a competitive product.

Commission Response

The commission agrees with the REP Coalition that the REP should have the discretion to limit a flagged customer whose contract expires to a default month-to-month renewal product. The commission agrees with OPUC that at times default month-to-month products have been priced higher than many other product offerings, but it declines to adopt the recommendation to mandate that all customers under a switch-hold be moved into fixed rate plans. The commission has prescribed in §25.475(e)(1) a default renewal product that reflects current market conditions as the default product for a customer who takes no action on a renewal notice after a term contract expires, and this same type of

product is appropriate for a customer whose account is flagged for tampering. The commission determines that if a customer is not offered another product in the renewal notice, and the customer is unable to switch due to a switch-hold, the customer would be placed on the default renewal product described in the contract expiration notice.

(3) Given the proposed language for placing a switch-hold for ESI IDs once tampering is discovered for attempted switches and move-ins, should the rule also address move-outs? If so, how?

ERCOT recommended that an attempted move-out transaction be handled via TDU processes like attempted switch and move-in transactions. ERCOT suggested that the TDU, not ERCOT, reject attempted switch, move-in, and move-out transactions received for ESI IDs with a switch-hold for meter tampering.

The REP Coalition commented that the objective in the implementation of the switch-hold mechanism should be to maintain the functionality of the existing Texas SET transactions. However, if the Electric Service Identifier (ESI ID) is flagged with a switch-hold, the completion of a Texas SET move-out transaction submitted by the current ROR will result in the severance of the REP's relationship with the ESI ID. The REP Coalition said that severance of the REP's relationship with the ESI ID would adversely affect the ability of the REP to collect any back-billed amount and/or meter tampering charges from the customer. Because of this, the REP Coalition recommended that a move-out transaction should not be used for customers with

switch-holds. In contrast, the REP Coalition stated that a disconnection for non-payment transaction (DNP) does not affect the REP/customer relationship in the same way.

The REP Coalition advocated a process whereby the ESI ID of a customer would remain assigned to the current ROR while a switch-hold was in place, due to the possibility that the customer may pay the outstanding amount and request reconnection of service at the premises. In addition, the REP Coalition said that because there is no provision of electric service to the premises during the period in which service is disconnected, it is reasonable to require the TDU to cease assessing delivery and other non-bypassable charges to REP during such time. Upon the reconnection of service after the flagged customer begins to meet its payment obligations, the TDU would start to assess those charges again. The REP Coalition recommended adoption of new proposed language in §25.126(g)(3).

The Joint TDUs, the REP Coalition, Houston, and TAA/HAA agreed that if the ROR issues a move-out, the switch-hold should be removed, because a move-out indicates that the ROR is terminating its relationship with that ESI ID. Joint TDUs stated that the premises should also remain associated with the ROR and the move-out should occur only when the ROR has decided, at its discretion, to completely sever its relationship with that premises. Joint TDUs stated that they understood that keeping the ROR associated with the ESI ID causes the REP to incur non-usage-related monthly charges even if the premises are disconnected. However, Joint TDUs stated that it is reasonable to impose such monthly charges, because the ROR itself can make the business decision about whether staying associated with the ESI ID will produce more revenue than the costs incurred. Joint TDUs stated that if the ROR sends a move-out the REP should not

be able to sever its relationship with the premises yet keep a switch-hold in place preventing a new REP from serving those premises. TAA/HAA argued that the rule should apply to move-outs because it could further complicate or slow down a rental property owner or new tenant from receiving electric service in its name.

The Joint TDUs opposed the REP Coalition's suggestions of using DNP for accounts that have a switch-hold, which would result in the halt of all TDU delivery and other non-bypassable charges to the account. The Joint TDUs pointed out that the DNP does not terminate the TDU's duties and costs associated with that ESI ID. Non-usage related costs will continue to be incurred and the REP must remain liable for paying those costs. In addition, to implement a Texas SET process for selective DNP would be costly and require a significant amount of time to implement. Furthermore, the Joint TDUs argued that under the commission's various securitization orders, payments of transition charges (TCs) for active accounts is not discretionary, and any rule that attempted to prevent the invoicing of those TC charges to the REP would be in violation of those orders. Joint TDUs proposed that should the REP determine that it wishes to avoid monthly base TDU charges, it has the discretion to process a move-out transaction and end its relationship with those premises.

Houston stated that the switch-hold should transfer with the person that moves from one REP to another or to an electric utility, if practical. Houston stated that it had reservations regarding the REP Coalition's reference to a "disconnection for non-payment transaction" and believes that the current docket is not the appropriate venue to address this issue. The Joint TDUs pointed out

that until the commission requires the implementation of an ERCOT-wide database, it is impossible to have a switch-hold follow the customer to new premises as Houston suggested.

OPUC/Turner strongly opposed the use of a switch-hold under any circumstances, and therefore commented that it should not be used against a person attempting to move out of premises.

Commission Response

The commission agrees with ERCOT that the TDU shall be the entity that rejects the attempted switch and move-in request while an ESI ID is flagged for a switch-hold. The commission acknowledges the comments by Houston that a switch-hold ideally would transfer with a person moving from one area to another; however, the commission agrees with the Joint TDUs that without a mechanism such as a database, it is impossible to accomplish this. The commission also agrees with commenters that if a ROR issues a move-out request, that the switch-hold shall be removed, and addresses this in new §25.126(g)(4). The commission does not agree with the REP Coalition's suggestion for a cessation of TDU charges to customers where a switch-hold is placed and the REP issues a DNP. While the commission acknowledges the arguments presented by the REPs on this issue, the commission finds that the REP may issue a move-out to avoid paying the monthly service charge for that account. If the REP does not issue a move-out to avoid paying the monthly charges, the commission finds that the REP should be able to collect those charges to the customer while the switch-hold is in effect.

(4) In what ways can the TDUs enhance the prevention of electricity theft, tampering, or diversion with the deployment of advanced metering systems (AMS)?

The REP Coalition stated that once AMS is deployed, visual discovery of meter tampering will be limited. Joint TDUs and the REP Coalition stated that AMS meters can provide alarms which signal removal or tilted activity that signals tampering may have occurred. Houston agreed that AMS will enhance the prevention of electricity theft, tampering, or diversion. The REP Coalition argued that the TDU can and should follow up on these types of tampering detection reports. The REP Coalition stated that the TDU should employ robust monitoring, discovery, and investigation of irregular consumption information, to identify electricity theft in the first instance. In addition, working closer with law enforcement personnel could be used to supplement TDU efforts to discover such theft as well. The REP Coalition stated that regardless of what triggers a TDU's determination that tampering may be occurring, the TDU should promptly investigate the matter using utility personnel who can physically inspect the meter for tampering and act quickly. Joint TDUs commented that they can develop systems over time and experience to detect meter tampering by making use of 15-minute interval data provided by the AMS meters. Joint TDUs added that processing large amounts of AMS data to detect the increasingly sophisticated diversion or bypass would likely be costly.

Commission Response

The commission acknowledges the comments by the Joint TDUs, Houston, and the REP Coalition regarding the enhanced capabilities that tilt-alarms and AMS can provide. It is the expectation of the commission that the TDUs take advantage of the capabilities of installed AMS to promptly detect meter tampering. The commission agrees with the REP Coalition that the TDUs must have processes in place to follow-up on tilt-alarms and other alerts that the meters send back to the TDUs. The commission finds that the TDU should employ a robust monitoring, discovery, and investigation of irregular consumption information, to identify electricity theft, regardless of whether the TDU has AMS, non-AMS or a combination of both in its territory. Section 25.126(d) imposes obligations on the TDUs to detect and investigate circumstances in which a meter is not accurately recording consumption and take steps necessary to detect meter tampering.

(5) Should the rule address a switch-hold in the case of a mass transition due to a provider of last resort (POLR) event? If so, how?

ERCOT stated that it would transition ESI IDs with switch-holds pursuant to its current mass transition procedures which transition ESI IDs to a provider of last resort (POLR) instead of leaving them with the defaulting REP. ERCOT believed using this procedure allows the TDU the ability to inform the POLR about the ESI IDs with switch-holds during the mass transition. This process would maintain consistency and simplicity as the TDU and POLR can handle the ESI IDs like attempted move-in transactions pursuant to the rule.

Joint TDUs stated that in the case of a mass transition to POLR, the switch-hold should be lifted and the premises should be switched to the new REP. Joint TDUs added that, as a part of a mass transition, the customer may actually be switched to an entity other than the POLR. Therefore, the rule should apply to all switches sent by ERCOT using mass transition code (currently a Texas Set 814_03 transaction with a TS code).

The REP Coalition, Joint TDUs, and Houston agreed that if a mass transition of customers to POLR occurs, the rule should require the TDU to remove all switch-hold flags placed on transitioned customers' ESI IDs. In this scenario, the ROR has defaulted on its obligations and turned its customers over to the POLR process. The REP Coalition and the Joint TDUs said that the TDU should be required to provide a list to all POLR providers and large service providers of the previously flagged ESI IDs belonging to that REP. Providing this list places the POLR on notice of any transitioned ESI ID that was previously flagged based on a finding of meter tampering and may affect the POLR's decision as to whether to require a deposit from the customer. OPUC and Houston opposed the suggestion by the REP Coalition and the Joint TDUs that a list of previously flagged customers should be created. OPUC stated that once a flag is removed from an account, that account is free and clear and should not have any negative connotations unless meter tampering occurs again involving the same ESI ID. Houston stated that the current docket is not the appropriate venue to address issues related to deposit criteria. In regards to any list, Houston believed that further discussion is required to address multiple customer privacy issues and to establish parameters for information stored, shared, or retained.

OPUC/Turner strongly opposed the use of a switch-hold under any circumstances and therefore did not believe it should be used against a person attempting to move out of premises. OPUC stated that PURA §39.106 would require the switch-hold (if permitted) to be removed upon a mass transition.

Houston stated that a determination should be made as to whether the switch-hold for the ESI ID is automatically released or if the switch-hold is transitioned to the POLR REP for oversight until customer compliance is achieved or the switch is released pursuant to proposed §25.126(g).

Commission Response

The commission agrees with Houston, the REP Coalition, and the Joint TDUs and adopts language in subsection (g)(3) relating to switch-holds in the event of a mass transition. Requiring TDUs to remove the switch-hold for any ESI ID that is transitioned to a POLR provider at the time of a mass transition is necessary in order to adequately address the mechanics of a switch-hold during a time of mass transition. Consistent with the requirement set forth at PURA §39.106(g), the switch-hold would be lifted to allow the POLR to comply with the requirement that they offer the customer the standard retail service package for that customer class with no interruption of service to a customer.

(6) Should the notice from the TDU to the customer described in §25.126(e) be different in the situation where the tampering predated the current occupant? If so, how?

Joint TDUs argued that the notice to the customer should come from the REP, not the TDU and that the notice should be the same for all customers. The notice would tell the customer that he or she is responsible for back-billings only for the time period he or she was the customer of record and he or she is not responsible for meter repair and restoration charges if tampering took place before he or she was the customer of record. The Joint TDUs disagreed with the portion of language suggested by the REP Coalition that indicates meter repair and restoration charges can only be charged if the tampering took place when the current REP was the ROR. The Joint TDUs believe that meter repair and restoration charges should be charged if the current customer was the customer at the time the tampering took place, irrespective of whether the current REP was the ROR at that time. Joint TDUs stated that these are legitimate charges that can only be recovered by invoicing the current ROR.

REP Coalition opposed the Joint TDUs' proposal to require the REP, as opposed to the TDU, to notify the customer that the TDU has determined that meter tampering has occurred at the premises and that the customer may be assessed certain charges relating to this determination. The REP Coalition stated that there is no rational justification for requiring the REP to act as the go-between in the communication of this information to the customer. The REP Coalition explained that the TDU owns the meter, has physical access to the meter, has access to meter consumption data, and is in a position to determine whether tampering has occurred and approximately when it occurred and calculate the back-billing and any meter repair/restoration charges. REP Coalition suggested that a single TDU notice should be used for administrative ease and convenience. In addition, REP Coalition presented language that to include in

§25.126(e) and in the notice that would serve to inform the customer about the potential impact of meter tampering on the customer's electric bill.

TAA/HAA, Houston, and OPUC/Turner believe that the stated notice should be different in situations where the current customer was not responsible for tampering and is probably not even aware that tampering has occurred. TAA/HAA stated that the letter should make clear that the current (innocent) customer (including the owner of the property) should not be held responsible for the costs of restoring the meter or other condition. Houston also recommended changes to the notice. Houston suggested a "Move-In Notice to Retail Customer" and that it contain information on typical kWh usage for various residential and other structures and a prominent clarification that customers engaged in diversion or tampering may be committing electricity theft. OPUC/Turner stated that the notice should explain that if the tampering pre-dated the occupant, the occupant will not be held liable for any of the charges that may have accrued for the premises.

EPE opposed TAA/HAA's proposal requiring vertically-integrated utilities to notify owners of rental property within two business days of the determination of meter tampering and to "take reasonable steps to contact a property owner before electric service is disconnected." EPE stated that such a requirement could provide an opportunity for evidence of meter tampering to be removed, hindering prosecution of energy theft. Further, such a notification would create an additional administrative burden and costs associated with establishing and maintaining a database of all rental property addresses and owners.

Commission Response

The commission disagrees with Joint TDUs that the notice to the customer should come from the REP, not the TDU. The commission agrees with the REP Coalition that in areas open to customer choice, the notice of meter tampering should be sent by the TDU, whose duty it is to identify and respond to meter tampering. The commission finds that the notice should address both tampering that appears to have pre-dated the current customer and that customer is therefore responsible only for up to six months or more of consumption (if the TDU chooses to bill the customer separately), and TDU/utility charges, and tampering that appears to have occurred while the customer was the owner or occupant and that the customer will be responsible for up to six months of consumption (or longer in instances when the TDU bills the customer directly), TDU/utility charges, and meter tampering charges. The commission also finds that if a TDU or utility identifies damaged equipment or meter tampering when it initiates service to a customer after a disconnect for non-pay, it is reasonable for it to charge the customer a fee to replace the equipment. The commission does not agree with TAA/HAA's suggestion that the rule should require that the utility always notify the rental property within two business days of meter tampering. However, the utility may contact the rental property owner for cases in which it deems necessary.

(7) Should the time period in which the customer can receive a credit for inaccurate meter readings referenced in §25.125(b)(3) and §25.126(b)(3) be changed to 24 months or different time period?

TXU Energy suggested that the period be changed to six months, consistent with the wholesale energy final true-up process. TXU Energy and Houston agreed that provided the overbilling was not caused by the customer having tampered with the meter, the customer has a right to a refund of any money that the customer has paid in an overbilling situation. TXU maintains the position that the REP should not be responsible for bearing the vast majority of the financial burden associated with refunds to certain customers for overbillings that encompass a time period extending beyond six months when the reason for overbilling is due to TDU issues. TXU Energy stated that REPs currently bear this financial burden due to the structure of the ERCOT wholesale energy settlement process. TXU Energy said that the commission's rules should require the party who is responsible for the overbilling to bear the associated costs, thus providing an efficient and effective means to resolve the current inequitable situation. TXU Energy argued that the proper allocation of costs associated with overbilling could be achieved through changes to the Standard Tariff set forth in §25.214(d)(1) and it should be modified to require the transmission and distribution service provider (TDSP) to refund the REP for wholesale energy charges that cannot be settled through the ERCOT process.

Joint TDUs and the REP Coalition agreed that 12 months represents a reasonable balance between making the customer whole and preventing extended periods of back-billing. The 12-month period balances the customer's interest in being made whole against the extent to which a REP can be made whole through the ERCOT settlement process but does not allow the settlement of wholesale energy beyond a six-month period. However, the REP Coalition proposed that §25.126(b)(3) be modified to eliminate any back-billing limitation related to the possible situation in which meter tampering unwittingly results in higher electric bills.

Joint TDUs disagreed with TXU Energy's suggestion that the rule require the party who is responsible for the overbilling to bear the associated costs. Joint TDUs argued that it is practically impossible to determine that the meter is no longer registering accurately until some event causes the meter to be tested. The Joint TDUs stressed that the REPs receive the same billing information as the TDU collects and processes; the REP can examine this billing information for inconsistencies just as easily as the TDU. Joint TDUs stated that TXU Energy presented no data or other information with respect to the amount of credits that relate to periods beyond six months.

Entergy recommended the term "inaccurate meter readings" be deleted as it is somewhat ambiguous and is not specifically contained in §25.125(b)(3). Entergy also recommended deleting the following wording, "or has provided incorrect meter readings" as this wording applies to TDUs who provide meter readings to REPs but does not apply to utilities such as Entergy. The deletion of this wording leaves only the reference to a "non-compliant meter," which results in inaccurate meter readings. Therefore, Entergy recommended that the time periods for customer credit due to inaccurate meter readings should be the same as for back-billings resulting in charges to the customer due to inaccurate meter readings, and the time periods should only be limited by the ability to identify when inaccuracy began.

SWEPSCO stated that the credit, like the back-billing, should be based on the review and investigation on a case-by-case basis and the time limitation should be the same for both. Joint TDUs disagreed with OPUC/Turner and TIEC that the 12-month time period be eliminated. The

Joint TDUs stated that unless the meter readings are well above what would be considered “normal,” both the TDU and the REP that receives the billing information will be hard pressed to determine whether the meter is measuring at 100% accuracy or 110% accuracy, thus a 12-month limitation strikes a reasonable balance.

