

**PROJECT NO. 41111**

**RULEMAKING RELATED TO                    §            PUBLIC UTILITY COMMISSION**  
**ADVANCED METERING                    §**  
**ALTERNATIVES                            §    OF TEXAS**

**ORDER ADOPTING NEW §25.133 AND AMENDMENTS TO §25.214  
AS APPROVED AT THE AUGUST 9, 2013 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.133, relating to Non-Standard Metering Service, and amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff for Retail Delivery Service) with changes to the proposed text as published in the March 1, 2013 issue of the *Texas Register* (38 TexReg 1328). The adopted sections require a transmission and distribution utility (TDU) with an advanced metering system (AMS) deployment plan to provide a service through which a customer may choose to have electric service metered through an alternative to the standard advanced meter. The adopted sections also require the TDU to obtain and retain written customer acknowledgement regarding the negative consequences arising from choosing non-standard metering service, and to separately charge for the costs associated with the service. The adopted sections constitute competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). The sections are adopted under Project Number 41111.

A public hearing on the new and amended sections was held at commission offices on April 19, 2013, at 11:00 a.m. Representatives from Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (TX ROSE/TLSC) provided comments at the hearing. In addition, comments at the hearing were provided by the following: Catherine Wilson, Thelma Taormina,

Nick Taormina, Devvy Kidd, David Tuckfield, John Ryan, Dr. Laura Pressley, John Marler, David Allen, A.K. Muir, Martin Kralik, Carl Young, John Hancock, Q. Coleman, Bill Biesel, Beth Biesel, Mark Summerlin, Sonia Borgialli, Sheila Hemphill, Michelle Guy, Terry Guy, Bobby Reed, Coleman Hemphill, Dr. Ivette Lozano and Russell Ramsland (collectively, Public Commenters). To the extent that these comments differ from the submitted written comments, such comments are summarized separately below.

The commission received written comments on the proposed sections from the Retail Electric Provider Coalition (REP Coalition); the Steering Committee of Cities Served by Oncor (Cities); Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (TX ROSE/TLSC); City of Houston (Houston); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, Texas-New Mexico Power Company, and Sharyland Utilities, L.P. (TDUs); Mr. H. Ragland; Mr. David Allen; and Texas Energy Association for Marketers (TEAM) and Direct Energy.

The REP Coalition was composed of the Alliance for Retail Markets (ARM); Reliant Energy Retail Services; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. Members of ARM participating in this proceeding were: Champion Energy Services, LLC; Constellation NewEnergy Inc.; Direct Energy, LP; Gexa Energy, LP; Green Mountain Energy Company; Liberty Power; Noble Americas Energy Solutions LLC; and Texas Power. Members of TEAM participating in this proceeding are: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy.

*General Comments*

TDUs stated that the proposed new rule strikes a fair and reasonable balance between the interests of the customers who wish not to have an advanced meter and the interests of the other stakeholders, including customers who choose to have an advanced meter. TLSC/Texas ROSE commented that the proposed new rule recognizes a customer's right to choose to opt-out of the AMS. This is a positive step in recognizing the individual needs of customers and providing options to serve those needs and will serve the public interest, according to TLSC/Texas ROSE. They also recommended that the commission remove the AMS surcharges from customers who choose to take alternative metering service under this rule.

Houston expressed its opposition to new §25.133. Its opposition is primarily because of the potential impact on electric reliability in the Houston area, which it considers to be a public safety issue for the city. Houston stated that offering such a program may diminish the reliability benefits of the intelligent grid. It asked that the commission reconsider implementing rules that allow retail customers to choose an alternative to a fully-functioning advanced meter. Houston explained that the widespread power outages caused by Hurricane Ike in September 2008 made improving reliability and outage preparedness prominent on Houston's long-term agenda. Houston stressed that the installation of a fully-functioning intelligent grid is central to its initiative. This was an initiative pursued in cooperation with CenterPoint Energy.

The TDUs, Cities, and Houston agreed that a widespread or ubiquitous deployment of advanced metering systems provides benefits to all customers, including those without an advanced meter, and helped utilities to identify outages and expedite repairs. The TDUs agreed with Cities that

all customers should pay AMS surcharges, including those who choose to decline advanced metering, because all customers will benefit from reduced outage events and restoration times. Houston requested that the commission consider an exemption from this new rule for those utilities that have substantially completed deployment pursuant to the utility's deployment plan as approved by the commission. Within Houston, advanced meter deployment is considered complete.

The TDUs stated that an AMS also facilitates the offering of time-of-use pricing products offered by REPs. They added that those who have advanced meters also benefit from lower commodity prices that will be achieved by broad implementation of time-of-use pricing and the corresponding decline in energy consumption during peak periods.

Houston commented that only a negligible number of customers persist in declining advanced meter installation - less than 0.002% - approximately 40 customers out of more than 2.2 million customers of CenterPoint Energy. It stated that if a program offering an alternative to advanced metering were applied to all customers, it could significantly undermine the overall success of advanced meter deployment in Houston. Houston commented that it anticipates an overall increase in the number of advanced meter opt-out customers if all are given an option to select an alternative to an advanced meter. It believes that any proposed AMS alternative program must proceed on a case-by-case basis in areas where advanced meter deployments are considered complete. Any such program should be designed and executed based on the specific needs of the utility, its customers, and other affected parties. Commission rules should provide for this flexibility and should ensure cost neutrality for the remaining advanced meter customers.

*Commission Response*

The commission agrees with TLSC/Texas ROSE that adopting this new rule is in the public interest. Although the commission does not share the health and privacy concerns with advanced meters expressed by some commenters, the commission concludes that it is appropriate to address these concerns by giving customers the right not to be served by advanced meters. The commission agrees with the TDUs that the new rule strikes a fair and reasonable balance between the interests of the customers who wish to decline advanced meters and the interests of the other stakeholders, including customers served by advanced meters. Therefore, the commission adopts a new rule that will allow a customer to take non-standard metering service. As the TDUs, Cities, and Houston state, a widespread deployment of AMS provides benefits to all customers, including those without advanced meters. The commission agrees with Houston that the new rule should ensure cost neutrality for the remaining advanced meter customers.

The commission declines to eliminate the AMS surcharges for customers who choose to take non-standard metering service under this new rule, as recommended by TLSC/Texas ROSE. First, PURA §39.107(h) provides that the AMS surcharge is nonbypassable, and therefore the commission does not have the authority to remove customers' obligation to pay the AMS surcharges. Furthermore, even customers who decline advanced metering benefit from the deployment of advanced meters, as the technology enables the utility to manage its entire system more efficiently. The commission further agrees with Cities and TDUs that customers without advanced meters benefit from AMS through shorter

**durations of being without power during outages that affect more than one customer and emergency events.**

**The commission acknowledges the comments from Houston regarding the adverse effects opt-out customers have on reliability and outage management. These effects will vary in relation to the number of customers who choose to have non-standard metering service. If few customers choose non-standard metering service, the effects will be small. These adverse effects support the new rule's requirement that customers who choose non-standard metering pay for all of the costs of that service.**

TLSC/Texas ROSE argued that low-income customers should be exempt from paying fees for declining an advanced meter, or should receive a low-income discount on the associated fees. They added that the utility should have the ability to recover costs of customers declining an advanced meter from shareholders. TDUs disagreed with TLSC/Texas ROSE because providing a discount to low-income customers would require other customers to pay more. The TDUs stated that this would be contrary to the commission's goal of requiring customers who decline an advanced meter to pay the costs associated with that choice.

***Commission Response***

**The commission disagrees with TLSC/Texas ROSE that low-income customers should be exempt from paying fees, or receive a discount on the fees, when choosing non-standard metering service. As the TDUs commented, implementing the TLSC/Texas ROSE request**

**would result in shifting those costs onto other non-standard metering customers or customers who receive service through advanced meters.**

TLSC/Texas ROSE commented that the proposed new rule, as currently written, does not require a customer outreach campaign. They stated that in areas where advanced meters have not been deployed, all customers should be provided the opportunity in advance to decline installation of an advanced meter. This notification would reduce costs because no additional field trips would be needed. TLSC/Texas ROSE added that customer education should include an explanation of the AMS, how it differs from the traditional system, what alternatives a customer would have to an advanced meter, and the corresponding costs. TLSC/Texas ROSE recommended that social and mass media be used to provide customer outreach. TLSC/Texas ROSE explained that REP and TDU websites should be required to include information about the ability to decline an advanced meter, but should not be the only source of information to customers.