Houston stated that the 12-month credit period should be changed, but a specific period should not be established. Houston believes that the current customer of record should receive a credit for the entire period of the inaccurate reading at the same location.

TIEC disagreed with the comments filed by Joint TDUs and the REP Coalition supporting a 12-month limit on back-billing when the customer is owed a credit. TIEC also disagreed with SWEPCO’s position that any limit on back-billing should be the same whether the customer was over-billed or under-billed. OPUC/Turner and TIEC agreed that the 12-month time period should be eliminated and the customer should receive credit for inaccurate meter readings for the time period that the meter readings were inaccurate. OPUC/Turner and TXU Energy stated that the utility is in the best position to know whether the meter is registering accurately or not and is responsible for the proper operation and accuracy of the meters. Therefore, the utility should also be held accountable for crediting customers for all overbillings regardless of the duration. TIEC also agreed with OPUC’s position that the utilities are responsible for ensuring the accuracy of meter readings and the utility, not the customer, is in the best position to identify inaccurate meter readings. Customers should not be penalized if the utilities fail to discover and remedy inaccurate meter readings for a period longer than 12-months. TIEC agreed with TXU

that there is a need to make customers whole and that customers have a right to refund of any amounts they overpaid.

Commission Response

The commission agrees with comments by TXU that support a customer's right to a refund of any money that the customer has paid in an overbilling situation, provided the overbilling was not caused by the customer having tampered with the meter. While the commission also agrees with TXU, OPUC, and Representative Turner that the TDU is the entity responsible for the proper operation and accuracy of its meters and is therefore accountable, the commission has determined that revising the rules as proposed by TXU is outside the scope of this rulemaking. The commission does not agree with the comments by Houston, Joint TDUs and the REP Coalition that a limitation on a credit due to the customer should be imposed.

General Comments

El Paso, SWEPCO, Entergy, and SPS opposed the changes that apply to vertically-integrated electric utilities operating in areas where customer choice is not available. SPS argued that the current rules have historically worked to near perfection for utilities in the regulated markets for identification and investigation of illegal meter tampering, and recovery of payment from those engaged in this practice. SPS and Entergy stated that a rulemaking which attempts to remedy tampering and back-billing issues between the REPs and the TDUs in ERCOT should not be conducted as part of the same rulemaking proceeding affecting back-billing and meter tampering enforcement in the regulated markets. SWEPCO and Entergy recommended that existing

§25.125 and §25.126 remain unchanged and that the proposed changes be deleted. SWEPCO and Entergy offered that alternatively, the commission could consider combining current §25.125 and §25.126 into a new §25.125, which would be applicable to the non-ERCOT regions of Texas. SPS, El Paso, and Entergy agreed. SPS stated that if a determination is made that amendments are necessary in regulated markets regarding meter tampering, a separate rulemaking is the appropriate vehicle for exploring such changes.

SPS recognized the issues that have arisen between TDUs and REPs regarding meter tampering, connection, and disconnection, and argued that the regulated utilities are vastly different in this regard and do not share these same concerns. SWEPCO noted that differences exist, and pointed out that in regulated areas the utility bears additional exposure, as it has billing, transmission, and generation services fully bundled. Consequently, SWEPCO argued, the insulation intended for the REPs by limiting the TDU abilities in the proposed rule changes will in fact create losses and increase the costs of service to all integrated electric utility customers. SPS opined that the genesis of the problem in the competitive market is that the TDU collects the back-billing for meter tampering from the REP, who must then try and collect the back-billing from the customer. Whereas in the regulated environment, SPS argued, the utility has the obligation to serve all customers in its territory, and with that obligation comes the right to recover damages from those customers who tamper with their meter. Whereas in a competitive market, REPs do not have the obligation to serve a customer, and customers have a choice of electric supplier. SPS stressed this is the reason why it is important to keep the current meter tampering rules in place.

SPS argued that it believes the current substantive rules are necessary to protect both utilities and citizens in regulated markets. EPE commented that the proposed changes inappropriately tilt the playing field for those who would steal electric service at the expense of innocent customers and shareholders. EPE explained that it has a robust process designed to investigate and document energy diversion. EPE shares this information with local law enforcement. EPE noted that there are important distinctions between competitive areas and areas in which vertically-integrated utilities continue to serve. EPE continued that vertically-integrated utilities serve end-use customers directly, and therefore, no innocent REPs exist in those areas that will be affected by the back-billing that results from meter tampering. EPE argued that the current rules provide adequate protection to innocent customers and the utility without rewarding those that would attempt to wrongfully avoid paying for service. EPE pointed to §25.28(d)(1), which addresses under-billing, and states that back-billing shall not collect charges that extend more than six months from the date the error was discovered unless the under-billing is a result of theft of service by the customer.

SPS commented that the commission has historically treated meter tampering and diversion of electric current as a criminal offense outside its jurisdiction through §25.126. Further, SPS noted that §28.03(c) of the Texas Penal Code specifically defines meter tampering as a criminal offense. SPS opined that the repeal of the current rule along with the omission of any language identifying meter tampering as a criminal offense in the proposed rule is troubling and bad public policy for regulated utilities in Texas.

Commission Response

The commission's present rules §25.125 and §25.126 apply both to areas with and without customer choice; therefore, in reviewing the rules in this proceeding, the commission finds it is appropriate to split the tampering rules to apply to areas open to competition and areas not open to competition. The commission acknowledges the comments by SPS, Entergy, EPE, and SWEPSCO that the present rules have historically worked well in the regulated markets for identification and investigation of illegal meter tampering, and recovery of payment from those engaged in this practice. The commission therefore maintains existing rules for vertically-integrated utilities.

AARP, TLSC/Texas ROSE, Cities, OPUC, and OPUC/Turner contended that the commission does not have the authority to impose any type of switch block on a customer. OPUC/Turner clarified they do not suggest that consumers that have stolen electricity should not be held accountable; however, a switch block is not the solution to this problem because the commission lacks the authority to impede a customer's choice of electric provider, and it is a command and control solution, rather than a market based solution. AARP and OPUC/Turner explained that preventing a customer from switching is a power neither specifically designated nor implied under General Powers of the commission in Chapter 14 of PURA. AARP added that a switch-block appears to be directly counter to the Customer Protection Chapter of PURA at §17.004(a)(2) and the Restructuring of Electric Utility Industry Chapter of PURA at §39.101(b)(2) and §39.102(a). TLSC/Texas ROSE argued that a switch-block would make certain customers captive to a single REP - giving rise to a monopolistic structure subjecting the consumer to unregulated pricing. TLSC/Texas ROSE explained this creation of a monopoly

status directly contravenes the legislative intent that the deliverers of retail electric service no longer be protected as monopolies, but that consumers be free to choose amongst competitive service providers. They further argued that implicit in the right to choose providers is the right to quit providers. TLSC/Texas ROSE stressed that a switch-block is contrary to the fundamental economic principle of competition for consumers: the freedom to enter the market place and bargain with any willing seller.

OPUC/Turner pointed out that the concept of a switch-hold has come up in an array of contexts as a tool to decrease REPs' bad debt since the market opened in 2002. OPUC/Turner noted that under the commission's powers to regulate and supervise, PURA §14.001 permits the commission "to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction." Preventing customers from switching is neither specifically designated as a power of the commission nor can it be implied by the Title. They further argued that rules that would prohibit customer choice in any way would be expressly against customer rights afforded under the statute. OPUC/Turner stressed that customer protections under PURA §§17.004(a)(2), 39.101(b) and 39.102 clearly and unambiguously state that a customer is entitled to choice of a REP, where that choice is permitted by law and to have that choice honored. They argued there is no language in the statute which contemplates any instance where a customer may not have such choice honored. OPUC/Turner stated that §25.1 also reiterates and supports PURA CH. 39 policy and purpose statements that customer choice is a fundamental component of the Texas restructured market. OPUC/Turner also argued that any attempt to lock a customer with one REP because of outstanding debt would clearly be a regulatory solution and against the normal forces of

competition. They pointed to language in §17.001(b) which states, “the purpose of this chapter is to establish retail customer protection standards and confer on the commission authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.” OPUC/Turner argued that one would be pressed to produce examples of other markets that prohibit competitive companies from offering their product or service to an indebted customer of a competitor. OPUC/Turner argued that to establish such a command and control rule in the restructured electricity market would inhibit competition and prevent customer choice and would not be a normal force of competition, and is completely at odds with the stated requirements and purpose of the restructured electric market.

The REP Coalition and Joint TDUs argued that the commission does have the authority to implement a switch-hold. REP Coalition stated that contrary to the arguments put forth by parties opposed to the switch-hold, the commission possesses the requisite authority to incorporate this critical element as part of the proposed rule. REP Coalition pointed out that each of the PURA sections relied upon by Rep. Turner et al. address the retail customer's right to choose. They do not contain language regarding a right to switch. The REP Coalition respectfully disagreed with Rep. Turner et al.'s arguments that the cited statutory language supports an absolute right to switch and instead urged the commission to find that PURA authorizes the switch-hold mechanism in the proposed rule.

REP Coalition emphasized that the switch-hold mechanism does not violate the provisions of PURA cited by OPUC/Turner, because it honors the customer's choice of REP, while requiring the customer to behave in a lawful manner and pay for electricity received from the REP of the

customer's choice. The customer is free to choose any other REP as soon as the legal obligations under the terms of service that are consistent with the commission's rules are met. The argument of OPUC/Turner that PURA and the commission's substantive rules "expressly and impliedly prohibit any rule that would prohibit a customer from switching from one REP to another at any time for any reason" is overbroad and does not comport with the cited statutory provisions regarding customer choice. Further, REP Coalition argued that contrary to OPUC/Turner's argument that no provision of PURA provides direct or implied power to the commission to address the switch-hold provisions, PURA §17.004(b) and §39.101(e) grant the commission the express authority to adopt and enforce rules necessary or appropriate to establish standards for REPs relating to extension of credit and termination of service. Finally, the REP Coalition argued that the proposed switch-hold mechanism works to protect those customers who are operating within the commission's rules from bearing the cost of unlawful behavior on the part of those individuals who engage in meter tampering: persons who have attempted to receive service without paying for it.

Joint TDUs argued that PURA does not give a customer an unlimited right to receive service from its REP of choice. Section 39.101(b)(2) states that a customer is entitled "to choose the customer's retail electric provider consistent with this chapter ...(emphasis added)." TDUs suggested this represent recognition on the part of the Legislature that other rules and requirements will impact the customer's entitlement or the manner in which it is able to make that choice. The Joint TDUs provided examples, including when a customer does not receive service from its REP of choice when ERCOT initiates a mass transition of that REP's customers.

A customer also does not receive service from its REP of choice if the REP disconnects the customer for non-pay. Clearly, the customer's right to choose a REP is limited by operations of the ERCOT market and what is necessary to make it work successfully, as well as the customer's abiding by its obligation to pay for the electricity it purchases. Joint TDUs submitted that PURA §39.101(a) itself expresses priorities that may limit or condition the customer's right to choose. When tampering is allowed to occur with no consequences on the individual who engages in the proscribed conduct, it will impair the right of all customers to “safe, reliable and reasonably priced” electricity, and will interfere with the provision of “high-quality service” to all. TDUs argued that unless those persons who engage in meter tampering are held financially accountable for their theft, the costs will find their way into the marketplace in one way or another and will impact prices paid by other consumers.

Joint TDUs continued that PURA §17.001(b) provides that the purpose of PURA Chapter 17 (Customer Protection) is “to establish retail customer protection standards and confer on the commission authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.” Notably, this provision is a general provision that is not limited to the actions taken by utilities or REPs, but protects retail customers from any such practices, including those done by other customers. Joint TDUs argued that unless those people who engage in meter tampering are held financially accountable for their theft, prices will rise, and all retail customers will be impacted by these fraudulent, deceptive, and unfair practices. Finally, PURA §39.101(c) prohibits discrimination in the provision of electric service on the basis of “race, creed, color, national origin, ancestry, sex, marital status,

lawful source of income, disability, or familial status.” It does not prohibit different treatment of those benefitting from theft of service.

Commission Response

The commission finds that it may authorize REPs to employ switch-holds for customers who have benefited from meter tampering and have not paid the associated charges. In performing its duties pursuant to PURA, the commission must balance the interests of various stakeholders. In this instance, the commission must balance the interests of a small segment of customers (individuals who benefit from meter tampering and then fail to pay the associated charges) to receive service from their REPs of choice against the interests of all customers to receive reasonably-priced electricity. Therefore, in an effort to ensure that all customers receive reasonably priced electricity, the commission finds that it is appropriate to authorize REPs to employ switch-holds with respect to any customers who have benefited from meter tampering and have not paid the associated charges.

Disconnection of service has long been used by vertically-integrated utilities in Texas as a means of ensuring that customers pay for the retail electric service they receive. The obligation that a customer must pay for retail electric service existed prior to the introduction of customer choice, and customer choice did not change this obligation. Where competitive retail service has not been introduced, utilities have the ability to disconnect service if a customer who benefited from meter tampering does not pay the associated charges, and the lack of service is a strong motivator for the customer to pay any charges associated with tampering. Since the introduction of customer choice in certain

areas of Texas, REPs have not had the ability to prevent their customers from switching to other REPs to avoid paying for costs associated with meter tampering. The result has been increased bad debt costs to the REPs. For example, Gexa Energy, LP provided the commission information at a November 6, 2009 workshop showing that tampering charges have been increasing, and over 50% of its customers who were billed for meter tampering charges did not pay the charges. As a result, the REPs' prices are higher to customers that have not benefited from meter tampering, because the REPs add this bad debt risk to the prices they charge.

OPUC/Turner's comparison of the retail electric market to competitive markets where service providers cannot stop indebted customers from switching to other providers, is not on point because of the manner in which REPs are regulated under PURA. PURA §39.101(b)(2) expressly conditions a customer's choice of REP on compliance with PURA Chapter 39. PURA §17.004(b) and §39.101(e) grant the commission the authority to adopt and enforce rules necessary or appropriate to establish standards for REPs relating to extension of credit and termination of service. In addition, PURA §17.004(a)(1) and (b) and §39.101(b)(6) and (e) grant the commission the authority to adopt and enforce rules to protect retail electric customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including such practices that are engaged in by other retail electric customers. Under PURA §39.101(a)(1), the commission is required to ensure that retail customer protections are established that entitle a customer to reasonably priced electricity. Authorizing REPs to employ switch-holds is consistent with this requirement because, as explained above, it protects customers who have not benefited from meter

tampering from higher prices that reflect bad debt to REPs resulting from meter tampering. In addition, PURA §39.101(f) requires that the commission's rules regarding customer protections ensure that at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999 is maintained in the restructured electric industry. The abuse of switching service providers to avoid paying meter tampering charges did not, and does not, exist in areas of Texas served by vertically-integrated electric utilities. Likewise, the quality of service to customers who benefit from meter tampering in areas served by vertically-integrated electric utilities did not, and does not, extend to switching service providers to avoid meter tampering charges. In the limited areas of the state where electric customers have more than one choice of vertically-integrated utility, §25.27(f)(1)(E) (relating to Retail Electric Service Switchovers) gives a utility the right to receive payment from a customer of all outstanding charges before the utility allows the customer to switch over to another utility. In addition, REP's ability to mitigate the risk of bad debt is limited by law. PURA §17.008(d) provides that a REP may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history, credit score, or utility payment data. Although this provision allows a REP to use an applicant's electric bill payment history, this information is usually not readily available. In addition, pursuant to PURA §17.004(b) and §39.101(e), the commission has adopted customer protection provisions in §25.478 that limit REPs' flexibility concerning customer credit and deposits.

Section 25.125

Entergy noted that should any revisions be made to the current versions of §25.125 and §25.126 as part of this rulemaking, then the current version of §25.28 will need to be revised as part of another rulemaking. Entergy commented that the title should be changed to “Adjustments Due to Non-Compliant Meters and Meter Tampering Where Customer Choice is Not Available.” Entergy explained that theft is an action included in meter tampering. Entergy also suggested a new subsection be added to address those circumstances where a utility is unable to fully comply with the data collection requirements to prove meter tampering as set forth in the proposed rule.

Commission Response

The commission substantially agrees with Entergy’s suggested title change and has made changes accordingly. The commission also adopts an effective date of July 1, 2010 and includes language to that effect. The changes the commission is making to §25.125 and §25.126 do not necessitate a change to §25.28. The commission declines to add a subsection as suggested by Entergy to address circumstances when a utility is unable to fully comply with the data collection requirements in the rule.

TAA/HAA suggested that the utility be required to investigate a call regarding suspected tampering within two business days. Entergy and SWEPCO did not agree with TAA/HAA, and explained that an investigation can be delayed by higher priority services such as outage restoration and service connections. SWEPCO continued that when any customer or landlord contacts the utility regarding suspected tampering, an investigative order is created immediately and routed automatically to the field.

Commission Response

The commission finds that the suggestion by TAA/HAA is an unreasonable limitation on a utility's ability to prioritize the use of its resources.

TEC expressed concern that customers reading the proposed rule may misunderstand its applicability, particularly to electric cooperatives and other entities that are not electric utilities, some of which are located in ERCOT. TEC suggested clarification to this subsection so that it refer to the definition of electric utility in PURA and the commission rules. TEC pointed to PURA §31.002(6) and §25.41, which define an electric utility broadly but include a list of exceptions. Among the exceptions are “a municipal corporation” and “an electric cooperative.” TEC recommended that the language be revised to apply to an electric utility as defined in PURA §31.002(6) in an area outside of ERCOT in which customer choice has not been introduced.

Commission Response

A reference to PURA is unnecessary because §25.5(41) (relating to Definitions) already defines electric utility to exclude municipal corporations and electric cooperatives. However, the commission has made clear that the rule applies only to an electric utility in an area in which customer choice has not been introduced.

Subsection (b)

Entergy suggested that the phrase “meter reading” be changed to consumption. Houston commented that the subsection include language so that eligibility for an extended payment plan for back-billed amounts be determined under applicable commission rules. In instances when the back-billed amounts exceed double the customer’s deposit, the utility shall offer repayment over no less than six equal monthly installments.

Commission Response

The commission agrees with Entergy that meter reading should be changed to consumption. The commission finds that the suggestion by Houston is reasonable, and will require utilities to allow customers to make payments over no less than six equal monthly installments and includes the language in this subsection.

EPE commented that the allocation of risk between REPs and TDUs is driving this rulemaking, and pointed to REPs comments related to true-up settlement after six months. EPE stated that clearly such concerns are not applicable outside of ERCOT. Consistent with comments provided in response to Question 7, OPUC/Turner commented that the utility should be responsible for refunding any overage that was collected due to an inaccurate meter. OPUC/Turner maintained the utility owns and controls the meter and therefore must take responsibility for any meter malfunctions. OPUC/Turner added that it is the utility’s responsibility to monitor and stop meter tampering at the earliest possible time. EPE opined that using the word “responsibility” alludes to the division of responsibility between the utility and a REP. EPE stated that no such division exists outside of ERCOT. While EPE agreed that the utility is responsible for installing and

maintaining accurate meters, it argued that once a customer tampers with a meter for the purpose of stealing electricity, the commission's rules should not reward the customer by limiting his back-billing risk. EPE argued that there should not be a limit on back-billing, and the fact there is no innocent REP that will share in the back-billing risk outside of ERCOT only adds to the reason that there should not be a limit to back-billing.

Commission Response

The commission does not agree with EPE that the word responsibility alludes to the division of responsibility outside of ERCOT. Whether in a restructured or fully regulated environment, it is the responsibility of the utility as part of its normal practices to monitor its system, and refund any overage collected due to an inaccurate meter. The commission agrees with Turner/OPUC that the utility owns and controls the meter and therefore must take responsibility for any meter malfunction.

Subsection (b)(2) Houston commented that all meter tampering should be subject to a six month back-billing limit. OPUC supported the six month back-billing limitation in the proposed rule. EPE, SWEPCO, Entergy and SPS opposed the proposal to limit back-billing in cases of meter tampering. They argued that a limit would reward violators and increase costs to innocent customers. SWEPCO stated if a limitation is imposed, it should be set at no less than twelve months, consistent with subsection (b)(3). EPE stated that the proposed six month limit would be detrimental to the interests of residential and small commercial customers, because the revenues lost outside the proposed six-month limit will be borne by those honest customers who pay their bills. SPS stated that the proposed limit would force it to write-off the lost revenue

from meter tampering as uncollectible debt, which would eventually be absorbed by all customers through increased rates. The limit on back-billing arbitrarily cuts off potential revenue, while benefitting wrongdoers, and will not increase collections. EPE argued the commission should not adopt any proposal that would benefit those who are adept at hiding their theft of electricity at the expense of honest, paying customers. Entergy agreed. SPS and EPE further warned that a limit would only encourage the more elaborate and complex methods of meter tampering and energy diversion. SPS added that it could foresee scenarios where an offender is able to “game” the system through the six month limitation. Entergy commented that as advancements in automated meter reading are implemented, there is potential for reduced identification of tampering due to the reduction of field employee visits to the meters.

Again, EPE pointed to the differences between the ERCOT and non-ERCOT regions of the State and suggested the commission preserve the ability of non-ERCOT utilities to back-bill for the full period for which meter tampering can be shown. EPE added that the existing rules strike a reasonable balance between the innocent customer and the thief, providing protection for the former while not rewarding the latter, and also place the burden of proof of meter tampering, bypass, or diversion on the electric utility. If the utility can produce sufficient evidence of theft of service by the customer that goes back farther than six months, there is no compelling policy reason that back-billing should be limited to six months. EPE concluded that such a limit would do nothing other than reward thieves that are better able to hide their crime.

OPUC responded that while the issues regarding back-billing may not affect the non-ERCOT utilities as much as the REPs and the ERCOT utilities, OPUC believes that the rules should be as

similar as possible, in part to promote continuity throughout the state. SPS commented that utilities take all reasonable steps to detect meter tampering, and strive to find a balance between meter tampering detection and the costs of doing so. SPS argued that monitoring is not the only tool for discouraging unlawful behavior, and that the ability to back-bill customers is an equally important tool for discouraging theft.

Entergy argued that back-billing should be allowed in all cases, not just those related to tampering. Entergy argued that alternatively, the limitations on back-billing could correspond to different customer classes, so that for residential customers, the corrected billing period could go back one year, and for non-residential customers, the corrected billing period could begin with the date when the meter tampering or meter inaccuracy occurred. Entergy also argued that whether back-billing residential or non-residential customers, the limits for refunds should be the same as the limits for charges.

Notwithstanding the arguments on the back-billing limitation, SPS and SWEPCO offered language in the event that the six-month limitation stays in place for utilities outside of ERCOT. In the spirit of compromise, SPS and SWEPCO commented that they could agree to a six-month limit for residential customers, if the rule would allow a utility to recover charges from its commercial class, for all electric current it can prove was diverted through meter tampering. SPS explained that while most of the tampering cases are residential, the vast majority of back-billed revenue in tampering is generated by commercial operations. SPS added that generally the tampering techniques employed by commercial customers are more sophisticated than those of residential customers and thus, more difficult to detect. SPS stated that because of the

sophisticated concealment methods of the commercial customer engaged in tampering, it can take many months, if not years, to detect tampering in some cases.

Commission Response

The commission acknowledges the comments by SPS, EPE, Entergy and SWEPCO that the design is different in areas not open to competition, the utility is fully integrated, and the utility has the billing relationship with the customer. The commission acknowledges the comments put forth by OPUC that the rules should be as similar as possible across the state; however, the commission finds that the utility practices outside of ERCOT regarding meter tampering have been successful in deterring meter tampering, and concludes that it is not necessary to impose a back-billing limitation on those utilities. The commission therefore retains the current process for back-billing in this rule.

Subsection (b)(3)

OPUC/Turner recommended that the language be revised so that the credit owed to the customer resulting from a non-compliant meter or if incorrect meter readings have been provided, that the twelve-month limit be deleted. SWEPCO commented that historically, meters slow down as they age and register less than 100% of the energy consumed. As noted in discussion of Question 7, Entergy also disagreed with Turner and OPUC's comments.

Commission Response

The commission finds that that the twelve-month limit should be deleted for utilities outside of ERCOT, because of the differences in the market structure as noted above, and the fact that all metering, wires, and energy related charges are billed by the utility directly to the end-use customer.

Subsection (c)

Entergy commented that because this section covers what the meter reading adjustments should be based on, which can either be a refund to the customer or additional charges to the customer that therefore, the term “charges” in the title should be changed to “adjustments.” Further, Entergy argued that depending on the specific meter tampering that occurred, the utility may be able to adjust the existing metering data, by a known amount. For example, if the unauthorized alteration was a change in a current transformer ratio, the utility would know what ratio it was changed to and what ratio it should have been. Therefore, Entergy explained the meter reading adjustment maybe as simple as multiplying the existing usage by the difference in these ratios. If this type of information is not available, Entergy agreed that an estimation of the consumption should be used.

Commission Response

The commission agrees with Entergy’s suggestion that the subsection be changed from charges to adjustments and modifies the rule in accordance with this suggestion.

Subsection (d)

SWEPCO noted that the burden of proof lies with the utility as defined in current §25.126(b). OPUC/Turner commented that the utility has the burden of proof, and it is not common for a person accused of a crime to prove that that he did not commit the crime. OPUC/Turner further argued that the burden may eventually shift back to the accused, but the burden is never on the accused without the accuser first meeting his burden. OPUC/Turner therefore recommended the requirement that the customer enter into a contested case proceeding in order to ensure that the utility has the burden of proof.

TAA/HAA suggested that language be added requiring the utility to notify a rental property owner if tampering has occurred on the property. EPE did not support this recommendation, as it would limit the utility's ability to take immediate action to remedy the meter tampering and, restore the meter to a safe condition. SWEPCO responded that it currently works cooperatively with apartment complexes and landlords of single family housing it has Leave-On-Agreements (LOA) with (SWEPCO explained LOAs are similar to Continuing Service Agreements used in the ERCOT market, except the agreements are established with the electric utility and not the REP). SWEPCO explained that typically, landlords are notified when verification is needed to determine who the current tenants are, or when their equipment is damaged and in need of repair before service can be reconnected. SWEPCO pointed out that if it identifies an unsafe condition during investigation, the electric service will be disconnected without prior notice to the customer or the landlord. Door hanger notices are also left advising that service was disconnected due to tampering and/or unsafe conditions and providing contact information for

SWEPCO. SWEPCO argued that contacting the landlord before disconnection is unnecessary, and noted that it does not notify the landlord when disconnection occurs for non-payment.

TAA/HAA also recommended that a utility investigate a call regarding suspected tampering within two business days. TAA/HAA explained that in its experience, anecdotally, it is aware of instances that calls from rental property owners alleging tampering are sometimes ignored.

Commission Response

The commission does not agree with the suggestion by TAA/HAA to require the utility to notify a rental property owner if tampering has occurred on the property, and agrees with EPE that such a requirement could limit the utility's ability to take immediate action to remedy the meter tampering and restore the meter to a safe condition. The commission notes that the utility is not prevented from notifying the rental property owner if necessary. The commission does not agree with TAA/HAA's recommendation that a utility investigate a call regarding suspected tampering within two business days, and finds that its reporting requirements in subsection (e) goes a long way to ensuring that utilities are more diligent in responding to meter tampering cases.

OPUC/Turner expressed concern that accused customers are not provided with the evidence that the utility may have against them. OPUC explained it has had more than one complaint in which tampering is alleged but no evidence of tampering has been available to examine. OPUC/Turner stressed that the customer should not be forced to file a complaint with the commission in order to see the evidence that is being used against him, or have to ask the utility for the evidence.

Entergy responded that the proposed process to require the customer to file a complaint to dispute meter tampering is reasonable and consistent with the commission's treatment of issues arising between the customer and utility.

OPUC/Turner argued that the utility should have the evidence gathered and analyzed prior to sending the customer a bill with the back-billed amount. OPUC/Turner noted that no explanation has been provided as to why the utilities are so reluctant to provide information to the customer at the same time the back-bill is issued. Entergy responded that this would only lead to a delay in obtaining recovery of revenues for uncompensated use of electricity. Entergy further argued that if a customer would like to see the evidence, he can request it. Entergy also commented that if a customer does not dispute that he has tampered with the meter and has been caught, there is no need to require the utility to expend time, effort and dollars in providing the customer proof of his meter tampering. Entergy explained that its policy is to attempt to contact the customer regarding meter tampering prior to the back-billing is issued.

SWEPCO suggested that the tampering discovery should be defined as when the suspected tampering investigation is initiated. Houston suggested that three business days is adequate to restore service to a meter that has been tampered. Entergy pointed out that it will reconnect a customer within its normal business process after payment arrangements are made with the customer, which restore the account to good standing. Entergy argued that customers who have tampered with their meter should not be provided a higher priority for reconnection over a customer requesting service.

SPS commented that with routine tampering cases, such as when a customer simply cuts the lock on their meter box and activates it following a disconnection for non-payment, three business days to restore normal meter registration and reading from the date tampering is discovered is reasonable. However, SPS argued that because meter tampering takes many forms, the more sophisticated the concealment technique the longer the investigation and evidence gathering process will take. SPS added that it is common to discover other illegal activity during a tampering investigation, such as illegal drug manufacturing. Entergy also argued that circumstances may exist such as unsafe conditions that could prevent timely restoration of service. It explained that the premises' metering may need to be left as discovered to avoid disturbing a crime scene or destroying evidence. SPS recommended that a firm, three business day period for restoration is not practical, and offered language that the utility restore service to its tampering customers within a "reasonable" timeframe, based on the particular circumstance of the individual tampering case. Alternatively, SPS provided language with the three business day restoration deadline, based on completion of the utility's investigation of the meter tampering. SWEPCO agreed with the suggestion that restoration occur upon completion of the investigation.

Entergy argued that the requirement that a utility take "all reasonable efforts" and "all steps" be deleted because these terms are not defined in the rule, and they would cause confusion and conflict. Entergy added that back-billing for uncompensated usage should occur from the time of the determination of meter tampering. Entergy also pointed out that there may be circumstances where removal of the meter is not necessary, and the requirement should be deleted.

Commission Response

The commission agrees with SWEPCO's suggestion that the discovery of tampering should be defined as when the suspected tampering investigation is initiated. The commission does not agree with Houston's suggestion that three business days is adequate to restore service to a meter that has been tampered. While the commission finds that service should be restored as soon as possible, certain situations may exist where the utility may have safety concerns or other reasons for keeping the premises disconnected, and that the utility should have the ability to keep the premises out of service until the customer satisfies any obligation related to tampering.

The commission does not agree with Entergy that the requirement that a utility take "all reasonable efforts" and "all steps" be deleted, and finds that it is perfectly reasonable that the utility take all steps as part of normal utility practice. The utility should be diligently detecting and preventing meter tampering and electricity theft in its system.

The commission agrees with Entergy that back-billing for uncompensated usage should occur from the time of the determination of meter tampering. The commission agrees with OPUC/Turner's argument that the utility should have the evidence gathered and analyzed prior to sending the customer a bill related to tampering. However, the commission disagrees with Turner/OPUC that the evidence should be automatically provided to the customer upon completion of the investigation, and agrees with Entergy that if a customer requests to see the evidence, the utility should make it readily available to the customer.

Subsection (d)(5)

Entergy argued that this provision would ostensibly require disclosure of information that lead to a determination of tampering that was of a confidential, “whistle-blower” nature. Entergy stated that this would have a chilling effect on confidential sources coming forward to provide meter tampering information.

Commission Response

The commission will maintain the current process for utilities outside of ERCOT in adopting this rule, and the language in proposed subsection (d)(5) is deleted.

Subsection (d)(6)

SWEPCO noted that a sworn affidavit is already required in existing §25.126(b), which applies to SWEPCO. Entergy commented that the sworn affidavit be qualified to be prepared upon request in cases that are challenged. Otherwise, Entergy argued, every instance of meter tampering would require a sworn affidavit.

Commission Response

The commission will maintain the current process for utilities outside of ERCOT in adopting this rule, and the language in proposed subsection (d)(6) is deleted. The commission notes that based on the comments by SWEPCO, the commission does not include language to require the utility to have a sworn affidavit upon completion of every investigation of meter tampering. However, the commission concludes that if a customer

requests more information from the utility regarding the determination of meter tampering, that the utility should provide an affidavit and other supporting information to the customer.

Subsection (d)(7)

Entergy and SPS recommended this provision be deleted. SPS explained that the taking of fingerprints from a tampered meter requires special forensic training, and thus is prohibitively expensive and impractical. SWEPCO and Entergy agreed. Videotaping a meter tampering crime scene is also prohibitively expensive to SPS, and would require equipping each of its meter readers with video cameras. SPS argued that digital photography is more than adequate to preserve the crime scene for evidentiary purposes.

SPS also argued that the 15,000 kWh threshold for requiring fingerprints and videotape is nearly impossible to comply with, as SPS would certainly not know the extent of the theft at the time of discovery. Houston suggested that the threshold be lowered to 7,500 kWh. SPS did not agree with Houston's suggestion.

Commission Response

The commission agrees with SPS, SWEPCO and Entergy that the requirements of this paragraph are prohibitively expensive and therefore deletes this language.

Subsection (e)

SWEPCO did not oppose the proposed requirement to provide an annual report. SPS and Entergy did not support the requirement that utilities submit anti-theft anti-tampering plans for commission review, as put forth by Houston. SPS argued that the current rules have historically served SPS well and provided sufficient deterrent against this crime, and that additional regulatory oversight is unnecessary. OPUC/Turner suggested that the annual report include the total number of cases actually prosecuted.

Houston suggested that the commission request white papers every two years which describe any changes in the area of electricity theft, diversion, and tampering including any new problems, new methods developed by utilities and methods which continue to prove effective. SPS and Entergy strongly disagreed. Entergy argued the suggestion by Houston is ill conceived, because the unscrupulous customer will gain valuable insight as to how to game the system and how to defeat claims of tampering when reviewing the plan which shows a “blow by blow” approach as to how each utility will deal with tampering. SPS argued that the reporting requirement as proposed is sufficient, and the recommendation by Houston is excessive.