The REP Coalition and the TDUs disagreed with TLSC/Texas ROSE that a customer outreach campaign for the right to decline advanced metering is required, because it would negatively impact the benefits of universal deployment of AMS. Thus, the commission should not encourage customers to decline advanced metering, nor require the TDUs to engage in a customer outreach campaign. The REP Coalition also responded that further customer outreach related to declining advanced metering is unnecessary. They noted that interested customers are well aware that the issue is under review by the commission by virtue of Project Number 40190 and the commission's request for written public comment, and public forums on the topic have been well-attended. The REP Coalition clarified that both TDUs and REPs will incur costs and

expend resources to implement the program. The new rule and amendments to the tariff address a TDU's recovery of those costs through commission-approved rates and a REP may choose to address the increased cost of doing business attributable to an opt-out program through institution of a fee.

*Commission Response*

**The commission declines to adopt a customer outreach campaign as recommended by TLSC/Texas ROSE. PURA §39.107(i) provides that it is the intent of the Legislature that AMS “be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives.” Demand response can lower costs to customers who decrease their usage during peak demand which has the potential to play a part in helping to ensure adequate resources in Texas’ growing economy. A customer outreach campaign to inform customers of alternative metering service that undermines these overarching goals would be an unwarranted expense.**

**The commission posed the following questions:**

*(1) Are there any circumstances, such as premises where an advanced meter has not been deployed, where a customer should not have to pay the one-time fee or should pay a reduced one-time fee under proposed subsection (e)?*

Cities, REP Coalition, TLSC/Texas ROSE, and Mr. Ragland commented that a one-time fee was not always appropriate. David Allen stated that under this scenario, the customer should not be charged the one-time fee if an advanced meter has not been deployed. Cities stated there are

certain situations where it is reasonable to exempt certain customers from the one-time fee. Specifically, if the utility did not incur a cost for physically altering the existing meter arrangement, such as by disabling data transmitting technology or providing a non-standard meter, then the one-time fee is unnecessary.

Similarly, TLSC/Texas ROSE stated that there are circumstances where the TDU is not required to perform any additional work or the incremental cost of installation would be less than the inclusive one-time fee. The REP Coalition commented that the new rule should not limit the TDU's ability to assess a lower one-time fee when circumstances warrant such rate treatment and it is deemed reasonable such as when an advanced meter has not been installed and the TDU does not incur upfront non-recurring costs in providing the service.

The TDUs stated that it is incorrect to assume that by leaving an existing meter in place, the TDU will not incur any installation expense and therefore the opt-out customer should not be assessed any costs. The TDUs maintained that costs will be incurred regardless of whether an advanced meter has been deployed at the premises. TDUs stated that they will also incur back-office costs associated with the process. These costs may include a truck roll for existing analog meter inspection and testing, as well as a truck roll for installation once the opt-out customer vacates the premises. The TDUs requested that the commission reject requests to eliminate the one-time fee. The TDUs noted that these same principles apply to the proposals for a reduced one-time fee for customers who currently have an analog meter. The TDUs stated that the proposed new rule properly allows the utility to file a tariff that covers the actual costs incurred by the utility.

Cities disagreed with the TDUs. They responded that forcing a customer to pay for installation of a non-standard meter or reinstallation of an advanced meter after a move-out (potentially years in advance) does not make sense and generates free cash for a TDU that has not yet, and may not for some time, incurred the cost underlying the fee. Cities maintained that including these charges in the one-time fee is inconsistent with cost causation principles.

Mr. Ragland stated that a customer who is currently being serviced by a properly working non-standard meter should be allowed to keep the existing meter, decline the advanced meter, and bypass the one-time fee. TLSC/Texas ROSE commented that a customer, not the TDUs, should have the discretion to choose how it receives opt-out service and the cost should vary depending upon that choice. The TDUs disagreed, stating that if a meter has not already been deployed, the TDU has sole discretion to either leave the existing meter or remove the meter and install a non-transmitting advanced meter. The TDU will therefore incur installation and back office costs at the time of the opt-out, or when the customer vacates the premises. Opt-out customers should pay the costs they cause the utility to incur.

TLSC/Texas ROSE commented that the argument could be made that customers should not have to pay a one-time fee because an opt-out provision should have been provided from the beginning. TLSC/Texas ROSE stated that issues should have been identified early on in the process and built into the deployment plans and that the commission should have withheld approval of major expenditures until all major issues were verified and resolved.

*Commission Response*

The commission does not agree with TLSC/Texas ROSE that issues in this proceeding should have been addressed during development of the advanced metering rule, §25.130. During a process that lasted several years and which included public hearings, workshops, and four contested cases for deployment plan approval and cost recovery, the issues being addressed in this rulemaking were not raised. Each of the four contested cases were settled, with no party objecting to the commission's final order requiring full deployment of advanced meters and cost recovery from all customers in the customer classes receiving advanced meters. Furthermore, the commission evaluated health and privacy concerns subsequently raised against advanced meters and concluded that the concerns are unwarranted. Through this rule, the commission is creating a new discretionary service to give customers the right to be served using non-standard metering service.

The commission agrees with Cities that a customer choosing to take service under this new rule should not be charged the cost of the potential, future installation of an advanced meter if an advanced meter has not been installed for the customer. The initial installation of an advanced meter for a customer not choosing non-standard metering service is not being direct-billed to that customer but is instead being recovered through the AMS surcharge, and a customer choosing non-standard metering service should be treated comparably in that regard. However, a customer choosing non-standard metering service that requires removal of an advanced meter should have to pay for the eventual, second installation of an advanced meter rather than having the cost of that second installation spread to other customers. The commission therefore has modified the rules accordingly.

*(2) For the recurring monthly fee for AMS Alternative Service under section 6.1.2.1 of the Tariff for Retail Delivery Service, should the fee be prorated so that the customer pays for the portion of the first month in which service under the AMS Alternative Service is provided and for the portion of the last month in which service under the AMS Alternative Service is provided?*

Cities and TLSC/Texas ROSE commented that it is appropriate to prorate the proposed monthly AMS Alternative Service fee. Cities stated that customers receiving AMS Alternative Service should only pay for the time period that the customer actually received such service and therefore prorating the monthly fee was fair and consistent with cost-based rates. TLSC/Texas ROSE agreed that the fee should be prorated if the commission determines that it is appropriate to charge the monthly fee.

The REP Coalition and the TDUs disagreed with Cities and TLSC/Texas ROSE. The TDUs stated that since the recurring costs are primarily driven by the time and expense incurred to read the opt-out customer's meter, these expenses will be incurred by the utility and passed on through the recurring fee regardless of the length of the billing cycle. It is incorrect to assume that the length of the billing period affects the monthly opt-out fee. The TDUs maintained that the TDU will bear the full array of costs associated with the opt-out regardless of whether the customer takes service for a few days or the whole month. The TDUs agreed in principle with Cities that billing should be consistent with cost-based rate making, but stated that billing for the full extent of the fee is the best implementation of this principle. The TDUs stated that the fee should therefore not be prorated.

Similarly, the REP Coalition commented that since the monthly AMS Alternative Service fee proposed is designed to recover costs associated with the TDU reading the customer's non-standard meter and managing that meter data, it is unclear how the charges could be prorated since the associated activities would occur each month regardless.

*Commission Response*

**The commission declines to adopt changes as proposed by TLSC/Texas ROSE and Cities. The commission agrees that the REP Coalition and the TDUs are correct, and the recurring costs are primarily driven by the time and expense incurred to read the opt-out customer's meter. These expenses will be incurred by the utility regardless of the length of the billing cycle. The commission agrees with the TDUs that the utility will bear the full array of costs associated with the opt-out customer regardless of whether the customer takes service for a few days or the whole month. The commission agrees with the TDUs that billing for the full extent of the fee is the best implementation of standard ratemaking principles.**

*(3) Should the TDU, rather than the REP, be primarily responsible for interacting with a customer concerning service using a non-transmitting meter, including providing the notification required by proposed §25.133(c)(1)(A), obtaining the acknowledgement required by proposed §25.133(c)(1)(B), and informing the customer of the access requirements described in proposed §25.133(d)(3)?*

Cities and REP Coalition recommended that the TDU be the primary point of contact with the customer. TLSC/Texas ROSE and TDUs argued that the REP should have primary responsibility.