Houston also recommended that when a customer moves into an apartment, the utility provide a written notice of typical kWh usage for the premise, and a notice that unlawful diversion of electricity or meter tampering is considered theft. Entergy specifically responded that both suggestions are not workable. Entergy explained that the level of kWh is dependent on the tenant’s use, how cool/warm the dwelling is maintained, how much water is used, whether appliance run by electric or gas, etc. Entergy argued that utilities should not be required to

represent to a tenant what his usage will typically be, and the practice could lead to more complaints. Entergy added that there is no need to advise tenants that using electricity without compensation is against the law, but if notice is required, that it be included in the “Your Rights as a Customer” brochure that is distributed to all new customers and to all customers every year as set forth in §25.31.

Houston suggested that the utility read the meter of a tenant whose usage is estimated at least every three billing cycles. Entergy pointed out that existing §25.25 addresses this concern, as it requires utilities to read estimated bills every three months.

Commission Response

The commission declines to adopt the recommendation by Houston that the utility submit anti-theft tampering plans, and concludes that the utilities shall file an annual report as proposed, beginning in July of 2010 for calendar 2009, and retains this language in subsection (e). The commission agrees with OPUC/Turner that the report shall include the number of cases actually prosecuted. The commission also declines to adopt the suggested requirement that the utility provide a new tenant upon moving into a new premise a written notice of typical kWh usage for the premise, and a notice that unlawful diversion of electricity or meter tampering is considered theft.

Subsection (f)(1)

SPS took exception to this requirement that it hire additional staff for the purpose of monitoring meter tampering. SPS commented that it should be allowed – in its sole discretion – to

determine how to dedicate resources to most effectively detect meter tampering and recover lost revenues. SPS added that utilities in regulated markets in Texas tend to serve much less densely populated areas than deregulated utilities. SPS commented that hiring additional staff to monitor tampering will only increase the utility's costs. Entergy recommended that the term dedicated should be deleted as an adjective for "staff" to acknowledge that the employees responsible for monitoring suspicious activity related to meter tampering may have other job responsibilities.

Commission Response

The commission is maintaining the current process for utilities outside of ERCOT in adopting this rule, and the language in proposed subsection (f)(1) is deleted.

Subsection (f)(2)

Entergy recommended that the proposed language be changed to require the customer hotline be placed occasionally in bill messaging as opposed to permanently on the web page. Entergy opined it is more efficient to place the hotline number in bill messaging.

Commission Response

The commission is maintaining the current process for utilities outside of ERCOT in adopting this rule, and the language in proposed subsection (f)(2) is deleted.

Subsection (f)(3)

SWEPCO commented that it currently provides a series of electrical safety education videos and documents on its website, at www.swepco.com/safety/LiveWireDangers.aspx. Entergy stated it

believes that the most efficient and cost effective way to educate customers on the safety hazards associated with meter tampering is through bill messaging, and suggested revisions to the subsection to reference bill messaging.

Commission Response

The commission is maintaining the current process for utilities outside of ERCOT in adopting this rule, and the language in proposed subsection (f)(3) is deleted.

Section 25.126

Subsection (b)

Joint TDUs proposed that the references to “meter readings” be changed to “consumption,” as the meter reading may accurately reflect what was on the meter display but due to tampering, recorded incorrect consumption. The REP Coalition agreed.

The Joint TDUs supported the concept that the back-billing period should be limited to the current customer and the current REP, unless the customer has switched REPs within the last 30 days. Joint TDUs explained that the provision allowing the TDU to back-bill the REP prior to the current REP, if the customer has switched from the prior REP to the current REP within the last 30 days, is designed to prevent the customer from observing any TDU investigation and then immediately switching REPs before the switch-hold can be placed in order to limit any exposure to tampering charges or back-billing. Customers who quickly switch REPs to avoid charges will become a greater concern as expedited switches become more common. Further, Joint TDUs

noted that the prior REP's relationship with the customer ceased, so the REP should still have current information for the customer.

The REP Coalition and OPUC did not agree with Joint TDUs and proposed that the TDU shall not assess meter repair and restoration charges to a REP if the current customer was not the customer of record at the time the meter tampering began, or if the current REP was not the ROR when the meter tampering began. OPUC argued that the TDU owns and controls the meters and is responsible for them; therefore, if there are any losses experienced in this market associated with meter tampering, they should be borne by the TDUs.

The REP Coalition explained that for policy reasons, it is reasonable to preclude the TDU from assessing meter tampering related charges in instances in which the tampering began prior to the current customer's status as the customer of record (which is typically prior to the current customer's occupancy at the premises), given the unlikelihood that the current customer engaged in the act of tampering under such circumstances. REP Coalition continued that it is also reasonable to preclude the TDU from charging the current ROR such fees when the retailer was not serving the customer of record at the time the meter tampering began. Joint TDUs strongly opposed this suggestion. Joint TDUs argued imposing such a requirement would reduce the financial risk to an individual who engages in meter tampering and encourage such an individual to switch REPs shortly after they first engage in tampering.

Joint TDUs acknowledged that the commission must balance the intent to charge those individuals who engage in meter tampering with the full cost of their actions against the desire to

protect REPs from charges they may not be able to recover from the customer. However, Joint TDUs argued the proposed rule will give REPs an extremely strong tool to use in order to receive payment from the customer with the back-billing limitation and the switch-hold. Joint TDUs opined that adding a limitation on the imposition of meter repair and restoration charges tilts the scales too far in favor of the REP, and at a cost that if not paid by the individual who engages in meter tampering, will ultimately be borne by the TDU's general body of ratepayers.

The REP Coalition also suggested non-substantive changes to the wording of this subsection.

Commission Response

The commission agrees with Joint TDUs and the REP Coalition that the term meter readings should be changed to consumption for clarity. The commission agrees with the REP Coalition and OPUC that that the TDU shall not assess meter repair and restoration charges to a REP if the current customer was not the customer of record at the time the meter tampering began, or if the current REP was not the ROR when the meter tampering began.

OPUC/Turner stressed that the utility should be responsible for refunding any overage that was collected due to an inaccurate meter. They argued that the utility owns and controls the meter and therefore must take responsibility for any meter malfunctions. Joint TDUs responded that this is flawed and should be rejected, for the reasons stated under question 7.

Commission Response

The commission agrees with OPUC/Turner that the utility owns and controls the meter and is responsible for any meter malfunctions. While the commission acknowledges the comments that it may be unfair for the REP to bear the burden of a refund to the customer that resulted from the TDU over-billing the REP, the commission concludes as noted above that the customer should receive all money that it overpaid. Therefore, the commission removes the 12-month limitation.

Subsection (b)(1)

Joint TDUs recommended that the three month back-billing limitation proposed for non-tampering situations should be changed to five months. Joint TDUs explained that the standard Tariff Section 4.7.5 provides for a 150 day limitation for non-tampering situations, and there has been no indication that such a time period has been impractical or unreasonable. The REP Coalition opposed the Joint TDUs' proposal to increase the three-month limitation, and commented stated that if the limitation is expanded, it should not exceed a 150-day period.

Joint TDUs also proposed that the format of this subsection be modified such that the situations where tampering has occurred and where it has not occurred be contained in separate paragraphs. Joint TDUs suggested that the title of this subsection be changed to "Back-billing", as it covers back-billing of consumption that was not previously billed, whether due to meter tampering or to a non-compliant meter. Joint TDUs added that omitting the phrase, "and meter tampering charges" from the title, reduces possible confusion that it also covers billing of Meter Repair and Restoration Charges.

The TDUs again suggested language to allow a TDU to back-bill the former REP if the customer has switched service to the current ROR within the last 30 days. The REP Coalition disagreed and argued that the proposed rule's prohibition against back-billing a REP that no longer serves the ESI ID in question is sound. REP Coalition explained the proposed rule reasonably takes into account the difficult task of trying to collect a back-billed amount from a former customer, particularly when the former customer is currently receiving retail electric service from another REP. As long as the lights are on, the former customer is likely to question why it should pay anything to a company no longer providing its retail electric service, especially when the former customer has fully paid what it believed would be the last electric bill issued by the former REP for such service. The REP Coalition continued that given the inability of the former REP to exert any meaningful leverage under such circumstances, as the switch-hold mechanism in proposed subsection (g) will provide no value in this regard, the back-billed amount owed by the former customer will inevitably be reflected on the company's books as an uncollectible, to the REP's financial detriment.

Commission Response

The commission does not agree with the Joint TDUs' recommendation that the three month back-billing limitation proposed for non-tampering situations should be changed to five months. The commission retains the language as originally organized, and agrees with the non-substantive wording changes for this section as proposed by the Joint TDUs. The commission concurs with the REP Coalition and disagrees with the Joint TDUs with respect to the prohibition against back-billing a REP that no longer serves the premises.

The commission agrees with the REP Coalition that the switch-hold will provide no value in this circumstance, and that extending the back-billing will only add bad debt for REPs.

Subsection (b)(3)

OPUC/Turner suggested language to specify that a credit is calculated from the time in which the non-compliant or incorrect meter readings began.

Commission Response

The commission finds that the suggestion by OPUC/Turner is a helpful clarification, and agrees that the credit should begin from the time the TDU determines the incorrect meter readings began.

Subsection (d)

Joint TDUs proposed deletion of the requirement to undertake “all reasonable efforts to minimize losses associated with inaccurate meters because the term “all reasonable efforts” provides no guidance as to what type of program or what specific actions may be required of a TDU. The REP Coalition suggested that the word “program” is unnecessary particularly if the use of the term suggests that the discovery, investigation and mitigation of meter tampering by a TDU are extraordinary activities that fall outside its normal course of business and/or deserve special rate treatment. Houston agreed and stated that a new subparagraph should be added to clarify that costs associated with meter tampering activities, whether autonomous or associated with a plan or program, should not be treated differently from other TDU day-to-day activities in terms of cost recovery.

Joint TDUs requested deletion of the requirement to take all steps necessary to mitigate the adverse impacts of inaccurate meters on the metering and billing of electricity consumption because it provides no guidance as to what steps the TDU is to take and appears to be redundant of the first sentence.

Commission Response

The commission does not agree with the Joint TDUs that the reference to all reasonable efforts should be deleted. The commission concludes that the TDUs should be aware of what efforts are needed to minimize the losses associated with inaccurate meters. The commission disagrees with the REP Coalition that the word “program” is unnecessary and implies special rate treatment. The commission agrees with Houston that costs associated with meter tampering activities should not be treated differently than other TDU day-to-day activities. The commission further disagrees with Joint TDUs’ proposed deletion of the requirement to take all steps necessary to mitigate the adverse impacts of inaccurate meter reading, as this requirement should be part of the utility’s normal course of business, and therefore, retains this language in this paragraph. Experience has suggested that because the losses associated with tampering are now borne by REPs, the TDUs have not been diligent enough in carrying out activities to prevent and detect tampering. Accordingly, the commission concludes that it is important to explicitly state this responsibility in the rule.

Joint TDUs recommended that all of the requirements regarding notice and the provision of information would be located in one place rather than various subsections of the rule. The REP Coalition also agreed that this sentence should be relocated but suggested it was appropriate for subsection (d).

Joint TDUs suggested that the phrase “once meter tampering is discovered” be changed to “once meter tampering is determined.” The TDUs stated that a meter reader or some other utility employee may notice something that appears to be tampering but tampering is not determined until the matter is adequately investigated by trained personnel.

The REP Coalition advocated the addition of a requirement to notify both the REP (by standard market processes) and the customer (in writing) prior to disconnecting service for bypass situations if the TDU is unable to eliminate the bypass.

Commission Response

The commission agrees with Joint TDUs that the word “discovered” should be changed to determined, as tampering is not determined until the matter is adequately investigated by utility personnel. The commission agrees with the REP Coalition’s suggestion that the TDU should be required to notify both the REP and the customer following disconnection of service for bypass if the TDU is unable to eliminate the bypass and has modified the rule in accordance with this suggestion.

Houston proposed to give each customer at a move-in and upon receipt of a change in REP a notice that contains information in typical usage for residential structure and a prominent clarification that a customer that benefits from tampering may be committing electricity theft. Joint TDUs responded that “typical usage” can vary enormously, particularly for TDUs that have geographically large service areas. Joint TDUs believed that greeting new customers with warnings about meter tampering and theft of service would be received negatively by the customer and could be counterproductive.

Houston also recommended that that upon rectification of meter tampering that the TDU provide notice to the customer of the action taken to restore normal meter registration. The Joint TDUs did not see the purpose behind immediately telling the individual who engages in meter tampering exactly what the TDU did to repair and restore proper meter functioning. The Joint TDUs also did not believe the notice should call for a toll-free number for inquiries. The Joint TDUs believed that the individual who engages in meter tampering should be informed to call its REP at the regular number with questions.

Commission Response

The commission does not agree with Houston’s recommendations regarding additional notices to the customer regarding estimated consumption, electricity theft and repair. The commission agrees with Joint TDUs that typical usage can vary substantially from customer to customer, and that notifying the individual who engages in meter tampering of what the TDU did to repair and restore proper meter functions following a discovery of tampering is not necessary. Instead, the commission is adopting requirements for the TDU

to engage in a customer education campaign that emphasizes the hazardous consequences from meter tampering, as well as maintaining a hotline or email address prominently displayed on its web page for individuals to contact the utility if meter tampering is suspected.

Subsection (d)(1)

Joint TDUs argued that the term “alleged” meter tampering should be replaced throughout the rule with the word “determined.” OPUC was concerned with this recommendation and stated that the rule must be clear that it is only the TDU’s assertion that tampering has occurred and that allegation does not shift any burden off of the TDU to prove the tampering.

Commission Response

The commission agrees with Joint TDUs that the term “alleged” should be replaced with the word determined, as it more accurately describes the process of investigation and determination once tampering is discovered by the TDU. The commission acknowledges the concern of OPUC that the rule should be clear that the allegation does not shift the burden of proving tampering away from the TDU. However, the commission finds that even if the TDU cannot prove that the customer tampered with the meter, the customer benefitted from the tampering through unjust enrichment and is still responsible for paying the back-billing.

Subsection (d)(2)

The TDUs stated that the proposed language found in the second sentence of this paragraph requires that all the charges relating to meter tampering including any back-billing be sent in one transaction; however, the TDUs interpret the intent is to have all of the fees and back-billings at or about the same time so as not to have the charges appear over several months. Assuming that intent, the Joint TDUs proposed that the paragraph be modified such that all charges must be sent over a single seven business day period within the same billing month. The REP Coalition reiterated that all tampering charges should be sent in a single transaction. The TDUs agreed that this would be possible as long as the charges did not include the back-billing.

Commission Response

The commission agrees with the Joint TDUs that the back-billing and meter tampering charges should be sent over a single seven business day period within the same billing month. The commission agrees with the REP Coalition that all tampering charges, minus back-billing, should be sent in a single transaction, and has modified the rule in accordance with this suggestion.

Subsection (d)(4)

REP Coalition proposed this subsection be deleted, and proposed that the methodology used to calculate the back billed amount should be included within the scope of information collected and prepared pursuant to proposed subsection (d)(4)(C). The Joint TDUs felt that this would be better addressed in subsection (e) as well.

Houston suggested that the methodology used to calculate back-billings be sent in the same electronic transaction transmitting the back-billing of any meter tampering charges. The Joint TDUs replied that this was unworkable since electronic transactions do not go directly to the retail customer. Secondly, Texas Set transactions are not designed to provide this information. Furthermore, the TDUs added, most persons who engage in meter tampering, when they are caught, do not take issue with how the back-billed amounts were estimated and there is no need to automatically provide the information for the small amount who would desire this information.

Joint TDUs suggested changing the term “under-billed” to “back-billed” consistent with the rest of the proposed rule. They also requested the term “alleged” be deleted, and that the term “tampering fees” be replaced by the term “meter repair and restoration charges.” The REP Coalition believed and OPUC agreed that the TDUs should make this information electronically accessible to REPs in a secure fashion without requiring a REP to first submit a request to access the documentation. REP Coalition agreed that access to the affected meter and metering equipment and other objects used to tamper with the meter would be handled differently. The REP Coalition stated that customers should be required to request access to information and stated that it was reasonable to apply the five business day timeline used in subsection (d)(3) to a customer request for access to the information listed in proposed subsection (d)(4) and suggested revisions. OPUC disagreed, and stated that they were strongly opposed to the suggestion that the customers must request and then wait for information and questioned what the REPs and TDUs do with the information in the five days and why they are unwilling to immediately provide that information to the customer.

Commission Response

The commission agrees with the suggestion by Joint TDUs that the term under-billed should be changed to back-billed, and that the term alleged should be deleted, and has modified the rule accordingly. The commission further agrees with the Joint TDUs that it is not necessary to automatically provide customers with the information related to the tampering investigation. The commission acknowledges the comments by OPUC that customers have a right to that information, and adopts language that the TDU must provide it upon customer request. The commission therefore agrees with the recommendation by the REP Coalition that customers should be required to request access to information, and it is reasonable to apply a five business day timeline for customers requesting access to the information gathered by the TDU in its investigation.

New subsection (d)(4)

Joint TDUs proposed that the commission set a time period for how long the utility should keep the evidence required under subsection (d)(4). Without a limitation, potentially tens of thousands of meters will need to be removed from service and stored. Joint TDUs proposed that the limitation be within 12 months from the date the TDU made the determination if the customer has not filed a complaint with the commission or upon conclusion of a proceeding disputing the tampering charges.

Commission Response

The commission finds that the suggestion for a 24-month retention period from the date the TDU makes a determination of meter tampering is sound and has modified the rule accordingly.

Subsection (d)(4)(C)

The REP Coalition stated that the methodology used to calculate the back-billing should be incorporated within the scope of other back-billing related information specified in subsection (d)(4)(C). Joint TDUs commented this was redundant.