Cities and the REP Coalition recommended that the TDU rather than the REP be primarily responsible for interacting with a customer concerning service using a non-standard meter. Cities noted that this approach is consistent with the traditional TDU ownership model regarding meters and commented that TDUs are familiar with their own tariffs and are better positioned to communicate any costs associated with non-standard meter service. Cities also stated that competitive issues may arise if REPs are responsible for interacting with customers regarding non-standard meters, including highlighting the increased wait time to switch proposed under subsection (c)(1)(A)(ii).

Similarly, the REP Coalition stated that the customer should communicate and interact with the entity that is in the best position to answer questions and facilitate the customer's opt-out request, which it maintained is the TDU. The REP Coalition noted that the TDU should be required to fulfill customer communication and interface related to the technical aspects involving metering equipment and service performance. The TDU has traditionally been and remains the best suited contact for issues relating to advanced metering and each deployment plan includes funds for customer education. Customers may already view the TDU as their point of contact for information on advanced metering. The REP Coalition commented that the TDU is the entity performing the physical activities required to effectuate an opt-out request and inserting the REP in the process would create confusion and result in inefficiencies. The REP Coalition noted that

the current tariff supports allowing the customer to communicate with the TDU directly regarding the installation of non-standard facilities. The tariff sets a precedent for designating the TDU as the point of contact for opt-out inquiries and supports requiring the TDU to directly bill the customer the one-time fee required to effectuate an opt-out request.

The REP Coalition went further in reply comments, stating that the TDU is required to provide metering services within its service area to those customers for whom ERCOT does not require an interval data recorder meter, and the provision of such metering services entails the TDU's ownership of the customer's meter as reflected in the AMS surcharge. Since the TDU owns and provisions the advanced meter, it is the appropriate entity to convey technical, rate, and other information to the customer relating to the disablement of the communications functionality and required meter access. For example, the TDU can better explain how the de-activation of an advanced meter's communication functionality serves to eliminate radio frequencies and/or electromagnetic fields to and from the meter, the nature of associated costs and charges, as well as the operational differences between advanced meters and the alternative meter options. REPs do not have detailed and well-informed information regarding these matters. Further, upon completion of deployment, advanced meters will be the standard meter for residential customers and any opt-out request will constitute a non-standard metering request. The REP Coalition noted that the TDU's tariff places the burden on the TDU for non-standard metering requests and the collection of any associated costs or charges. The REP Coalition stated that the TDU should be the initial and final contact with regards to a customer's opt-out request.

The TDUs and TLSC/Texas ROSE disagreed and stated that the REPs are the best contact for primary customer interaction. TLSC/Texas ROSE commented that under the current customer protection rules, the REP is responsible for communicating with customers and has the appropriate customer service staff able to communicate the customer's preference to the TDU as it does with any other discretionary service.

The TDUs requested that the commission reject Cities' and the REP Coalition's proposals. The TDUs commented that the REP has pre-existing, direct relationships with customers and informational responsibilities, so therefore the REP should be primarily responsible for interacting with opt-out customers. The TDUs stated that this imposes no additional undue burden on the REPs and that implementing the opt-out provisions would be no different than administering and communicating the TDU move-in provisions as is current market practice. The TDUs stated that the REP Coalition's argument that TDUs should assume opt-out communication and billing responsibilities is inconsistent with the position commonly taken by REPs in other proceedings, namely that only REPs should be entrusted to communicate with their customers. As an example, the TDUs cited Project Number 41061 in which the REPs stated in regards to demand response that the "REPs are best positioned to deliver these types of programs [. . .] because the REP has the direct customer relationship, with insights into the customer's wants and needs." Additionally, the TDUs countered that the TDUs do not have a traditional role with respect to opting out of meters, because residential customers have never before had the right to opt out of using the utility's standard meter. Therefore, there is no precedent for the TDU assuming responsibility.

In response to Cities, the TDUs stated that no matter who communicates the opt-out fee to the customer, the fee will be adopted in the TDU's tariff and therefore is set and non-negotiable. The fee will be fixed regardless of who communicates the charge to the customer. The TDUs commented that the REPs should be primarily responsible for interacting with the customer regardless of the type of meter at a customer's premises, as the REP has a preexisting direct relationship with the customer and is aware of the customer's contract and service agreements. The TDU would not be able to explain to the customer potential impacts of opting out, such as possible effects on the customer's electric service plan choice, termination fees, or penalties. Additionally, REPs already regularly quote TDU tariff fees and charges to the customer.

The REP Coalition agreed that the REP should be required to fulfill communication and service requirements impacting the customer's retail product choice and retail service contract. The customer might have to choose an alternative product before an opt-out request can be completed. The REP Coalition proposed conforming language amendments to proposed subsection (c), clarifying the allocation of communication, interface, and administration responsibilities appropriately between the REP and TDU. Cities responded that the REP Coalition's proposal to split communication responsibilities between the REP and the TDU appears reasonable and strikes a reasonable balance between competing concerns.

The TDUs and TLSC/Texas ROSE disagreed. TLSC/Texas ROSE stated that the REP Coalition's proposed amendments would be both cumbersome and time-consuming, allowing for a customer to be bounced back and forth between the TDU and REP. TLSC/Texas ROSE maintained that the REP should be the initial point of contact for opt-out service.

The TDUs noted the REP Coalition's concession that the customer must still communicate with the REP before seeking to opt-out in any event. The TDUs stated that it would be more efficient and less confusing to the customers if the REPs are required to make the necessary disclosures and to obtain acknowledgement. The bifurcated approach advocated by Cities and the REP Coalition would confuse and frustrate customers, causing multiple phone calls to each entity as questions arise. The TDUs commented that the convoluted communication mechanism proposed by the REP Coalition for processing opt-out requests illustrates the complications of trying to divide the responsibilities. The TDUs requested that the commission adopt the simple process prescribed by the proposed rule. The REP Coalition maintained that the REP should only bear the responsibility to convey information to the customer regarding compatibility of an opt-out request and the customer's current retail product or service, and to work with the customer to resolve any related issues. The TDU is the appropriate entity to be primarily responsible for interacting with the customers, and the proposed rule should allocate responsibility in a manner consistent with the roles the TDU and REP serve in effectuating a customer's opt-out request. The REP Coalition agreed with the TDUs that it is the REP's responsibility to communicate any customer contract or product concerns.

### *Commission Response*

**The commission adopts language to make the TDU primarily responsible for working with customers who take service under this rule. While commission policy has generally made the REP the primary market interface for customers, the commission disagrees with the TDUs that the REP should be primarily responsible for handling issues relating to this service. Although the TDUs correctly pointed out that there are instances where the REP**

relationship with the customer has been acknowledged in commission rules, the commission notes there have been several exceptions. These exceptions relate to metering (*e.g.*, deployment, education, installation, troubleshooting), construction service under the tariff, administration for critical care and chronic condition customers, and meter tampering. In each of those instances, the commission has found that it is appropriate for the TDU to have primary responsibility for interfacing with the customer. Construction service under the tariff and the meter tampering rule include requirements for the TDU to directly bill the customer. The commission agrees with Cities and the REP Coalition that requiring the TDU to have primary responsibility is consistent with the TDU's ownership of the meters. The TDUs are familiar with their own tariffs and are better positioned to communicate the costs associated with this non-standard service. The commission also agrees with the REP Coalition that the TDUs are better able to communicate with customers about the technical aspects involving metering equipment and service performance. The commission agrees that concerned customers may already view the TDU as their point of contact for information on metering. The commission agrees with the REP Coalition that the current tariff supports allowing the customer to communicate with the TDU directly regarding the installation of non-standard facilities. The existing language in the tariff for construction service and metering and other services set a precedent for designating the TDU as the primary point of contact for non-standard metering service, and supports requiring the TDU to directly bill the customer the one-time fee. This is addressed further in §25.133(e).