Commission Response

The commission agrees with the REP Coalition that the methodology used to calculate back-billing should be incorporated with other back-billing related information and has modified the rule accordingly.

Subsection (d)(4)(D)

Joint TDUs proposed to clarify that if the meter itself has not been tampered with then the requirement to remove the meter should not be imposed.

Commission Response

The commission agrees with the Joint TDUs that if the meter has not been tampered with, then the requirement to remove the meter is not necessary, and has modified the rule accordingly.

Subsection (d)(4)(E)

Joint TDUs stated that experience indicates that people who turn in other people for meter tampering (such as a neighbor or ex-spouse) often desire to remain anonymous. The TDUs pointed out that it is unclear whether this section required such “whistleblower” information to be disclosed and recommended the rule only be required to disclose only non-confidential information to be provided to REPs and the end-use customer and that this should be moved to subsection (e). OPUC was opposed to anything less than full disclosure of all evidence and believed that the term “non-confidential” had the possibility to create discovery and other types of avoidable disputes. OPUC stated it did understand the need to protect the identity of people that provide tips to the TDU regarding tampering, and recommended that the utilities use the term “anonymous tip” in any situation in which tampering was reported by someone other than the utility itself.

Commission Response

The commission clarifies that the rule requires the TDUs to disclose only non-confidential information to the REP and the customer. The commission agrees with OPUC that the TDU should use the term “anonymous tip” in situations in which tampering is reported by anyone other than the utility, and has modified the rule accordingly.

Subsection (d)(4)(G)

Joint TDUs and REP Coalition proposed to delete this section. REPs stated that videotape and fingerprints would have limited value. The TDUs pointed out that this subparagraph requires

that videotape footage of the premises and fingerprints be taken in instances where the tampering results in back-billing in excess of 15,000 kWh. The TDUs believed that this provision is impractical since until the tampering is determined to have occurred and the TDU is able to estimate when the tampering first occurred, the TDU will not know whether the back-billing will exceed 15,000 kWh at which point it is likely that any evidence that could be shown on video will already have been removed or repaired either by the TDU or customer and that any fingerprints will have been obliterated. Thus the only effect of this provision is either to force the TDU to take video and fingerprints of every suspected case, even before tampering has been determined or to completely prevent the TDU from being able to impose any tampering charge or back-billing if the back-billing exceeds 15,000 kWh, meaning that the biggest individuals that have tampered would owe nothing. Joint TDUs argued that the first scenario is extremely impractical and would be ineffective and the latter would be completely contrary to the commission's intent to deter tampering.

Joint TDUs added that to be effective taking video or fingerprints requires skilled technicians and would increase hiring requirements, the amount of time it takes to investigate tampering and costs and would be unlikely to provide any useful evidence as videos are unlikely to add anything still photos wouldn't show, and contended that meters and other equipment will likely have multiple sets of fingerprints and if not taken by law enforcement are unlikely to have probative value. Houston proposed that the threshold be reduced to 7,500 kWh, the TDUs responded that a 7,500 kWh threshold does not relieve the impracticality of the provision and the proposed the idea be rejected.

Commission Response

The commission agrees with both Joint TDUs and the REP Coalition that the proposed requirements relating to fingerprints and videotaping should not be adopted. The commission notes that when coordinating with law enforcement, there may be cases in which it will be helpful to gather videotape, audio, fingerprints, or other evidence needed in order to prosecute a case.

Joint TDUs stated that in some instances taking picture of a residence or other activities required by subsection (d)(4) cannot physically be done or could result in a safety hazard to the TDU employee. Thus Joint TDUs proposed that all investigations be done pursuant to Good Utility Practice and that exceptions for safety concerns be permitted. OPUC believed that the safety of the TDU employees should be first priority and urged the utilities not to place their employees at risk in collecting information necessary to make their allegation, but disagreed that an exception should be written into the rule. OPUC stated that if the TDU cannot collect the requisite information then the TDU has not met its burden and should not be able to allege tampering occurred.

Commission Response

The commission is skeptical about the assertion that there are some instances in which taking a picture or other activities required to substantiate its claim of meter tampering cannot be performed by the utility. The TDU may not have access to buildings, but most cases of tampering should involve the meter or facilities adjacent to the meter to which the TDU has access. The commission agrees with OPUC that if the TDU cannot collect the

necessary information that it has not met its burden of proof and therefore, should not be able to make a determination of tampering.

Subsection (e)

The REP Coalition stated that the internal inconsistencies should be eliminated in this section and that information contained in the REP Coalition's response to Question 6 should also be included. OPUC found REP Coalition's proposed notice language to be confusing and proposed its own notice language.

The REP Coalition stated that in describing one of the two circumstances in which the switch-hold flag shall be removed, proposed subsection (g) states that the customer's satisfaction of payment obligations triggers this action as opposed to the customer's agreement to satisfactory payment arrangements. Simply making satisfactory payment arrangement should not trigger the customer's ability to switch service as the promise to pay is not the equivalent of the payment itself.

Joint TDUs suggested that the heading be modified since this subsection does not deal with the disconnection of service.

Commission Response

The commission agrees with the REP Coalition that making a satisfactory payment arrangement should not trigger the ability of a customer to switch service, and has modified the language in this subsection. The commission also agrees with the non-

substantive changes recommended by the REP Coalition, Joint TDUs and OPUC and has modified the rule accordingly.

Joint TDUs stated that the first sentence requires that the TDU notify the REP within two hours of the TDU determining that meter tampering has occurred. The TDUs suggested that this timeline would require a nearly constant provision of e-mails and would effectively eliminate the ability to make such notification through the daily posting on a website of a list of premises for which a switch-hold flag has been attached.

Joint TDUs believed that the REP should be the party that will notify the customer and proposed revisions to this effect. OPUC disagreed that that the notice should be made by the REPs since the TDUs own the meters. They should be responsible for sending the notice. The TDU stated that it also does not normally have the information to notify a landlord if the premises is a rental and proposed that the REP notify the landlord if necessary.

Commission Response

The commission agrees with OPUC that the notice should come from the TDUs, as they own the meter and are responsible for making the determination. The commission concludes that TDUs shall provide notice to the customer directly either by a door hanger or direct mail. The commission agrees with the Joint TDUs that the utility should not have to notify the REP within two hours of making a determination of tampering. The commission finds that it is appropriate to require the TDU to directly notify a REP that it has determined that meter tampering has occurred at the premise of an ESI ID served by

the REP. This notice should be provided within one business day after the TDU makes its determination. The TDU may meet the requirement to provide the one-day notice to an affected REP in subsection (e) by providing the REP with a separate list of the ESI-IDs served by the REP that were flagged with a switch-hold on the specified day. This direct notice from the TDU to the REP would be made in conjunction with, but separate and distinct from, the master list of ESI IDs with switch-holds that the TDU must update daily and make available to REPs pursuant to subsection (g). The availability of the master list of ESI IDs subject to switch-holds in subsection (g) is not an appropriate substitute for the direct TDU-to-REP notice required in subsection (e), particularly since the master list will not specify the REP serving an ESI ID appearing on the list.

Subsection (f)

TDUs noted that this subsection appropriately places the burden of proof on the TDU should a customer challenge the claim of meter tampering in a contested case proceeding at the commission. The TDUs suggested that the term “allegation” be changed to “determination.”

OPUC/Turner commented that notifying a landlord in all cases of tampering is unnecessary and caused concern regarding the customers’ right to privacy. OPUC/Turner pointed out if a tenant steals some other type of service such as telephone, the landlord is not notified. OPUC/Turner acknowledged that some tampering may pose a threat to others and therefore, in such cases believes that it is prudent to notify the landlord that tampering has occurred.

OPUC/Turner suggested that the customer should not have to file a complaint with the commission before it can see the evidence against him or her. Joint TDUs agreed with OPUC/Turner. OPUC/Turner also argued that the customer should automatically receive all of the documentation the utility developed. Joint TDUs strongly disagreed, and explained that tampering occurs in tens of thousands of cases each year. It is very rare for a customer to dispute the TDU's determination of tampering. There is no need to automatically provide this information to all customers where tampering has been determined to have occurred. Joint TDUs continued that the rationale for not automatically providing this information is that there is no good reason to impose additional duties, and thus additional costs, on the TDU and/or the REP for the over 99% of cases where the customer never asks for the documentation.

Commission Response

The commission agrees with the Joint TDUs that the term “allegation” should be modified to determination. The commission agrees with OPUC/Turner that the TDU should not be required to notify the landlord in cases of tampering unless a safety issue arises, or in the TDU’s discretion it is necessary. The commission also agrees with OPUC/Turner and Joint TDUs that the customer should not have to file a complaint before it can see the evidence of tampering. However, the commission does not agree with the suggestion by OPUC/Turner that the customer should automatically have all evidence provided upon a determination of tampering, and concludes that the customer should have access to that information upon request.

Subsection (g)

ERCOT recommended that the rule include additional language to state that the TDU shall reject attempted switch and move-in transactions received for ESI IDs with a switch-hold for meter tampering. Joint TDUs and the REP Coalition strongly supported the switch-hold concept. Joint TDUs also commented that the rule should allow the TDU an adequate period of time to receive the information from the field and then manually place the switch-hold. Joint TDUs proposed that the requirement be modified from “immediately” to “the same business day.” The REP Coalition disagreed with the Joint TDUs recommendation, and argued that a deadline based on a number of business days, rather than a number of days, may unduly delay the imposition of the switch-hold and the updating of the list of ESI IDs affected by a switch-hold. The incorporation of same-day deadlines here will also result in the reasonable coordination of those and other requirements imposed on the TDUs in proposed subsection (e).

The Joint TDUs also suggested clarification that a switch-hold will not prevent a customer from making a request to move to another REP, but will prevent such a request from being completed by the TDU. Thus, the proposed language should be modified to reflect the process that will actually take place. Joint TDUs also recommended non-substantive clarifications regarding the flow of information from the REP and the TDU during a switch-hold for POLR and regarding final payment of the customer which releases the switch-hold.

Joint TDUs suggested that the reference to disconnection of service be deleted and this subsection be titled “switch-hold.” The REP Coalition suggested clarification that a REP can exercise its right of disconnection for nonpayment pursuant to §25.483 of this title (relating to

Disconnection of Service) for an ESI ID that is flagged, and recommended the inclusion of language that acknowledges that right and specifies that the switch-hold will continue to remain in place after the disconnection of service. Joint TDUs responded that while correct, that provision is unnecessary. The entire construct of the rule is that the switch-hold remains in place until one of the events set out in the rule allows it to be removed: the ROR removes it, a move-out, a valid move-in, a mass transition switch, or the expiration of a six-month hold.

The REP Coalition further recommended that this language be revised to more properly state that the switch-hold remains in effect until the customer's satisfaction of the obligation to pay both any back-billed amounts and any meter repair and restoration charges.

Commission Response

The recommendation by the Joint TDUs to impose a switch-hold on the same day tampering is discovered, rather than immediately, is appropriate, and the commission has made the change in this paragraph. The commission also agrees with ERCOT that the TDU shall reject move-in requests for ESI IDs in which a switch-hold is in place, and has added language accordingly. The commission agrees with the suggestions by the REP Coalition regarding the language pertaining to the REP's right of disconnection for nonpayment, and the customer's obligation to pay both the back-billed amounts and meter repair and restoration charges, and has modified this section to include such language.

Subsection (g)(1)

The Joint TDUs suggested minor wording change to this provision, so that the language reflects the defined term “meter repair and restoration charges” found in proposed §25.132(2).

Commission Response

The commission agrees with the suggestion by the TDUs on the definition in §25.132(2), and therefore adopts changes in this section to conform to that definition.

Subsection (g)(2)

REPower commented that it believes the rules as proposed leave a gaping loophole in requiring any timely response by the TDU to instances of tampering. Joint TDUs proposed that this subsection (g)(2) be deleted. This language provides a timeline for disconnection for customers taking prepaid service under §25.498, where there is a prepayment device or system. Further, it should be emphasized that a REP with a prepayment device or system can always disconnect service using that device or system. Joint TDUs submitted that such REPs should not be given any additional preferences, and should be handled in the same manner as any other account involving tampering. Joint TDUs further stated that it should not have to roll a truck for these meters and to do so would increase costs to the TDU, which costs would have to be spread to all other REPs.

Joint TDUs commented they strongly believe that there is no reason why the tampering rule should have any impact on the disconnection of service provisions, including disconnection timelines, found elsewhere in the commission's rules. Any back-billings and meter repair and

restoration charges will simply become part of the amount owed by the customer, and the disconnection rules will apply to those amounts as they would to other normal retail electric service charges. The REP Coalition argued that a TDU must be given sufficient time to execute a REP's request for disconnection of prepaid service to an ESI ID with a tampered meter. Therefore, the two-hour window in this proposed subsection should be expanded to require the TDU to complete the disconnection of service on the same day that the REP submits the disconnection request.

Commission Response

The commission disagrees with the Joint TDUs and finds that the language suggested by REPower is necessary for the TDU's response in dealing with tampering of ESI IDs under §25.498. The commission agrees with REPower that a gap in the process could potentially exist if a meter collar and associated equipment from the REP serving customers under §25.498 is tampered with as well, in addition to the meter, therefore making it impossible for the REP to use its own equipment to disconnect the customer. The commission therefore concludes that language should be inserted to specify the disconnection timeline for those customers under the prepaid rule, and agrees with the REP Coalition that the timeline should be expanded. The commission has inserted a timeline of one day in this paragraph.

Subsection (g)(3)

Joint TDUs and the REP Coalition proposed that this paragraph be deleted, and explained that this language requires the implementation of a switch-hold before a TDU may back-bill for

meter tampering. They also argued that this language is redundant, as it is also contained in subsection (d), and specifies that a TDU may not invoice the current REP for any back-billings or meter tampering fees until a switch-hold has been put in place.

Commission Response

The commission agrees with the REP Coalition and the Joint TDUs that this paragraph is redundant, and has modified the rule accordingly.

New subsection (g)(3)

As detailed in the response to Question No. 5, Joint TDUs commented they believe that, in the case of a mass transition to POLR event, the switch-hold should be lifted and the premise should be switched to the new REP. Joint TDUs noted that, as part of a mass transition, the customers may actually be switched to an entity other than the POLR. The TDUs therefore recommended that language included in the rule should apply to all switches sent by ERCOT with a mass transition code (currently a Texas SET 81403 transaction with a TS code). The REP Coalition recommended similar language to address POLR events, and added that the rule should state that no later than the next business day following the completion of the last mass transition switch, the TDU shall provide all POLR providers a list of ESI IDs previously subject to a switch-hold. OPUC did not agree with the REP Coalition's suggestion of a list, and argued that this will turn into a quasi-database.

Commission Response

The commission agrees with the REP Coalition and the Joint TDUs' recommended language relating to a switch-hold in the event of a mass transition. The commission does not agree with OPUC that this list of ESI IDs submitted to the POLR providers will turn into a quasi-database, because the POLR receives the customer account information once the transition occurs. Further, providing the switch-hold data is only one more piece of information, to which the POLR provider is entitled.

The REP Coalition recommended this subsection include a provision to address the ongoing assessment of TDU charges upon the completion of a disconnection for non-payment for an ESI ID for which a switch-hold is placed. Otherwise, the REP's uncollectibles exposure will continue to grow if the TDU can continue to assess a fixed level of delivery and other non-bypassable charges to the flagged ESI ID. The REP Coalition reiterated that because there is no electric service available at the disconnected premise, it is not unreasonable to require the TDU to cease the assessment of those charges. The REP Coalition explained that in contrast, when the ROR requests a move-out for a flagged ESI ID, its relationship with the ESI ID ends. Accordingly, the switch-hold placed there for the benefit of the REP should be removed as part of the move-out process. The Joint TDUs strongly disagreed with the REP Coalition, and suggested that the REP issue a move-out transaction if it does not want to continue paying these charges.

Commission Response

The commission does not agree with the REP Coalition that language should be included to require the cessation of TDU charges upon completion of a disconnection for non-payment for an ESI ID for which a switch-hold is placed. Because the commission is adopting a switch-hold mechanism, the commission finds that the REP should have significant leverage to demand payment from the customer. The commission finds the suggestion by the TDUs to reject this suggestion to be reasonable and therefore declines to include language as suggested by the REP Coalition.

Subsection (h)

TAA/HAA commented they understood the reason why it is necessary to place a switch hold on accounts, but they are extremely concerned about the potential delay associated with a new tenant moving in, or for the rental property owner to get service established in their name. Many properties have continuous service agreements (CSAs) in place designed to make the transition from the old tenant to the property owner before a new tenant moves in. Consequently, typically service is switched from an old tenant to the owner before service is switched from the owner to the new tenant. TAA/HAA therefore recommended that the rule should be clarified to lift a switch hold when a CSA is in place and the switch is from the old tenant to the owner of the property (the customer under the CSA). Joint TDUs agreed, and commented that accounts with a CSA usually involve rental properties where, upon the tenant moving out, a move-in to the landlord takes place. Joint TDUs added that ESI IDs covered by a CSA, when a move-out is sent to ERCOT, results in ERCOT sending only a move-in transaction to the TDU with information indicating that the ESI ID is subject to a CSA. For ESI IDs with a CSA, even if a switch-hold is

in place the move-in should not be rejected. There is no question but that the customer with the CSA (usually the landlord) is a different customer – and the request should be completed. Thus, the second paragraph provides that, for such accounts, the move-in request will not be rejected but instead the switch-hold will be removed and the move-in will be completed.