**REPs will address questions about the impact of non-standard metering service on their customers' electric service contracts. And if the REPs receive calls regarding technical aspects of the provision of non-standard metering service from their customers, they can refer the customers to the TDU.**

The REP Coalition recommended that if an affirmative written acknowledgement from the customer is required, the TDU should be the party to obtain the acknowledgement, as it would trigger modification to the TDU's metering equipment. The REP Coalition reiterated that the tariff sets a precedent for requiring the TDU to directly bill the customer the one-time fee required to effectuate an opt-out request. The REP Coalition maintained that the one-time fee could be billed by the TDU directly to customers similar to the market mechanism for construction charges, but if the REP were required to bill the customer instead, it should be adequately protected from risk of nonpayment.

*Commission Response*

**The commission finds that an affirmative, written acknowledgement from the customer shall be required. The TDU shall be the party required to obtain and retain the signed acknowledgement from the customer. This requirement is addressed in §25.133(c).**

The TDUs stated that they have no objections to the commission adopting a mechanism providing REPs any protections when collecting one-time or monthly opt-out fees from customers. The TDUs noted that a REP could protect itself from nonpayment of the one-time fee by waiting to notify the utility of the customer's opt-out request until after the customer

tenders payment. The TDUs disagreed, however, that the utility should be the billing agent. The TDUs stated that the same arguments used to justify making the REP the point of contact for communications purposes with the customer also support making the REP the billing and collections agent with respect to the one-time and monthly opt-out fees. The TDUs noted that the REPs have existing billing arrangements with the customers, whereas the TDUs do not and that any construction charges are generally one-time collections handled through a manually-intensive process. TLSC/Texas ROSE disagreed that the TDU should directly bill the opt-out customer the one-time service fee. The proposal would cause additional administrative expenses and confuse customers who expect to receive their bills from the REP.

#### *Commission Response*

**The commission finds that the TDU should be responsible for billing the customer directly for the one-time fee. This is discussed below, and rule language is added in §25.133(c).**

#### *Public Hearing*

A public hearing was requested by Texas Eagle Forum. The commission held a public hearing on Friday, April 19, 2013. Public Commenters commented on a number of issues not specific to the rule at the public hearing. These issues included customer choice, constitutional freedoms, personal testimonials regarding experiences with TDUs, Texas sovereignty, health concerns, privacy, and damage to consumer appliances. Hearing comments that relate to particular rule language are included in the summary for the applicable rule provision.

Public Commenters voiced their opposition to the installation of advanced meters and the continued implementation of Smart Grid technologies, and asked that the Texas state government protect its citizens from any rules or regulations stemming from the United Nations' Agenda 21. Beth Biesel stated that the deployment of advanced meters was not mandatory. Ms. Biesel stated that the TDUs are regulated monopolies. By failing to provide flexibility or options for customers and requiring fees to be paid by those customers declining advanced meters is incompatible with the free market model. Ms. Biesel pointed out that other new technology, such as cell phones, were developed and deployed in a free market exchange, and initially only wealthy or tech-savvy chose to purchase a cell phone. She stated that the cost of new technology tends to decrease over time, and more customers subsequently adopt it. She added that no one was forced to buy a cell phone, nor was anyone penalized for not buying one.

Ms. Biesel also urged the commission to keep the Texas electric grid separate and independent.

Public Commenters provided anecdotal information related to the negative health effects they attribute to the installation of advanced meters. David Tuckfield, representing the petitioners in Project Number 40404 (Petitioners), commented that the commission should conduct a study on the health effects of advanced metering and provide the public with information regarding health and safety.

The Petitioners stated that the costs incurred by a TDU to implement the proposed new rule should not be borne only by the customers who choose to receive service using non-standard meters because a customer's decision to maintain an analog meter is not simply a preference, but

may be a medical necessity because of disabilities. Russell Ramsland stated that health concerns by themselves should dictate that declining installation of an advanced meter be made available at no cost. Coleman Hemphill expressed the same position.

Bill Biesel stated that he owns various warehouses and retail buildings in the Dallas/Fort Worth area and leases them to tenants. Mr. Biesel stated he would like to decline installation of advanced meters on his properties because he does not want to expose his business to potential liabilities in the form of negative health effects.

Public Commenters voiced concerns regarding their privacy and the security of meter data. David Allen stated that a meter that has had its data transmission capabilities disabled still collects data and can be activated at any time. Mr. Allen also stated that an analog meter should be made available on request to ensure that no data transmission could take place. Mr. Biesel also stated his concern about the loss of private data by his tenants, including unspecified intellectual property, and feared such loss would expose his business to potential liability.

Public Commenters stated that there were numerous instances where people had suffered damage to appliances upon installation of an advanced meter. Mr. Allen stated that the disconnect relay in an advanced meter can be activated which could damage appliances. An analog meter should be made available on request to ensure that inadvertent power disconnections do not take place.

*Commission Response*

The commission acknowledges the comments made by Public Commenters, Mr. Biesel, Ms. Biesel, Mr. Tuckfield, Mr. Allen, Mr. Ramsland, Mr. Hemphill, and the Petitioners. The commission evaluated health, privacy, and operational concerns against advanced meters and concluded that the concerns are unwarranted. However, through this rulemaking the commission is giving customers the right to choose metering service that does not require use of advanced meters. As with other non-standard services, customers choosing this non-standard metering service will be required to pay the costs for the service.

*Section 25.133**Subsection (a) Purpose*

TEAM and Direct Energy raised the issue of the applicability to commercial customers. They stated that customer classes were not specified in the published rule, and therefore the rule and tariff changes would apply to all customers who have advanced meters. TEAM and Direct Energy expressed concern that the application of the rule would be overly broad and could lead to unintended consequences, such as potential ERCOT settlement issues and market distortions.

TEAM and Direct Energy argued that commercial customers have other avenues available to them to alleviate their concerns with advanced meters. TEAM and Direct Energy stated that commercial customers also have additional premises construction and property configuration options that could be used to alleviate any concerns with proximity of the meter to certain portions of premises. Further, commercial customers have the ability today to obtain a meter

other than an AMS meter as installed by the utility through the competitive metering process under §25.311.

TEAM and Direct Energy commented that the rule does not appear to contemplate the ability of a customer who chooses a non-standard meter to be settled on 15-minute data. Because of this, TEAM and Direct Energy believe the provisions of the proposed rule changes should not apply to non-residential customers. Without the 15-minute data, premises will be settled on an estimated profile of usage. Estimated profiles of usage are not appropriate for commercial customers whose actual usage may be much different than the profile, depending on the nature and type of business. Commercial customers generally receive electric service based on their usage, and advanced metering services allow their service to be provided on the most efficient basis possible using real 15-minute data.

Mr. Pratt responded that the term commercial is applied to virtually any location with less use than a residence, such as with outdoor security lights, barns, and other separate structures on a homeowner's property that have separate meters. As such, Mr. Pratt argued that homeowners with electric service that is partly classified as commercial, or non-residential, would be greatly impacted by TEAM's and Direct Energy's recommendation. Moreover, Mr. Pratt argued, business owners will be able to judge for themselves what is in their best interest.

*Commission Response*

**The commission agrees with Mr. Pratt that homeowners with electric service who may be partly classified as commercial or non-residential would be put at a disadvantage by the**

**recommendations made by TEAM and Direct Energy. TEAM and Direct are correct that the non-standard metering service provided for under the new rule will not be settled using the customer's actual usage each 15 minutes. The commission does not believe that the potential for ERCOT settlement issues raised by TEAM and Direct requires non-residential customers be exempt from this rule. Although sub-optimal, some commercial customers have for years been served by non-advanced meters and therefore settled by ERCOT using averaged load profiles. As indicated by the comments of Bill Biesel, persons concerned with smart meters include owners of commercial facilities such as warehouses and retail buildings. The commission therefore declines to adopt the recommendation put forth by TEAM and Direct.**

Cities stated that all customers should continue to pay the fixed AMS surcharge, even those opting for non-standard meter service. Cities argued that deployment of advanced meters and the resulting Smart Grid technologies allow the TDUs to better manage reliability and respond more quickly to outages. This benefits all customers, and it is only fair that all customers carry those costs. Cities noted that the rule as proposed appropriately does not exempt customers who will choose non-standard meters from paying the surcharge. The TDUs agreed with Cities. TDUs added that advanced metering customers also benefit from the potential for lower commodity prices that can be achieved through broad implementation of time-of-use pricing, and the corresponding decline in peak period consumption.