Commission Response

The commission agrees with the Joint TDUs and TAA/HAA that the switch-hold should be lifted by the TDU for accounts with a CSA when a move-in is submitted, and has addressed this provision in subsection (h)(8).

Houston included language requiring that, upon the current ROR approving the move-in as valid, the selected REP must “immediately” resubmit the move-in transaction, and the TDU “promptly” complete the move-in. Joint TDUs responded that under the MarkeTrak process, once the current ROR has approved the move-in by “completing” the MarkeTrak Issue, the selected REP must then reassign the Issue to the TDU and instruct it to remove the switch-hold. Joint TDUs explained that the TDU will then remove the switch-hold and communicate that fact back to the selected REP by “completing” the MarkeTrak Issue. Only at that point, Joint TDUs argued, can the selected REP submit a move-in request; if it does so “immediately” upon receipt of the current ROR's approval, then the TDU will not have been notified to remove the switch-block, and the move-in will again be rejected. Joint TDUs explained that such processes must be done manually, and both the TDU and the selected REP will timely process them so that the move-in can be completed. Joint TDUs argued that Houston's proposed modifications are inconsistent with how the MarkeTrak process will work and must be rejected.

Joint TDUs commented that this subsection should specifically reference MarkeTrak, not a standard process. Joint TDUs explained that until the process can be reflected in Texas SET transactions, Joint TDUs want to ensure that MarkeTrak is the only process that will be used. Joint TDUs commented they do not want some “transitional” third system to be developed for use between the MarkeTrak process and the development of a Texas SET transactional process, as this would simply cause unnecessary additional system and programming changes.

Commission Response

The commission disagrees with Houston’s suggestion regarding MarkeTrak and concludes that the language in this rule, while not exactly what Houston recommended, will accomplish the same objective. The commission agrees with Joint TDUs that this subsection should be clear that MarkeTrak is the only process that will be used among parties, and that any other alternative or transitional system would require additional changes and additional cost.

The REP Coalition recommended this subsection should address the scenario in which the current ROR fails to communicate whether the move-in request should be granted and the switch-hold removed prior to the expiration of the 24-hour period. Under such circumstances, the REP Coalition stated that a default mechanism should be adopted, so that a customer moving into a flagged premise is not unnecessarily delayed simply because the current ROR for the premise fails to act in a timely fashion. Therefore, if the current ROR fails to communicate its position by the 24-hour deadline, appropriate steps should be taken to remove the switch-hold

and complete the move-in request, using the applicable standard market process, such as ERCOT's MarkeTrak. Joint TDUs responded that the use of a 24-hour review period is inconsistent with the current MarkeTrak process, in that the MarkeTrak process only operates during normal business hours. Therefore, the Joint TDUs proposed use of the term "no later than the same time on the next business day" as constituting the review period.

The Joint TDUs commented that if a switch-hold is in place, a move-in transaction will not be "suspended" but will be rejected. It is upon that rejection that the selected REP will begin its efforts to validate the customer. Joint TDUs also explained that in general, the process will allow the selected REP to obtain adequate documentation that the customer is a new customer making a valid move-in request, open a MarkeTrak Issue which then goes to the TDU, and is followed by the TDU then identifying the current ROR to the selected REP by completing the MarkeTrak Issue. Joint TDUs added that the selected REP will then add the documentation to the MarkeTrak Issue and reassigns it to the current ROR. The ROR then has one business day to review the documentation via the MarkeTrak Issue and determine whether it believes the move-in is valid. If the ROR does not act within that one business day, then the selected REP is authorized to instruct the TDU to remove the switch-hold. Whether by affirmative approval or failure to act by the ROR, the selected REP will authorize the TDU through the MarkeTrak process to remove the switch-hold. The TDU will remove the switch-hold and complete the MarkeTrak Issue, and then the selected REP will resubmit the move-in request and close the MarkeTrak Issue that it created. Joint TDUs suggested that in the event the current ROR timely denies the move-in request through the MarkeTrak Issue, the selected REP can either agree and close the MarkeTrak Issue it created, or provide additional documentation and the process is

repeated. Joint TDUs also clarified that if current ROR takes no action, the MarkeTrak Issue will essentially be “stuck” with the current ROR; to remove the switch-hold after the expiration of the review period, the selected REP will have to open a second MarkeTrak Issue solely for that purpose.

Commission Response

The commission adopts the timeline from the REP Coalition and the Joint TDUs, and includes language in subsection (h)(4) and (5) to address this matter.

The REP Coalition proposed another revision to include an objective standard for the current ROR’s assessment of whether the switch-hold should be removed, based on its review of the redacted documentation provided through the standard market process and any other reliable information. The REP Coalition recommended the adoption of a “legitimate move-in request” standard. Under this standard, the current ROR has the opportunity to review the redacted documentation obtained by the selected REP and, based on that documentation and any other reliable information, determine whether the move-in request is legitimate and the switch-hold should be removed.

The REP Coalition added that the Retail Market Guide (RMG) developed through the ERCOT stakeholder process should also be modified to address this review and determination by the current ROR with greater specificity (*e.g.*, specification of the criteria used by the current ROR in evaluating the move-in request). ERCOT agreed. The REP Coalition also provided suggested criteria that might be used in evaluating whether a move-in request in this situation is legitimate

such as: (1) the date on the documentation obtained by the selected REP must be later than the date the switch-hold flag was placed on the ESI ID; and (2) the address on the documentation obtained by the selected REP must match the address of the ESI ID's premise. The REP Coalition recommended the RMG should also be revised to address how disputes between the selected REP and the current ROR are resolved efficiently and quickly, so the applicant is not unduly prejudiced or harmed.

The Joint TDUs responded that while they recognize that this is an issue that primarily impacts REPs, Joint TDUs do not want to somehow get caught in the middle, and believe that the commission should in this rulemaking resolve the issue of which REP – the selected REP or the current ROR - will have the final determination as to whether the move-in is valid or not. The Joint TDUs' suggested language that provides for the selected REP to provide more documentation should the ROR initially deny the move-in, but the ultimate decision will remain with the current ROR. However, Joint TDUs stated that they are agnostic as to which REP should have final authority over this matter, and requested that the commission should include explicit language in the rule as to which REP gets to make the final determination.

Commission Response

The commission understands the Joint TDUs' position that they should not be caught in the middle of the ROR and the new selected REP, but nonetheless concludes that the TDU is the only neutral party in this process that can review the documentation submitted by the requesting customer and the REP and can do so in a timely manner. The commission agrees with the REP Coalition that the current ROR should be able to review the

information provided by the selected REP, and shall work with the TDU to make a determination within four business hours. The commission has added language to address this situation in subsection (h)(2), (4) and (5). The commission also clarifies that it is the expectation that the TDU will err in favor of the customer when this situation arises.

TXU supported the REP Coalition comments on this subsection as an interim solution and stated it is extremely important to act now to address the inequity in the market around meter tampering. TXU added that it is concerned that the process contemplated by proposed subsection for removal of a switch-hold is not the best solution for the market in the long term. Under this subsection, the switch-hold could be lifted by the “current REP” (*i.e.*, the REP serving a premise where the TDU has placed a switch-hold for tampering) after the current REP receives sufficient evidence from the “selected REP” that the selected REP's prospective applicant is not the customer with a pending uncollected balance due to meter tampering. TXU stated that a manual process for evaluating switch-holds should be viewed as a necessary, but temporary, solution. For the switch-hold to be most effective, TXU believes that this process must be automated as a Texas Standard Electronic Transaction (“Texas SET”) whereby the TDU would timely and effectively establish and remove switch-holds and suspend requested move-ins and switches on affected locations much in the same manner holds for permits are processed effectively today. Without this automation, TXU said it is concerned that the potential for negative customer impact tied back to human error in a manual process may be too great. Accordingly, TXU encouraged the commission to require ERCOT to automate this process on an expedited basis in the rule. TXU added that the next scheduled Texas SET update is scheduled

for 2011. The Joint TDUs agreed that the sooner a Texas SET based process can be implemented, the better.

TXU emphasized that the manual, temporary solution with direct REP to REP communication and document transmittal will have many potential points of failure because each individual instance involving a switch-hold must be addressed by call centers containing large numbers of representatives. Conversely, an automated process through a Texas SET change would have fewer moving parts and consequently less chance for error.

In recommending the long-term Texas SET solution, TXU explained this transaction provides that the TDU, not the current REP, would make the determination as to whether to lift a switch-hold. TXU argued that the TDU is ideally suited to make this determination. Among the three entities involved in the transaction with the customer, the TDU is the only neutral party and possesses the information needed to verify the identity of the customer associated with the flagged meter (*i.e.*, name, address and telephone number). Further, TXU added there are processes currently in place that could be used to model the TDU's involvement, which are similar to the concept of a switch-hold. Specifically, in most cities, TDUs are unable to energize service for new facilities until they receive a permit or inspection authorization from the city. In such instances, the request for service is put on-hold until the TDU receives the city's authorization.

Joint TDUs took issue, however, with the recommendation that the TDU would make the determination as to whether to lift the switch-hold. Joint TDUs explained that while the TDU is

a neutral party, it has the least amount of information about both the current customer and the “new” customer. Joint TDUs took issue with TXU’s analogy of when move-in requests are put on hold until the TDU has received a required city permit or inspection authorization. Joint TDUs pointed out that TDUs do not determine whether a city’s inspection or permit authorization is valid; they simply wait until it arrives, and once it does, complete the move-in.

ERCOT did not take a position on the long-term solution recommended by parties, but recommended, however, that the proposal be further vetted by the Meter Tampering Task Force (MTTF) to examine the impact on all parties if the commission believes the proposal is a viable long-term solution. ERCOT pointed out that a TDU’s suspension of a move-in transaction places the transaction in a pending state at ERCOT and would require the ERCOT system and Texas SET changes with at least a 14-month implementation timeline.

Commission Response

The commission agrees with TXU that a manual process for evaluating switch-holds is a necessary but temporary solution. The commission agrees with commenters that this process must be automated as a Texas Standard Electronic Transaction (TxSET), whereby the TDU will timely and effectively establish and remove switch-holds and suspend requested move-ins and switches. The commission finds that without this automation, there is greater potential for human error and negative customer impact. The commission concludes that a transaction should be implemented by ERCOT as soon as possible. The commission, as noted above, is requiring the TDU to be the neutral party in deciding whether to lift the switch-hold, and has added language accordingly.

The REP Coalition expressed concern with protecting customer privacy during the switch-hold removal determination process. Accordingly, the REP Coalition proposed subsection be revised to require the selected REP to redact financial information, driver's license numbers, and social security number before the selected REP may transmit the information to the current REP.

Commission Response

The commission agrees with the REP Coalition and has modified this subsection accordingly in subsection (h)(3).

Subsection (i)

REPower supported the requirements that the TDU set up a process for REPs and customers to report meter tampering. REPower has been in the practice of reporting tampering to the TDUs. As opposed to other REPs, REPower is in the field at customer premises to install its pre-pay devices, and has the ability to spot tampering. It is important to establish a defined process for REP-reported tampering to ensure that these issues are responded to in a timely manner by the TDU. REPower suggested that this requirement also needed to specify a timeline by which the TDU must investigate and resolve such allegations of tampering once it has received an allegation. REPower explained that it has provided the commission staff with numerous examples of delays it has experienced with the resolution of tampering after REPower has provided proof of tampering to the TDU. In some instances, tampered meters have been left in place for months, preventing REPower from deploying its pre-pay devices as requested by

customers. TDUs should be held accountable to timely remedy instances of meter tampering, and REPower supports revising the proposed rule to add such accountability.

The REP Coalition expressed concern with the requirement that the TDU to maintain a dedicated staff responsible for “monitoring suspicious activity related to meter tampering...” The TDU duties and responsibilities relating to the discovery, detection, investigation, and mitigation of meter tampering activities, as listed in proposed subsection (d), are sufficient for purposes of ensuring that the TDU reasonably and necessarily staffs its efforts to meet those obligations. Also, as stated earlier in the discussion of proposed subsection (d), the REP Coalition expressed concern that references to “programs” and “dedicated staffs” may suggest extraordinary ratemaking treatment for the costs expended in carrying out these meter tampering related activities. In the REP Coalition's view, such activities have long fallen within the TDU's normal course of business and, therefore, they should not be treated differently from other TDU day-to-day activities in terms of cost recovery.

Commission Response

The commission agrees with REPower that a process should be established for REPs and customers to report meter tampering. In order to deter future tampering, diversion and electricity theft, it is important to have a mechanism in place for parties to communicate suspicious activity to the TDU. The commission also agrees with the REP Coalition that these activities are within the TDU's normal course of business, and are not subject to special rate treatment or treated differently than its normal day-to-day activities.

Subsection (i)(1)

Joint TDUs stated that this provision should be clarified that the TDU is to report on the number of cases that it has referred to law enforcement for prosecution, as opposed to possibly including cases referred for prosecution by REPs.

OPUC/Turner proposed that the TDUs should be responsible for reporting how many cases are actually prosecuted. Joint TDUs objected to this provision, and stated that TDUs will not be privy to this information. While Joint TDUs will generally be aware of cases that go to trial (as such cases will likely require one or more TDU employees to be a witness), Joint TDUs will likely not be aware of cases that are prosecuted and then either dismissed before trial, or where a plea bargain is reached. Joint TDUs explained that only the district or prosecuting attorneys will have the information as to how many cases were actually prosecuted, and if their computer systems are not designed to readily retrieve that information, then obtaining that information will either cause those offices to spend valuable time retrieving the data, or the data simply will not be provided at all. Joint TDUs further stated that since the TDUs are not in control or possession of this information, and cannot vouch for its accuracy or completeness, such a formal reporting requirement should not be imposed.

Houston recommended that the annual report include the effects of the TDU's efforts to mitigate inaccurate meters, misreads and meter tampering since the TDU's last report. Joint TDUs argued that the report required applies only to meter tampering; it has nothing to do with inaccurate meters or misreads. As to the effects of the TDU's efforts, that can be determined by comparing the most recent annual report to prior annual reports. Joint TDUs added that the annual report

will provide the commission with the data, and the commission can then enquire further as necessary.

Commission Response

The commission agrees with Joint TDUs that this provision should be clarified such that the TDU will report on the number of cases that it has referred to law enforcement for prosecution. In addition, the commission agrees with OPUC/Turner that the TDUs should be responsible for reporting how many cases are actually prosecuted, and disagrees with the Joint TDUs that this information is not available at the district attorneys' offices. The commission further clarifies that the first report for calendar year 2009 shall be due by July 1, 2010. The commission does not agree with the suggestions by Houston regarding expanding the reports submitted by the TDUs, and concludes with the Joint TDUs that the reports should address only meter tampering and related statistics.

Houston proposed that the annual report include specific anti-theft/anti-tampering proposals that would form the basis of a commission-approved anti-theft/anti-tampering plan. Joint TDUs objected to this provision, for the reasons discussed earlier. In addition, Joint TDUs noted that anti-tampering plans will need to be somewhat TDU-specific, to take into account AMS deployment levels, individualized algorithms used to identify tampering, geographic differences (bypass at a rural location may be far different than bypass at an apartment complex), etc. A single plan for all TDUs would not be appropriate.

TAA/HAA proposed that there should be a two-business day deadline for a TDU to respond to a call regarding possible tampering. Joint TDUs responded that they recognize the need to timely respond to calls about possible tampering, but opposed the imposition of a deadline, as the ability to respond to third-party calls will vary depending on the number of such calls received at any given point in time, plus the number of investigations started by the TDU based on its own programs for detecting tampering. TAA/HAA also proposed that the TDUs and REPs identify a designated contact person that can be called if the customer is having problems. TDUs responded that they already have established customer contact procedures and facilities, however, and Joint TDUs stated that no additional requirements are necessary for this issue.

Commission Response

The commission agrees with TAA/HAA that there should be a deadline for a TDU to respond to a call regarding meter tampering, and has addressed this provision in subsection (d). The commission concludes that two days may not always be a reasonable timeframe for the utility, and adopts a timeframe of ten days. The commission disagrees with Houston's proposal that the TDU be required to provide anti-tampering proposals in the annual reports.

Subsection (i)(2)

Joint TDUs proposed language in this paragraph that specifies that the number for customers to call when reporting suspected tampering be a hotline number, as interaction with a customer service representative would be helpful. Alternatively, Joint TDUs suggested that an email address could be provided. Joint TDUs also proposed that the phone number be displayed on the

“front page for electric service” to recognize that CenterPoint Energy is also a gas utility, and the display needs to be on the electric utility's main web page.

REPower suggested that this requirement also needed language that specifies a timeline by which the TDU must investigate and resolve such allegations of tampering once it has received an allegation. REPower commented that it has provided the commission staff with numerous examples of delays it has experienced with the resolution of tampering after REPower has provided proof of tampering to the TDU. In some instances, REPower explained that tampered meters have been left in place for months, preventing REPower from deploying its pre-pay devices as requested by customers. TDUs should be held accountable to timely remedy instances of meter tampering, and REPower supported revising the proposed rule to add such accountability.

Commission Response

The commission agrees with Joint TDUs that a customer hotline or an email address should be displayed prominently on its front page of the company website, and has made changes accordingly. The commission agrees with REPower that the TDU should be held accountable for timely remedy of meter tampering, and has addressed this issue in subsection (d)(2).

Subsection (i)(4)

The REP Coalition argued that while a customer information campaign about safety hazards may have surface appeal, it is uncertain whether such a campaign should be mandated in the proposed

subsection. If any type of program of this nature is mandated, it should be one that educates customers about the financial and other consequences they will bear if meter tampering is identified at their premises, as outlined in the proposed rule. Houston proposed that the phrase “cost effective” be added. Joint TDUs responded that if this paragraph is not deleted, the phrase "cost-effective" should not be added. Joint TDUs explained that they do not know how the cost effectiveness of a customer education campaign on the safety hazards of meter tampering would be measured, and argued that the inclusion of this phrase would simply invite challenges to cost recovery in a rate case of what will be a mandatory customer education campaign.

Commission Response

The commission acknowledges the comments by the REP Coalition regarding the customer information campaign, but nonetheless believes it is an important policy objective of this rulemaking. The commission does not agree with the Joint TDUs that the words “cost effective” as proposed by Houston should be deleted, and therefore retains the language in new subsection (i)(4) relating to the customer education campaign.

REPower and TAA/HAA supported the provision, and explained that anytime the ROR changes, the TDU should be required to warrant that the new REP is starting their service with the customer with a clean slate. REPower argued that TDUs should be incented to identify and resolve meter tampering allegations in a timely fashion, and REPower stated that adding this requirement provides such incentive. TAA/HAA argued that while some types of meter tampering may not be readily apparent and certainly do not want to see a situation in which TDUs are forced to delay establishing service to new customers. However, TAA/HAA stated

that they remain deeply concerned that there may be attempts to hold new “innocent” customers accountable for tampering that occurred before an account was in their name and feel it is reasonable that TDUs hold some responsibility for inspecting meters.

The Joint TDUs and REP Coalition stressed that the requirement that a TDU warrant there is no evidence of meter tampering or electricity theft at a premise when changing the ROR is unworkable, requiring the TDU's expenditure of a significant amount of time, money, and resources in order to comply. Joint TDUs strongly urged deletion of this paragraph. REP Coalition and Joint TDUs explained that the only way a TDU could properly fulfill this obligation is to send personnel to inspect the customer's meter and associated equipment to the premise site, so that it can “warrant” that no such activities have occurred. The Joint TDUs cautioned that it will create the potential for very damaging consequences and should not be in the rule.

The REP Coalition pointed out that given the number of market transactions involving a change in the ROR that occur in ERCOT on a daily basis, the TDU would need to enlist an army of meter tampering personnel to accomplish the objective sought in proposed subsection (i)(4). The Joint TDUs added that Oncor estimated that it completed roughly 1.6 million switch and move-in requests in 2009. Complying with this proposed provision would require a physical inspection before each of those transactions was executed by the TDU. In addition, because tampering is often not detectable upon sight, it would require removing and testing the meter, and analyzing usage patterns to see if there are consumption anomalies indicating possible tampering prior to every switch and move in.

Joint TDUs further explained that if a customer's request to switch into a premise is held up because of tampering, this would impose enormous additional costs on the TDUs, and would cripple the commission's desire to expedite switches. It would be contrary to one of the advantages of the introduction of AMS meters: a reduction in the number of trips that have to be made to a premise/meter. Joint TDUs also argued that it does not make any allowance for a mass transition to POLR, which can potentially involve tens or hundreds of thousands of switches, and which could not possibly be executed expeditiously if this provision were in place.

REPower emphasized that the TDU must be held accountable to perform their duties. Those duties include regular inspections of meters and accounts to police for meter tampering. REPower explained that TDUs are regulated entities whose rates are set to recover their cost of service and provide for a reasonable rate of return. The continued deployment of advanced meters should have no effect of the requirement of TDUs to police accounts on a timely basis for meter tampering and resolve those instances in a timely manner. REPs should not be forced to bear the sole responsibility for TDU inaction with respect to identifying and resolving meter tampering allegations on a timely basis.

Commission Response

The commission agrees with Joint TDUs and the REP Coalition that a requirement that the TDU warrant there is no evidence of meter tampering or electricity theft at a premise when changing the ROR is impractical, and could require the TDU's expenditure of a significant amount of time, money, and resource, thereby resulting in increased costs to the customer.

The commission agrees with REPower that the TDU must be held accountable, and has addressed REPower's concerns in new subsection (i)(3).

New subsection (j)

The REP Coalition recommended that a new section be added to the rule to address proprietary customer information that is exchanged between and among ERCOT, REPs and TDUs for the purpose of facilitating transactions under the proposed rule. The Joint TDUs supported this recommendation. The REP Coalition recommended the adoption of a new proposed subsection to require ERCOT, REPs, and TDUs to protect and treat any customer or applicant information sent or received for the purpose of facilitating a transaction under the proposed rule as customer proprietary information and limit its use solely to the purpose of the transaction. This approach is similar to that in §25.43 (the POLR rule). Section 25.43(o)(7) states: "Customer proprietary information provided to a POLR provider in accordance with this section shall be treated as confidential and shall only be used for mass transition related purposes." Section 25.472(b)(1)(I) similarly includes language that allows the release of such information by a REP or aggregator to "the registration agent, another REP, a provider of last resort (POLR), or TDU as necessary to complete a required market transaction, under terms approved by the commission." The REP Coalition suggested including language in the rule that requires that the information passed between REPs only be used for purposes of evaluating whether to lift a switch-hold and cannot be used for any other purpose, including but not limited to marketing or sales efforts by the current REP. This confidential information should also be securely destroyed by the current REP when the market transaction is complete.

Commission Response

The commission agrees with the REP Coalition’s suggestion that a new subsection related to customer proprietary information be included and has added language in accordance with this recommendation.

*Section 25.132**Definition (1)*

Entergy recommended a modification the definition of meter tampering, to include the term “replacement,” and to note modification of equipment that has not been approved by the utility.

Joint TDUs proposed that the definition given to the term “meter tampering” also be explicitly given to just the term “tampering,” as that is the term that is frequently used in proposed §25.126.

Definition (2)

The Joint TDUs recommended that the proposed definition of meter repair and restoration charges should be expanded in two areas. First, the definition should include the cost of repairing damage to the meter. Joint TDUs stated it is not clear whether the proposed phrase “restoring the condition of metering facilities” actually covers the cost of repairs to the meter itself. Joint TDUs suggested that to clarify this ambiguity, the cost to repair the meter should be explicitly listed. Joint TDUs added that the costs to secure the meter and equipment against future tampering - such as locks - should also be included in the definition. Second, Joint TDUs commented that the definition should include the cost to repair damage to non-metering

facilities. Thus, in the case of bypass, if the utility must do more than simply remove the bypass device *e.g.*, it must also make repairs to the lines involved.

REP Coalition suggested a modification to the definition of meter repair and restoration charges, to include fees associated with other costs relating to the investigation and correction of authorized use.

Commission Response

The commission agrees with the suggestions by Entergy, the REP Coalition, and the Joint TDUs and has modified the definitions accordingly.

Section 25.214

Joint TDUs supported modifications in the proposed rule and added that the time frames and deadlines should be modified. Joint TDUs strongly urged the commission to modify the proposed amendments to conform with the discussions and consensus of the Market Improvement and Transformation Task Force (MITTF) at ERCOT. Joint TDUs stated that proposed language would serve to change TDUs' current operations with regards to disconnections and reconnection practices for legacy mechanical meters from 5:00 p.m. to 7:00 p.m. Joint TDUs added they believe that proposed time changes would require changes to discretionary service charges to accommodate additional staffing costs required to perform orders received between 5:00 p.m. and 7:00 p.m.

Regarding timelines, TDUs commented that language for reconnection requests received after 2:00 p.m. CST on a Business day requiring reconnection that day, if possible is not necessary and was not agreed to by MITTF. The REP Coalition opposes the Joint TDUs' proposed changes to §25.214 including the proposal to strike language that accelerates the reconnect timeline for customers with an advanced meter. While the TDUs' did not agree to this improved reconnect timeline as part of the Market Improvement and Transformation Task Force (MITTF), the REP Coalition believes this is an important advanced meter benefit of that should be delivered to customers this year.

Commission Response

The commission understands that the MITTF discussion did not reach complete agreement on the additional timeline. However, MITTF has met since the proposal for publication and stakeholders have agreed to the extension of the timelines. The commission agrees with the REP Coalition that these changes to the Tariff are an important benefit of advanced meters that should be delivered to customers as soon as possible.

Section 4.3.12.2 and Section 6.1.21

Joint TDUs suggested the cut-off point be changed to 5:00 p.m. for standard reconnect requests received by Company after 7:00 p.m. Joint TDUs noted that advanced meters that have remote disconnect/connect capabilities and for which the TDU can successfully communicate with that meter, the time period referenced is from 8:00 a.m. CPT to 7:00 p.m. CPT. Again, the time period agreed to by MITTF was a cut off time of 2:00 p.m. CPT for reconnects within two hours of requests. Extending the time to 7:00 p.m. CPT will unduly burden the TDUs and increase

costs. Joint TDUs also suggested that situations where there is a provisioned advance meter with remote disconnect/connect capabilities and where the Competitive Retailer provides prepaid service under §25.498 should be deleted, for the sake of consistency and the deadline should be the same requirement as the two-hour reconnect of 2:00 p.m. CPT.

REPower argued that the exception for when the TDU cannot successfully communicate with the advanced meter to execute a request should be deleted. REPower further states if a TDU cannot communicate with its advance meter to perform the required transaction then the TDU should roll a truck to perform the transaction manually.

Lastly, REPower suggested that the Joint TDU statement that MITTF did not agree to any particular cut off time for the one-hour reconnect for pre-paid customers receiving service under §25.498 and for the sake of consistency the deadline should be the two-hour reconnect for advanced meters. REPower suggests that the original language proposed by staff be retained and that the Joint TDU proposal be rejected.

Commission Response:

The commission retains the timelines regarding remote disconnection and reconnection as proposed, as it is important for customers to receive these benefits from deployment as soon as possible.

Compliance Tariffs

Each TDU shall apply to amend its tariff to comply with amended §25.214 no later than seven days from the effective date of amended §25.214.

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

The repeals, new rules, and amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.003, which authorizes the commission to require reports from public utilities; §17.004 and §39.101, which authorize the commission to adopt retail electric customer protection rules; and §38.002, which provides the commission the authority to adopt standards for measuring the furnishing of electric service and for ensuring the accuracy of equipment used to measure service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 17.004, 38.002, and 39.101.

§25.125. Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Not Been Introduced.

- (a) **Applicability.** This section applies to an electric utility in an area in which customer choice has not been introduced and shall take effect July 1, 2010.
- (b) **Back-billing and meter tampering charges.** If any meter is found not to be in compliance with the accuracy standards required by §25.121(e) of this title (relating to Meter Requirements), readings for the time the meter was in service since last tested shall be corrected only as allowed below, and adjusted bills shall be rendered, except that previous readings shall not be corrected for any period in which the current customer was not the customer. The utility shall also bill the customer for any tampering, meter repair, or restoration charges due to meter tampering, if the current customer was the customer when the meter tampering began. Eligibility for an extended payment plan for back-billed amounts relating to meter tampering shall be determined under the applicable commission rules provided that, for back-billed amounts exceeding double the amount of a deposit permitted under §25.24 of this title (relating to Credit Requirements and Deposits), the utility shall offer repayment over no less than six equal monthly installments.
- (c) **Calculation of charges.** The charge for any period in which the meter was not in compliance with the accuracy standard shall be based on an estimate of consumption under conditions similar to the conditions when the meter was not registering accurately,

during a prior or subsequent period for that location or a similar location, to the extent such information is available.

- (d) **Burden of proof.** If a customer challenges the utility's determination of meter tampering or the imposition of charges based on any such determination in a contested case proceeding before the commission, the utility bears the burden of proof that meter tampering occurred.
- (e) Additional requirements. By April 1 of each calendar year, each utility shall file with the commission a report detailing the following for the previous calendar year concerning meter tampering:
- (1) Total number of customers for which meter tampering was determined by the utility;
 - (2) The number of customers back-billed and the average of the following charges per customer:
 - (A) utility delivery and energy charges, and
 - (B) meter tampering, repair, and restoration charges; and
 - (3) Total number of cases referred to law enforcement for prosecution that included photographs, a descriptive incident report, affidavit, and notification to law enforcement of the availability of physical evidence in the case.

§25.126. Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced.

- (a) **Applicability.** This section applies to a transmission and distribution utility (TDU) and a retail electric provider (REP) in an area in which customer choice is available. The implementation of this section shall take effect on July 1, 2010. This section does not limit a TDU's or REP's right to seek redress for meter tampering through civil and criminal proceedings.
- (b) **Back-billing and meter tampering charges.**
- (1) If any meter is found to be non-compliant with the accuracy standards required by §25.121(e) of this title (relating to Meter Requirements), or if the TDU has provided incorrect consumption or billing data to the REP, then consumption or billing data shall be corrected, and adjusted bills shall be rendered. The TDU shall not back-bill for any period in which the current customer was not the customer of record, or the current REP was not the REP of record. The TDU shall not assess any meter tampering fees, meter repair charges, or restoration charges due to meter tampering, if the current customer was not the customer of record when the meter tampering began, or if the current REP was not the REP of record when the meter tampering began.
- (2) Back-billing under this subsection shall not exceed a period of:

- (A) three months, if the TDU discovers a non-compliant meter or other equipment that has not been affected by meter tampering and the back-billing would result in additional electricity charges to the customer; or
 - (B) six months, if the TDU discovers a non-compliant meter that has been affected by meter tampering and the back-billing would result in additional charges or fees to the customer.
- (3) The back-billing shall not be limited if the TDU discovers a non-compliant meter that has not been affected by meter tampering or has provided incorrect meter readings that are unrelated to meter tampering and the back-billing would result in a credit to the customer.
- (4) In instances where the TDU finds it appropriate, the TDU may assess charges for services received by the customer prior to the six months back-billed to the REP, and the charges assessed beyond six months shall be sent to the end-use customer directly by the TDU. Charges assessed by the TDU pursuant to this paragraph may extend to periods in which the current REP of record was not the REP of record. Energy charges shall be determined using the ERCOT-wide bus average hub price as calculated by the independent system operator for the applicable time periods. The utility shall notify the current REP of record of the charges assessed to the customer beyond six months. The TDU shall pay the current REP of record 50% of the energy charges collected for the period of time in which that REP was the REP of record. The TDU shall provide the energy charges to the REP pursuant to a method agreed to by the REP and the TDU.

- (c) **Calculation of charges.** The charge for any period in which the meter was not in compliance with the accuracy standard shall be based on an estimate using the standards for calculation as stated in the Tariff for Retail Delivery Service, Section 4.8.1.4, adopted pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
- (d) **TDU responsibilities concerning metering accuracy.** A TDU shall undertake all reasonable efforts to minimize losses associated with inaccurate meters and meter tampering, including the prompt detection and investigation of circumstances in which a meter is not accurately recording and reporting consumption. The TDU shall also take the steps necessary to deter meter tampering and to mitigate the adverse impacts of inaccurate meters on the metering and billing of electricity consumption.
- (1) Once meter tampering is determined to have taken place, the TDU shall restore normal meter registration and reading within three business days. If the tampering involves a bypass of the meter, and the TDU cannot eliminate the bypass, the TDU shall, within this period, disconnect service to the premises.
 - (2) Following disconnection, the TDU shall provide written notice of disconnection to the customer of record and notice to the REP using a standard market process.
 - (3) The TDU shall, concurrent with the back-billing, supply the REP with the revised estimated meter read resulting from consumption at the premises that the TDU has determined was not previously billed as a result of the meter tampering. The electronic transaction transmitting the estimated meter read to the REP shall

clearly denote that the meter read is an estimate and shall state the reason for the estimation.

- (4) All applicable meter repair and restoration charges shall be sent in a single transaction by the TDU and shall not be spread over several months. The TDU shall send corresponding back-billing transactions concurrently with the transaction for meter repair and restoration charges.
- (5) The TDU shall investigate, and remedy if necessary, all instances of meter tampering reported under this section within ten business days from the date the tampering was reported to the TDU.
- (6) The TDU may not invoice the current REP for any back-billed TDU charges related to meter tampering or for any meter repair and restoration charges, until the TDU has placed a switch-hold on the affected ESI pursuant to subsection (g) of this section and collected and prepared the following information in support of a determination of meter tampering. The TDU shall make the information specified in this paragraph electronically and readily available to the REP of record through a secure method, without requiring the REP of record to first request the information. The TDU shall also provide the affected customer this information within five business days of the customer's request. The TDU shall provide reasonable and timely access to the physical items specified in subparagraph (D) of this paragraph to any requesting REP of record or customer.
 - (A) Photographs of the premises including a general photograph of the residence/business (showing address number if available), a wide shot photograph of the meter against the wall or where attached to the

- premises, and close-ups of the meter and/or diversion evidence (prior to removing the meter cover if the tampering is obvious and after removing the meter cover if the damage is inside the meter), and any other relevant evidence that can be photographed;
- (B) A detailed description of the detection and investigation methodology employed by the TDU;
 - (C) Documentation of the methodology or rationale used by the TDU to determine the date or approximate date upon which the meter ceased accurately registering consumption at the premises and the detailed calculation and methodology for estimating consumption subject to back-billing, and the methodology used to calculate the back-billing;
 - (D) The affected meter and other metering equipment that the TDU may need to remove from the premises because the tampering involved an unauthorized alteration, manipulation, change or modification of that equipment, and any available object used for meter tampering;
 - (E) Any other reliable and credible information that supports its conclusion that the meter was tampered with, while maintaining confidentiality of anonymous tips provided to the TDU; and
 - (F) A sworn affidavit from an employee or other representative of the TDU attesting to the veracity of the information.
- (7) The information specified in paragraph (6) of this subsection shall be retained by the TDU for 24 months from the date the TDU invoices the REP pursuant to paragraph (6) of this subsection and, if a legal proceeding is initiated during those

24 months, the information shall be retained by the TDU until the final resolution of that proceeding, or 24 months, whichever is later.