*Commission Response*

The commission agrees with TDUs and Cities that all customers should continue to pay the fixed AMS surcharge, even those opting for non-standard metering service, as required by PURA. Under PURA §39.107, the “commission shall establish a *non-bypassable* surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and metering information networks.” (Emphasis added.) Furthermore, AMS benefits customers not served by advanced meters. AMS allows a TDU to better manage system reliability and respond more quickly to an outage in the case where a customer without an advanced meter is situated close to customers with advanced meters and is affected by the same outage.

*Section 25.133**Subsection (b) Definitions*

TLSC/Texas ROSE stated that the proposed new rule should articulate what alternative options would be available to customers in place of advanced meters. They suggested that more than one option should be offered, including customer retention of the analog meter rather than being limited to the TDU provisioning a non-standard advanced meter. They pointed out that providing customers with options is consistent with a competitive market and should be encouraged. Mr. Ragland stated that the customer should be allowed to choose not to have the existing analog meter replaced with an advanced meter. Public Commenters agreed. Mr. Pratt recommended that a customer be allowed to choose an analog meter, not merely a digital non-communicating meter. Mr. Pratt expressed concern with customers being overcharged as a result

of advanced meters, and that merely turning off the communication functions of a digital meter may not protect customers from being overcharged.

TLSC/Texas ROSE stated that the costs incurred in providing alternate metering services should vary depending on the circumstances, and that customers who decline advanced metering, and not the TDUs, should have the discretion to choose how they will receive service, including using analog meters.

*Commission Response*

**The commission agrees with Public Commenters, Mr. Pratt, and TLSC/Texas ROSE that more than one option should be offered under this rule. The commission therefore adopts a rule that offers four options to customers. None of the four options will transmit 15-minute data. These options will allow the customer to receive service metered through either (1) an advanced meter that has the radio communications disabled; (2) if applicable, the existing meter if the TDU determines that it meets applicable accuracy standards; (3) an analog meter, if commercially available to the TDU and if determined by the TDU to be accurate; or (4), a digital, non-communicating meter.**

*Section 25.133*

*Subsection (b)(2)*

The REP Coalition proposed changing the term “non-transmitting meter” to “non-advanced meter.” They stated that this would capture both the disabling of the advanced meter’s communications capability and the absence of transmitted meter data for settlement purposes. The REP Coalition added that the modification appears to be consistent with the purpose and

intent of the proposed rule. They recommended revising the definition to be less prescriptive, because the proposed rule as a whole adequately covers what is intended.

The TDUs disagreed, arguing that the current language provided a clear definition for a “non-transmitting meter” and the TDUs’ obligations regarding such a meter. They stated that changing the term to “non-advanced meter” would be a misnomer for advanced meters whose wireless communications capabilities have been disabled or removed. TDUs commented that if the meter’s communications capability is disabled, it logically follows that the meter is not transmitting meter data for settlement purposes. Moreover, they explained that some of the TDUs intend to remove all analog meters and replace them with non-transmitting meters.

TLSC/Texas ROSE and Public Commenters’ argued that a disabled advanced meter should not be the only option available to a customer that wants to opt out. They urged the commission to allow customers to keep their analog meter if it is still on the premises, or choose from other options such as a digital non-communicating meter, in addition to the non-transmitting advanced meter as proposed in the rule.

### *Commission Response*

**The commission has changed the term “non-transmitting meter” to “non-standard meter,” which more accurately reflects the four non-standard metering options available under the adopted rule.**

*Section 25.133**Subsection (c) Participation*

The REP Coalition and Cities restated their position that the TDU should be primarily responsible for communicating with customers regarding requests for non-standard metering service. TLSC/Texas ROSE and TDUs disagreed, and reiterated their support for the REP responsibilities as described in the proposed rule.

*Commission Response*

**As explained above, the commission agrees with the REP Coalition and Cities that the TDU should be primarily responsible for communicating with customers regarding this service. The commission therefore declines to adopt the recommendations made by TLSC/Texas ROSE and the TDUs.**

*Section 25.133**Subsection (c)(1)(A)*

The TDUs commented that the notification requirements under this provision will not impose any material, additional burden on the REP because the majority of the conditions listed and included in the acknowledgement apply to the TDU's advanced meter and the discretionary services relating to the non-standard meter. The REP Coalition disagreed, and argued that the customer's informed request to decline installation of an advanced meter after the receipt of pertinent information and payment of the one-time fee should serve as the customer's affirmation to receive electric service through a non-standard meter. The REP Coalition stated that the TDU

is allowed cost recovery under the proposed rule so it is better positioned to recover the costs associated with administering the process.

The REP Coalition argued that existing processes should be leveraged, and suggested that TDUs and REPs could use ERCOT's existing MarkeTrak process to handle customer requests. The REP Coalition provided proposed language to this effect, and described a detailed alternative to the proposed rule process. First, all customers would contact the TDU if they had questions about non-standard meters and/or desired to affirmatively request an alternative to an advanced meter. The TDU would notify the customer of the information listed in proposed subsection (c)(1)(A). If the customer chooses to affirmatively request a non-standard meter after receipt of this information, the TDU would initiate a standard market process (*e.g.*, MarkeTrak) to notify the REP of the customer's request. TDUs responded that these fees would be approved by the commission and included in the tariff, so the REP should be able to explain those fees, just as it does with other fees today.

Second, the REP Coalition proposed that the REP would then have ten days from the date of notification by the TDU to attempt to work with the customer to transition them to a different retail product or service in the event the customer is currently enrolled in a product or service that relies on an advanced meter. If the REP is unable to transition the customer within the ten-day period, the REP will notify the TDU that the request cannot move forward. Otherwise, the default action by the TDU is to move the request forward. TDUs responded that under this scenario, the TDU would have to issue the MarkeTrak notice and then monitor the process for up to ten days to see if the REP replies.

If the TDU is not contacted by the REP within ten days, the TDU would be required to assume that the opt-out request was approved by the REP. The TDUs said this is problematic, and that assumptions should not be made about the customer's opt-out request.

Third, the REP Coalition proposed that for the requests that can move forward, they support the 30-day timeline proposed in subsection (d)(1). Once the request to have a non-standard meter is completed, the TDU would be required to provide notice to the customer and the REP that a non-standard meter has been activated at the customer's premises.

Lastly, the REP Coalition commented that to address the requests that do not move forward because of the customer's current enrollment in a product or service that relies on an advanced meter, the rule should direct the TDU to inform the customer that the request could not move forward and advise the customer to contact the REP for further details. The rule should also state that the customer may submit a new request after the issue is resolved.

The TDUs maintained that the mechanism proposed by the REP Coalition illustrates the complications of trying to divide the communication responsibilities between TDUs and REPs.

### *Commission Response*

**For the reasons discussed above, the commission believes that the TDU is the appropriate party to serve as the primary point of contact for customers wishing to decline an advanced meter. Once the TDU has obtained the signed written acknowledgement and one-time fee**

**from the customer, the TDU shall notify the REP through market notice procedures of the customer's choice to decline an advanced meter. The TDU shall not commence the opt-out process until it receives both the signed written acknowledgement and the one-time fee. For a customer for whom the TDU has not installed an advanced meter, the commission has included a deadline of 60 days for the customer to provide the signed written acknowledgement and one-time fee.**

**The commission agrees with the REP Coalition that the rule needs to address retail electric product compatibility with non-standard metering service. The commission has therefore added §25.133(f), which provides that if a customer is on a retail electric product that is not compatible with non-standard metering service, the REP must transition the customer to a product that is compatible with non-standard metering service.**

*Section 25.133*

*Subsection (c)(1)(B)*

The REP Coalition recommended that the acknowledgement requirement in this paragraph be deleted, or alternatively, the TDU be required to obtain the acknowledgement. They argued that obtaining this written acknowledgement will be difficult from an administrative standpoint and may delay completion of an opt-out request because of the customer's own dilatory action. Further, it is unnecessary because the receipt of payment from the customer would serve as the customer's affirmation to obtain a non-standard meter. The REP Coalition stressed that placing this responsibility on the TDU would avoid the complexities that would otherwise ensue if the customer switches REPs in the middle of the opt-out process.

The REP Coalition added that given the TDU is allowed cost recovery under the proposed rule, it is better positioned to recover the costs associated with administering this potentially time and resource-intensive step in the opt-out process.

The TDUs disagreed with this suggestion. They argued that the written and executed acknowledgement adds value in at least two ways. First, it ensures that each customer has been informed of the disadvantages associated with opting out. Second, it provides a written record of the customer's decision to opt out, which can be used not only to trigger the meter switch, but also defend against later allegations that the customer did not opt out and therefore should not be charged the monthly fee. TDUs commented that it was unclear from the REPs why this process would be administratively difficult, and that any delay in effectuating the opt-out as a result of not receiving the customer acknowledgment would not hurt the REP. The TDUs also pointed out that only the REP knows the information required as to whether the customer is currently enrolled in a product or service requiring an advanced meter as a condition of enrollment.

### *Commission Response*

**The commission agrees with the TDUs that a written acknowledgement adds value. A customer who chooses to opt-out may experience substantial disadvantages resulting from that choice. These include but are not limited to the potential for longer restoration times in the event of an outage, inability to choose retail services that depend on advanced meters such as prepaid service, increased discretionary service charges to account for the truck roll necessary for moving-in and moving-out of premises and for switching, and longer**

switch times. Given these disadvantages, it is reasonable to require a written acknowledgement. A written acknowledgement will ensure that the customer has been informed of, and has acknowledged, the disadvantages associated with opting-out. A written acknowledgement will also create a clear record of the customer's choice to opt-out. In order to ensure that the written acknowledgement is available, the commission has added a requirement that the acknowledgement be retained by the TDU for at least two years after the non-standard meter is removed from the premises. In addition, to ensure that the written acknowledgement conveys sufficient information and is consistent throughout TDU service areas, the commission may adopt a form for the written acknowledgement.

The commission agrees with the REP Coalition that the TDU is in the best position to obtain and retain the customer's written acknowledgement. Under this rule, the TDU will continue to provide service for the customer regardless of whether the customer switches REPs and therefore the written acknowledgement can be readily located and provided by the TDU if it is needed long after the non-standard metering service is initiated. If the REP were required to obtain and retain the written acknowledgement, there would be logistical challenges and costs if the customer switched REPs and the written acknowledgement needed to be located and provided long after the non-standard metering service is initiated.

*Section 25.133*

*Subsection (d)(1) TDU Installation and meter reading obligations*

The REP Coalition recommended deleting this provision.

*Commission Response*

**The commission agrees with the REP Coalition and deletes this language accordingly.**

*Section 25.133**Subsection (d)(3)*

TLSC/Texas ROSE again stated the proposed new rule does not provide enough alternatives for those wishing to avoid having an advanced meter. This subsection requires the TDUs to read a non-standard meter monthly but does not include other options such as the customer reading the meter, which would lower the costs of providing an alternative to advanced metering.

Mr. Allen suggested that if a customer could enter their electric usage data into a web page, no meter reading charge would be needed. He explained that his coworker in Austin County read her own meter for 30 years, each month sending in the readings on a prepaid post card from the power company. He stated that a TDU should be able to create a data entry webpage to enable analog meter customers to enter their monthly meter readings and this would save both the TDU and customers millions of dollars in meter reading charges.

Ms. Biesel commented that declining an advanced meter does not necessarily require a meter reader because the TDUs could transmit electric consumption over existing phone lines or power lines. She stated that this method would also be more secure than wireless transmissions and eliminate RF exposure. She added that she was aware of landline technology being removed from a house when an advanced meter had been installed.

The TDUs opposed the recommendations to allow customers who decline an advanced meter to read their own meters and report their usage, and cautioned against the unintended consequences. They explained that accurate consumption is necessary to ensure system costs are paid fairly by all customers. The TDUs stated that, while they do not believe that the customers who desire to decline advanced meters are dishonest, allowing the self-reporting of usage would encourage dishonest people to decline advanced meters so that they could under-report their usage. This would also enable meter tampering to occur because a customer without an advanced meter would be able to evade detection by meter readers that have been trained by the TDU to detect instances of meter tampering during the monthly meter reading.

*Commission Response*

**The commission declines to adopt the recommendation that customers be able to read their own meters and self-report their electricity consumption. The commission believes that the commenters advocating for the option to receive non-standard metering service are motivated by health, privacy, and operational concerns about smart meters. Furthermore, although customers receiving non-standard metering service should pay all of the costs for that service, they should not have to pay unnecessary costs for that service. Allowing self-reporting of usage could perversely encourage a practice of declining advanced meters in order to under-report electricity usage. In addition, customers could inadvertently fail to timely report their electricity consumption or unintentionally misstate their consumption through mistakes in writing down the meter consumption numbers. Although such problems would be addressed later, the price of electricity varies substantially over time, and therefore the errors would have to be corrected using estimates of consumption for all**

**of the numerous 15-minute intervals affected by the errors. As a result of these errors and estimates, a non-standard metering service customer who had delays or other errors in meter consumption numbers will be undercharged or overcharged for service, even after correction of the errors through estimates. The effects of the error will be spread to other customers. As a result, other customers would be forced to pay for the delays or other mistakes of these customers. In addition, even without errors or intentional under-reporting, some cost shifting will occur from non-standard metering service because averaged load profiles will have to be used because 15-minute consumption data will not exist for these customers. Allowing non-standard metering service customers to self-report their usage would exacerbate this cost shifting. Therefore, the commission declines to allow non-standard metering service customers to self-report their consumption.**

*Section 25.133*

*Subsection (e) Cost Recovery*

*Utility Direct Bill Proposal*

The REP Coalition reiterated its position that requests for a non-standard meter should be handled in the manner that customer requests for non-standard services are currently handled – by the TDU. They argued that the TDU has the ability to directly bill the customer the construction charges relating to the request for non-standard service. The one-time fee that is required by the proposed rule to have a non-standard meter should be treated as a construction charge, with billing to occur directly from the TDU to the customer using existing market processes.

The REP Coalition stated that requiring the TDU to directly bill and collect the one-time fee from the customer is the best way to protect against the risk of nonpayment of such a fee. The REP should not be required to bear the entire risk of nonpayment of the one-time fee, because of the potentially significant amount of the fee and the possibility that many customers charged the fee may not feel compelled to pay it. Treating the one-time fee as a discretionary service charge for electric service will allow a REP to compel payment of the fee through potential service disconnection, but a customer could request a non-standard meter and then switch to another REP to avoid paying the one-time fee, resulting in bad debt for the unpaid REP.

The REP Coalition suggested two ways for the REP to address the risk of nonpayment. The first way is for a REP to require the customer to remit full payment of the one-time fee before the opt-out request proceeds. The second is if the REP elects not to require the up-front and full payment of the fee, it could place a switch-hold on the customer's account until the one-time fee is paid in full. This would be subject to informing the customer of the REP's right to apply a switch-hold before allowing the customer's request to decline an advanced meter to proceed. The TDUs also commented that the REP could require the payment of the fee upfront.

If the determination is made that the TDU should not be required to directly bill the customer the one-time fee, the REP Coalition asserted that the commission should adequately protect REPs from the risk of nonpayment. Any monthly charge for a non-standard meter should be treated as a discretionary service charge for electric service, regardless of whether the TDU or REP is designated as the entity responsible for billing the one-time fee.

The REP Coalition pointed out that if the REP were required to bill the one-time fee, a REP would need to design and implement new internal processes to ensure the removal of the TDU charge from its bill to the customer, provided that the customer has prepaid the amount. This second alternative would require the development of new market processes to create a switch-hold category designed specifically for requests to decline advanced meter installation.

The REP Coalition summarized that the complexity and costs associated with either option are precisely why the TDU should bill and collect the one-time fee for a non-standard meter, consistent with the handling of construction charges in the tariff.

TLSC/Texas ROSE and TDUs did not support the REP Coalition's recommendation. TLSC/Texas ROSE responded that this proposal would cause additional administrative expense, increasing the costs customers would bear to receive opt-out services. It also could result in confusion from the customer who expects the bill to come from the customer's REP. TDUs commented that the same reasons that justify making the REP the point of contact for communications also support making the REP the billing and collection agent. The TDUs pointed out that the REPs have existing billing arrangements with their customers, whereas the TDUs do not. They also pointed out that comparing opt-out to construction charges is not apples to apples because construction charges are generally one-time charges that are handled through a manually-intensive process. In contrast, TDUs argued, the REPs have well-developed processes for billing customers.