(e) **Notification of meter tampering.** The TDU shall notify the REP within one business day, upon a determination that meter tampering has occurred through a standard market process. The TDU shall also notify the customer within two business days of the determination of meter tampering.

(1) The notice to the customer shall be either provided to the customer in the form of a door hanger, or mailed to the premises address assigned to the ESI ID or an address provided by the REP if there is no valid postal premises address assigned to the ESI ID.

(2) The notice shall include the following information in the same format as follows:

[TDU Letterhead]

Date: _____

Address: _____

ESI-ID: _____

NOTICE OF METER TAMPERING

We have identified electric meter tampering, or theft of electric service at this location.

You may be billed for any applicable fees relating to repairing or replacing the electric meter and other facilities, and for electricity usage not previously billed as a result of the tampering or theft. A bill for these charges will be issued by your retail electric provider (REP). If the meter tampering occurred prior to the time you became the customer of record at this location, you may be billed for any of your electricity usage that was previously unbilled. If the meter tampering began after you became customer of record at this location and your current REP was providing your electric service at that time, you may also be billed meter repair and restoration charges. Your REP may also authorize disconnection of service for nonpayment. You will not be able to switch your service to another REP until you have satisfied your obligation to pay these charges.

- (f) **Burden of Proof.** If a retail customer challenges the TDU's determination of meter tampering, or the imposition of charges based on any such determination, in a contested case proceeding before the commission, the TDU shall bear the burden of proof that meter tampering occurred.

- (g) **Switch-hold and disconnection of service.** Upon determination by the TDU that tampering has occurred at a premises, the TDU shall on the same day place a switch-hold on the ESI ID, which shall prevent a switch or move-in transaction from being completed for the ESI ID. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title (relating to Disconnection of Service), the switch-hold shall continue to remain in place. The switch-hold shall remain in effect until the REP of record notifies the TDU to remove the switch-hold because the customer has satisfied its

payment obligations for back-billings and meter repair charges due to tampering, or until such time as removal of the switch-hold is otherwise authorized by this section. The TDU shall create and maintain a secure list of ESI IDs with switch-holds that REPs may access. The list shall not include any customer information other than the ESI ID and date the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.

- (1) The REP via a standard market process shall submit a request to remove the switch-hold once satisfactory payment is received from the retail customer for the back-billings and meter repair and restoration charges.
- (2) For a customer receiving service under §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), a TDU shall disconnect service within one day of its receipt of the REP's request for disconnection if the TDU has determined that tampering with the customer's meter has occurred.
- (3) At the time of a mass transition, the TDU shall remove the switch-hold for any ESI ID that is transitioned to a provider of last resort (POLR). No later than the business day following the completion of the last mass transition switch, the TDU shall provide all POLR providers a list of ESI IDs previously subject to a switch-hold.
- (4) When the REP of record issues a move-out request for an ESI ID under a switch-hold, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

(h) **Move-ins with a valid switch-hold.**

- (1) If a retail applicant for electric service selects a REP and the selected REP submits a move-in transaction for an ESI ID that has an existing switch-hold as defined in subsection (g) of this section due to meter tampering, the TDU shall notify the selected REP that the move-in transaction is rejected via a standard market process. If the selected REP determines the applicant's premise has an existing switch-hold, the selected REP may request removal of the switch-hold prior to submitting a move-in transaction.
- (2) The selected REP shall use best efforts to promptly determine whether the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed and, if so, obtain adequate documentation that the move-in request is legitimate. Adequate documentation shall include a copy of a signed lease, an affidavit of a landlord, closing documents, a certificate of occupancy, a utility bill dated within the past two months from a different premise, or other comparable documentation in the name of the retail applicant for electric service, and shall include a signed statement from the applicant stating that the applicant is a new occupant of the premises and is not associated with the preceding occupant.
- (3) Upon receipt of such information from the applicant, the selected REP shall ensure that the applicant's financial information, driver's license number, and social security number and federal tax ID number are protected from improper release. Another REP or a TDU that receives such information from the selected REP shall also protect such information from release.

- (4) The selected REP shall initiate the use of ERCOT's MarkeTrak issue process to request removal of the switch-hold and provide the supporting documentation to the TDU. This request and supporting documentation shall be subsequently provided to the current REP of record through the MarkeTrak process.
- (5) The current REP of record may submit other information in response to the supporting documentation submitted by the selected REP, using the MarkeTrak process. This additional information shall be made available to the TDU and the selected REP through the MarkeTrak process. Within four business hours of receiving the request to remove the switch-hold and supporting documentation, the TDU shall determine whether the switch-hold should be removed by confirming the documentation provided under subsection (h)(2) of this section is adequate. In making this decision, the TDU shall take into consideration any additional information submitted by the current REP of record. If the TDU determines the documentation is inadequate, the selected REP and the current REP of record shall be immediately notified through the MarkeTrak process that the request to remove the switch-hold is rejected, and the switch-hold shall remain in effect pursuant to subsection (g) of this section. If the TDU concludes that the documentation is adequate, it shall immediately grant the request to remove the switch-hold and both the selected REP and current REP record shall be immediately notified of the removal through the MarkeTrak process. After being notified of the removal of the switch-hold, the selected REP shall resubmit the move-in transaction to initiate the move-in request.

- (6) A TX SET transaction or process developed specifically for the purpose of addressing the treatment of switch-holds in the context of move-in transactions shall be used as a substitute for the equivalent process described in this subsection once that TX SET transaction becomes available. The Electric Reliability Council of Texas (ERCOT) shall develop this TX SET transaction process as soon as possible.
 - (7) For a move-in transaction indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.
- (i) **Additional requirements.**
- (1) By April 1 of each calendar year, each TDU shall file with the commission a report detailing the following for the previous calendar year concerning meter tampering:
 - (A) Total number of customers for which meter tampering was determined by the TDU;
 - (B) The number of customers back-billed and the average of the following charges per customer:
 - (i) utility delivery charges; and
 - (ii) meter repair, and restoration charges.
 - (C) Total number of cases referred to law enforcement for prosecution that included photographs, a descriptive incident report, affidavit, and

notification to law enforcement of the availability of physical evidence in the case;

- (D) Total number of cases prosecuted;
 - (E) Switch-hold statistics, including the number of ESI IDs for which a switch-hold was placed, the number of ESI IDs placed under a switch hold for three months, six months, one year, or longer; and
 - (F) The number of premises for which a TDU assessed charges directly to the customer pursuant to subsection (b)(4) of this section.
- (2) The utility shall maintain adequate staff responsible for monitoring suspicious activity related to meter tampering in its service territory. The utility shall establish a process for REPs and customers to report meter tampering. The TDU shall also include a customer hotline telephone number or email address on its website, prominently displayed on its front page for electric service.
- (3) The utility shall maintain a record of meter tampering investigations. The record shall include a timeline by ESI ID, starting with the date information is reported by a REP, landlord, TDU employee or other individual on meter tampering, the date the TDU completed the investigation, and the date the TDU issued the back-billing to the REP. The utility shall make this information available to the commission upon request.
- (4) The utility shall engage in a customer information campaign to educate customers on the safety hazards associated with electricity theft, diversion, and meter tampering.

- (j) **Proprietary Customer Information.** The prohibition against the release of proprietary customer information in §25.472 of this title (relating to Privacy of Customer Information) does not prohibit the release of customer proprietary information to the registration agent, a REP, a POLR provider, or a TDU when the information is necessary to complete a market transaction described in this section. Customer proprietary information provided in accordance with this section shall be treated as confidential, shall be securely destroyed by the current REP of record after 24 months, and shall be used only for the purposes of evaluating whether to lift a switch-hold and cannot be used for any other purpose, including but not limited to marketing or sales efforts by the current REP.

§25.132. Definitions.

For purposes of this subchapter, the following terms have the following meanings unless the context indicates otherwise:

- (1) **Meter tampering or tampering** -- any unauthorized alteration, manipulation, change, or modification of a meter or metering equipment, the diversion or bypass of the meter so that consumption is not properly registered and recorded, interference with or obstruction of meter communications, or alteration of meter data that could adversely affect the integrity of billing data or the electric utility's ability to collect, record, and process the data needed for billing or settlement. Meter tampering includes, but is not limited to, harming or defacing the electric utility's metering facilities, physically or electronically disorienting the meter, attaching objects to the meter, inserting objects into the meter, altering billing or settlement data, construction of electrical pathways that bypass the meter in whole or part, or other electrical or mechanical means of preventing the metering equipment from accurately registering, recording, and reporting accurate consumption information.
- (2) **Meter repair and restoration charges** -- any fees or charges for replacing a meter, repairing a meter, restoring the condition of and securing metering facilities, removing any device that permits the meter to be bypassed, or repairing any other damage to the utility's facilities as authorized by the electric utility's tariff, including all other costs associated with the investigation and correction of the unauthorized use.

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

(a) - (c) (No change.)

(d) **Pro-forma Retail Delivery Tariff.**
Tariff for Retail Delivery Service.

CHAPTER 1: Definitions

HOME AREA NETWORK (HAN) PROVISIONED METER: An advanced meter as defined in P.U.C. SUBST. R. 25.130, Advanced Metering, that has been deployed by the Company, and for which the HAN communications are operational.

SETTLEMENT PROVISIONED METER: An advanced meter as defined in P.U.C. SUBST. R. 25.130, Advanced Metering, that has been deployed by the Company, and for which 15-minute interval data is sent to and accepted by ERCOT for settlement purposes.

4.3.12.2 DISCONNECTION DUE TO NON-PAYMENT OF COMPETITIVE RETAILER CHARGES; RECONNECTION AFTER DISCONNECTION

Competitive Retailer may request disconnection for non-payment by Retail Customer or reconnection thereafter as authorized by the Commission's customer protection rules and in accordance with Chapter 6 of the tariff. The execution of a disconnection for non-payment does not relieve the Competitive Retailer of responsibility for any Delivery Services provided to that Point of Delivery.

For premises without a provisioned advanced meter, for premises with a provisioned advanced meter without remote disconnect/connect capabilities, and for premises with a provisioned advanced meter that Company cannot successfully communicate with at the time Company attempts to execute the request by using Company's advanced metering system, standard

reconnect requests received by Company by 2:00 PM CPT on a Business Day shall be reconnected that day. For such premises, standard reconnect requests received by Company after 2:00 PM CPT on a Business Day shall be reconnected that day, if possible, but no later than the close of Company's next field operational day.

For premises with a provisioned advanced meter with remote disconnect/connect capabilities and for which the Company can successfully communicate with that provisioned advanced meter at the time Company attempts to execute the request by using Company's advanced metering system, standard reconnect requests received by Company from 8:00 AM CPT to 7:00 PM CPT on a Business Day shall be reconnected within 2 hours of receipt of a request.

For premises with a provisioned advanced meter with remote disconnect/connect capabilities where the Competitive Retailer provides prepaid service under P.U.C. SUBST. R. 25.498, Retail Electric Service Using a Customer Prepayment Device or System, standard reconnect requests received by the Company from 8:00 AM CPT to 7:00 PM CPT on a Business Day shall be reconnected within 1 hour of receipt of request.

For all premises, standard reconnect requests received by Company between 2:00 PM CPT and 5:00 PM CPT on a Business Day shall be reconnected that day if possible, but no later than the close of Company's next field operational day. Standard reconnect requests received by Company after 7:00 PM CPT or on a day that is not a Business Day may be considered received at 8:00 AM CPT on the next Business Day.

4.7.5 INVOICE ADJUSTMENT DUE TO METER INACCURACY, METER TAMPERING OR THEFT

If any Meter is determined to be non-compliant with the accuracy standards prescribed by Commission rules, Company shall render an adjusted bill pursuant to Commission rules.

Chapter 6: Standard Discretionary Service Charges

6.1 RATE SCHEDULES

6.1.2 DISCRETIONARY CHARGES

6.1.2.1 STANDARD DISCRETIONARY SERVICES**Disconnect/Reconnect for Non-Pay Charges****Disconnect for Non-Pay (DNP)**

Applicable to requests from Competitive Retailer to de-energize service to Retail Customer due to Retail Customer's failure to pay charges billed by its Competitive Retailer or Company.

For premises without a provisioned advanced meter and for premises with a provisioned advanced meter without remote disconnect/connect capabilities, if the DNP is requested by the Competitive Retailer, the request shall be completed within three Business Days of the requested date, provided Company receives the request at least two Business Days before the requested date. Notices received after 5:00 PM CPT, or on a day that is not a Business Day, will be considered received on the next Business Day.

For premises with a provisioned advanced meter with remote disconnect/connect capabilities and for which that Company can successfully communicate with that provisioned advanced meter at the time Company attempts to execute the request by using Company's advanced metering system, if the DNP is requested by the Competitive Retailer, the request shall be completed within 2 hours of receipt of request on the requested date provided Company receives the request no later than 2:00 PM CPT on the requested date and provided that the requested date is a Business Day. Requests received after 2:00 PM CPT on the requested date, or on a day that is not a Business Day, will be completed no later than 8:00 AM CPT on the next Business Day. If Company cannot successfully communicate with the provisioned advanced meter at the time Company attempts to execute the request by using Company's advanced metering system, the request shall be completed within three Business Days of the requested date.

For all premises, Company shall not disconnect a premise before the requested date and shall not disconnect a premise on the Business Day immediately preceding a holiday.

If the DNP is performed by Company due to Retail Customer's non-payment of a charge billed directly by Company to the Retail Customer, or because the Retail Customer has not fulfilled its

obligations under a contract entered into between Company and the Retail Customer, these charges shall not be billed to the Competitive Retailer.

At Meter

- | | | |
|-----|---------------------|--------|
| i. | Standard Disconnect | \$x.xx |
| ii. | Same Day Disconnect | \$x.xx |

At Premium Location (i.e., pole, weatherhead, secondary box)

- | | | |
|-----|---------------------|--------|
| i. | Standard Disconnect | \$x.xx |
| ii. | Same Day Disconnect | \$x.xx |

Reconnect After DNP

Applicable to requests to re-energize service to Retail Customer after Retail Customer has been disconnected for non-payment. Company shall complete reconnection no later than 48 hours from the time the request is received. However, if this requirement results in the reconnection being performed on a day that is not a Business Day, an additional charge for non-Business Day connection will also apply.

Standard Reconnect:

For premises without a provisioned advanced meter, for premises with a provisioned advanced meter without remote disconnect/connect capabilities, and for premises with a provisioned advanced meter for which that Company cannot successfully communicate with that provisioned advanced meter at the time Company attempts to execute the request by using Company's advanced metering system, standard reconnect requests received by Company by 2:00 PM CPT on a Business Day shall be reconnected that day.

For premises with a provisioned advanced meter with remote disconnect/connect capabilities and for which Company can successfully communicate with that provisioned advanced meter at the time Company attempts to execute the request by using Company's advanced metering system,

standard reconnect requests received by Company from 8:00 AM CPT to 7:00 PM CPT on a Business Day shall be reconnected within 2 hours of receipt of request.

For premises with a provisioned advanced meter with remote disconnect/connect capabilities where the Competitive Retailer provides prepaid service under P.U.C. SUBST. R. 25.498, standard reconnect requests received by the Company from 8:00 AM CPT to 7:00 PM CPT on a Business Day shall be reconnected within 1 hour of receipt of request.

For all premises, standard reconnect requests received by Company after 2:00 PM CPT on a Business Day shall be reconnected that day if possible, but no later than the close of Company’s next field operational day. Standard reconnect requests received by Company after 7:00 PM CPT or on a day that is not a Business Day maybe considered received on the next Business Day.

Same Day Reconnect:

Same day reconnect requests received by Company prior to 5:00 PM CPT on a Business Day shall be reconnected no later than the close of Company’s field operational day.

At Meter

- i. Standard Reconnect \$x.xx
- ii. Same Day Reconnect \$x.xx
- iii. Weekend \$x.xx
- iv. Holiday \$x.xx

At Premium Location (*i.e.*, pole, weatherhead, secondary box)

- i. Standard Reconnect \$x.xx
- ii. Same Day Reconnect \$x.xx
- iii. Weekend \$x.xx
- iv. Holiday \$x.xx

NOTE: In no event shall Company fail to reconnect service within 48 hours after a reconnection request is received.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the repeal of §25.125 relating to Adjustments Due to Meter Errors and §25.126 relating to Meter Tampering are repealed with no changes to the text as proposed; and new §25.125 relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Not Been Introduced, §25.126 relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced and §25.132 relating to Definitions; and amendments to §25.214 relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, are hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS this the 20th day of MAY 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER

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