*Commission Response*

The commission agrees with the REP Coalition that the installation of a non-standard meter under this rule is a non-standard, one-time service and should be handled by the TDU. As pointed out by the REP Coalition, the one-time fee that is required by the proposed rule to have a non-standard meter should be treated as a construction charge, with billing to occur directly from the TDU to the customer using existing market processes. Requiring the REP to assess the fee from the customer would require each REP in the market to invest in system and process changes, even if the REP never has a customer that chooses non-standard metering service. The commission adopts language accordingly to require the TDU to bill this fee to customers. The REP shall bill the customer for the recurring monthly fee for non-standard metering service, like other recurring charges for ongoing service.

*Proceeding to Set Fees*

TDUs commented that the fees to be charged to customers should be approved administratively. Cities, TLSC/Texas ROSE, and the REP Coalition commented that costs could vary depending on the circumstances. TLSC/Texas ROSE stated that any recurring fees proposed by a utility should be supported in advance by evidence of the reasonable and necessary costs, and that the proposal should also include alternatives for the customer and alternatives for cost recovery. They stated that all customers should be treated equally whether they choose to decline an advanced meter before or after its installation. Cities recommended that the commission require the TDUs to file the supporting calculations for developing the fees or revisions to the fees.

They commented that the proposed rule is unclear about what information the utilities must file to establish the opt-out fees to ensure that they are appropriately supported by costs.

Cities opposed tariff approval without commission action. Cities also did not support the concept of the TDUs using an administrative review process to change the one-time opt-out fee and the monthly opt-out fee because it is inconsistent with §22.33(b). The rule requires the docketing of a proposed tariff if the commission receives a motion to intervene by a third party or if a proposed revision of an existing tariff will increase the utility's revenues or the customer's bill. Cities also cited §22.32, which states that such a filing does not qualify for administrative review unless the docket has been referred to the State Office of Administrative Hearings, at least 30 days have passed since the completion of all notice requirements, the matter has been fully stipulated by the parties so that there are no issues of law or fact in dispute, and the administrative law judge finds that no hearing or commission action is necessary.

Cities pointed out that in the AMS implementation dockets, utilities provided estimates of savings and benefits resulting from the deployment of advanced meters, such as meter reading savings, ad valorem tax savings, as well as other savings. Cities suggested that if recurring charges for non-standard meter service exceed the relevant components of the operating savings credited to AMS surcharge recovery, TDUs may over-recover costs. Thus, utilities should provide sufficient information regarding the savings embedded in AMS surcharge recovery at the same time that they present their proposals for non-standard meter service. This will demonstrate that the combined charges do not result in TDUs double recovering operating costs.

TLSC/Texas ROSE recommended that the proposed rule include language so that rates for declining an advanced meter are set in a public rate hearing. This would ensure that the reasonableness and necessity of costs the TDUs use to determine their recommended fees. They argued that customers have the right to a hearing to contest a rate proposed by a utility, and the proposed new rule should be amended to replace the phrase “compliance tariff” with “rate filing.”

The TDUs agreed that one-time and recurring monthly fees should be based on costs incurred by TDUs for a customer to decline an advanced meter, but took issue with having the fees determined through contested hearings. They argued that the process would give rise to rate case expenses, which would be allocated to those who decline an advanced meter in the form of a surcharge added to the monthly recurring fees.

The TDUs also argued that contested cases would deny the commission and TDUs the flexibility to change the fees associated with declining advanced metering services. The TDUs stated that maintaining this flexibility is important because the costs of maintaining a manual data entry system or installing an automated system (in the event a large number of customers wish to decline advanced metering) are fixed, while the amount allocated to those customers who decline advanced metering services would be a variable cost, depending on how many make that choice. The TDUs explained that conducting a cost-of-service study and undertaking a contested case each time it wanted to reallocate fixed costs would take a considerable amount of time before rates could be changed to reflect the new customer counts. The TDUs proposed as a solution to instead use good faith estimates of costs in filing compliance tariffs, and that existing remedies

can be used in the event that the true costs incurred by a TDU necessitate a challenge to its compliance Tariff.

The TDUs suggested that language could be added to define when and how a TDU can change the one-time, up-front fee and the monthly fee. TDUs pointed out that it is currently unknown how many customers will take advantage of the alternative service. Moreover, the number of opt-out customers may change from month to month. The TDUs stated that it is important that they have a mechanism to change the one-time, up-front fee and the monthly fee to ensure that the costs incurred by those who decline an advanced meter are borne solely by them, without undertaking a full tariff revision process and its attendant delays.

The REP Coalition stated that it did not oppose the TDUs' proposal to update the one-time fee and recurring monthly charge approved in the compliance tariff required under the rule provided that the REPs are given reasonable notice (*i.e.*, 45 days) of any revisions to the one-time fee and recurring monthly charge. The REP Coalition stated it supported this if the rates are expressed as specific dollar amounts, rather than "as calculated" amounts that may vary from customer to customer, as the TDUs currently use for certain discretionary services in the tariff.

### *Commission Response*

**The procedures that will be used for the commission to approve the fees will depend on whether there are disputed issues. If there are no disputed issues, the fees can be approved by the commission without the need for a hearing. In order to minimize the possibility of disputed issues, the TDUs should make reasonable proposals that are fully supported with**

testimony and documentation, and the commission has included language in the rule to this effect. If there are disputed issues, the commission anticipates that it may preside over the hearings rather than refer the disputes to the State Office of Administrative Hearings, in order to reduce the time necessary to approve the fees. Under PURA, a TDU has the right to seek changes to the fees if the TDU determines that the fees do not accurately reflect the costs of the service. To more explicitly provide for recovery of all such costs, the commission has added language to the rule allowing the fixed costs not related to the initiation of non-standard metering service to be allocated between the one-time and monthly fees, and recovered through the monthly fee over a shortened period of time. In addition, the commission has added language to the rule allowing the TDU to recover through the fees the reasonable rate cases expenses that it incurs for the proceedings to set the fees.

The commission agrees with the REP Coalition that changes made to the fees pursuant to this rule should include a 45-day notice period to account for changes to the recurring monthly charge and adds language to this effect.

*Installation Costs for Advanced Meters*

Cities argued that the TDUs should not charge customers in advance the cost of re-installing the advanced meter when the customer who declined the advanced meter vacates the premises. They stated that it is unclear when the customer will vacate the premises. It could be a period of years before they vacate, and if the customer owns the residence, the decision to decline an advanced meter may be permanent. Cities stated that requiring advance payment for reversing

the decision to decline an advanced meter would generate free cash for a TDU because the TDU has not yet incurred the cost underlying the fee and this would be inconsistent with cost causation.

Public Commenters did not support the proposed cost structure in this subsection. Mr. Allen stated that customers have been billed monthly surcharges for years to pay for the advanced meters and customers should not be charged again to remove them.

The REP Coalition stated that advanced meters will constitute the standard meter and the objective of the approved deployment plans is ubiquitous deployment. A customer's request for non-advanced meter is a request for a non-standard meter. A customer today may directly request delivery service utilizing non-standard facilities from a TDU under §5.7.5 of the tariff, subject to the operational feasibility of installing or constructing those facilities and the requirement that the customer pay the cost of those facilities directly to the TDU. In addition, §5.7.8 of the tariff allows a customer to directly request a TDU to remove a meter under similar operational restrictions and payment requirements.

*Commission Response*

**The commission agrees with the REP Coalition that the objective of the approved deployment plans is ubiquitous deployment. The commission agrees with Public Commenters, Cities, and Mr. Allen that a customer taking service under this rule should not be charged the cost of the potential, future installation of an advanced meter if an advanced meter has not been installed for the customer. The initial installation of an advanced meter for a customer not choosing non-standard metering service is not being**

**direct-billed to that customer but is instead being recovered through the AMS surcharge, and a customer choosing non-standard metering service should be treated comparably in that regard. However, a customer choosing non-standard metering service that requires removal of an advanced meter should have to pay for the eventual, second installation of an advanced meter rather than having the cost of that second installation spread to other customers.**

*Section 25.133*

*Subsection (f) Effective Date for Non-Standard Metering Service*

The TDUs commented that when the new rule is adopted, all market participants will need time to establish processes for communication of requests, billing, and other back-office functions. They provided language clarifying that provisions of this rule shall not become effective until the 180<sup>th</sup> day after the date on which the final rule is published in the *Texas Register*. TLSC/Texas ROSE responded that the rule should take effect in less than 180 days after the rule is promulgated. They stated that the TDUs should make rate filings within 30 days of the effective date of the rule, and that the alternate metering service commence within 45 days of commission adoption of the associated service fees.

The REP Coalition agreed with the TDUs that all market participants will need time to establish processes to handle customer requests. Regarding the effective date, they did not have an opinion on whether it should be 180 days after publication in the *Texas Register*. They suggested that the effective date should be calculated based on several factors. These include the reasonable estimate of the time it will take for market processes to be developed to handle

customer requests; the time for the commission to review and approve the TDUs' compliance tariffs relating to opt out service; and the need for a 45-day notice period from the date of compliance tariff approval to allow REPs adequate time to implement any new charges assessed by the TDU to a REP. The REP Coalition indicated it would like to work with commission staff and other parties to determine the most appropriate effective date once the opt-out process is finalized.

*Commission Response*

**The commission agrees with the REP Coalition's statement that certain factors should be considered to determine the appropriate implementation date for non-standard metering service and has added a new subsection (g) to address that implementation date. Under the Administrative Procedure Act, a rule generally takes effect 20 days after the date on which it is filed in the office of the Secretary of State. Therefore, TDUs will be required to file compliance tariffs no later than 25 days after the effective date of the new rule and TDUs will be required to begin offering non-standard metering service pursuant to the new rule the later of 160 days from the effective date of the new rule or 45 days after notice of the approved rates to REPs.**

**§25.214 - Pro-forma Retail Delivery Tariff**

*Subsection (d)*

*One-Time Fee*

Cities stated that the new rule appropriately incorporated the principle of cost neutrality to customers who do not select non-standard meters. Cities stated that all customers should

continue to pay the fixed AMS surcharge, even those opting for non-standard meters. The rule as currently proposed relies upon PURA §39.107(h) and §25.130(k) of the commission's rules. The TDUs stated that no broader public interest is served by an individual customer's decision to decline an advanced meter, so the costs should be borne solely by the customer who causes the costs to be incurred. Cities agreed with the TDUs in that regard, and stated that the option for a customer to select a non-standard meter should be cost neutral to those customers who do not select them.

Public Commenters argued that they should not be charged to opt-out because they did not want the advanced meter in the first place. Mr. Ragland commented that by leaving the existing meter (non-advanced meter) in place, the TDU will not incur any installation expense, and therefore he should not be assessed the one-time fee. He added that this option will help minimize costs for both customers and the TDUs. Mr. Biesel stated that his business should not be penalized for not participating in the advanced meter program because it was not mandatory. He opined that because the cost of deployment has been socialized, then declining advanced metering should also be socialized. Mr. Allen stated that customers have already been billed monthly surcharges for years to pay for the advanced meters and customers should not be charged to have an alternative meter. Ms. Biesel commented that being charged a fee to decline an advanced meter is discriminatory because only the wealthy will be able to afford it. She stated that it would be challenging for people who are elderly, disabled, or on a limited or fixed income to pay the costs of declining an advanced meter. She pointed out that many of these classes of people are the ones who are potentially the most vulnerable to health-related issues. Ms. Biesel also argued that imposing a charge to decline installation of an advanced meter could be considered as

discriminatory against minorities because those who have been requesting it have been referred to as a “discreet [sic], small number of people.”

The TDUs stated that the new rule allows customers to elect non-standard meters if they choose, but also requires them to bear the full costs of their choice. This avoids the forced subsidization that would occur if the costs caused by customers who decline an advanced meter were spread among all customers. The TDUs argued that the new rule is appropriate by requiring those who decline advanced metering to pay the full cost incurred by the TDU because of the customer’s decision. The TDUs stated that nearly all the stakeholders filing comments endorse the principle that customers with advanced meters should not subsidize those who make the choice to decline the advanced meters.

*Commission Response*

**As discussed previously, through PURA the Legislature has established a policy of promoting the deployment of advanced meters and requiring all customers in the customer classes for which advanced meters are deployed to pay the costs for the advanced meters. Even customers who choose not to be served by advanced meters benefit from the advanced meters through increased reliability and lower electricity prices. For a TDU that has deployed advanced meters, service through a meter that is not an advanced meter is a non-standard service and, like other non-standard discretionary services, a customer requesting the service should pay all of the costs for that service rather than shifting any of those costs to customers receiving the standard service.**

A TDU will incur fixed and variable costs to provide non-standard metering service. One of the most challenging aspects of implementing non-standard metering service will be setting the fees to ensure that the TDU's fixed costs to provide the service are recovered only from the customers who choose the service. The commission anticipates that customers choosing the service will be largely limited to a subset of the customers who have resisted advanced meters and for whom TDUs therefore did not install advanced meters pending the resolution of how to serve these customers. The commission anticipates that some customers on a TDU's "do not install" list will decide not to opt-out of standard metering service, once they are responsible for the one-time and monthly fees required for non-standard metering service. In addition, the commission anticipates that the number of customers receiving the service will decline over time, as concerns about advanced meters diminish; the benefits of advanced meters become more apparent; and new customers move into locations served by non-standard meters and the meters are replaced with advanced meters.

The conundrum that the commission will face in initially approving the one-time and recurring monthly fees includes balancing the following factors: the difficulty of setting the fees so that they will recover the TDU's fixed costs of providing the service when the number of customers who will choose the service is unknown; the level of the fees are dependent on the number of customers choosing the service (*i.e.*, the fewer the customers the higher the fees); the number of customers choosing the service will depend on the level of the fees; and the number of customers receiving the service is likely to decline over time. The recovery of 25% of the fixed costs not related to the initiation of non-standard

metering service (*e.g.*, billing software costs) through the one-time fee with the remaining fixed costs of this type recovered over a three-year period may be appropriate. In any event, consideration of the various factors will be fact-specific to the particular TDU whose fees the commission is setting. The commission has therefore modified §25.133(e) to permit allocation of fixed costs not related to the initiation of non-standard metering service between the one-time and monthly fees, and permit recovery of such fixed costs through the monthly fee over a shortened period of time. If the number of customers choosing the service is less than estimated, it may be necessary for the utility to request revision of the fees. In deciding whether to choose non-standard metering service, customers need to be aware that the fees may increase over time. Therefore, the commission has modified §25.133(c)(1)(A) to require that the written acknowledgement to the customer disclose this risk.

#### *Discretionary Service Charges*

The REP Coalition stated that the TDUs' implementation of a program for non-standard meter service will also require the establishment of charges for certain existing discretionary services (*e.g.*, move-in) that are separate from the charges assessed for the performance of those same services at premises with advanced meters.

The REP Coalition stated that discretionary service charges applicable to premises with non-standard meters must take into account the costs the TDU incurs to perform those services (*e.g.*, the cost of "rolling a truck"). They stated that customers at premises with advanced meters should not subsidize the provision of those discretionary services to or on behalf of customers

who choose an alternative to advanced metering through the discretionary service charges paid by customers with advanced meters.

*Commission Response*

**The commission agrees with the REP Coalition. The commission has therefore modified §25.133(e) to make this clear.**

All comments, including any not specifically referenced herein, were fully considered by the commission. The commission has modified the rules to clarify its intent.

The sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), 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 with 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; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and PURA §39.107(h), which requires the commission to establish a nonbypassable surcharge for an electric utility or transmission and distribution to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to

residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, and 39.107(h).

**§25.133. Non-Standard Metering Service.**

- (a) **Purpose.** This section allows a customer whose standard meter is an advanced meter to choose to receive electric service through a non-standard meter and authorizes a transmission and distribution utility (TDU) to assess fees to recover the costs associated with this section from a customer who elects such a meter.
- (b) **Definitions.** As used in this section, the following terms have the following meanings, unless the context indicates otherwise:
- (1) Advanced meter--As defined in §25.130 of this title (relating to Advanced Metering).
  - (2) Non-standard meter--A meter that does not function as an advanced meter.
- (c) **Initiation and termination of non-standard metering service.**
- (1) **Initiation of non-standard metering service.**
    - (A) This subparagraph applies to a TDU that, on the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section, has completed deployment of advanced meters except for customers for whom the TDU did not install advanced meters because of the requests of the customers. The TDU shall serve on such a customer by certified mail return receipt requested notice consistent with subparagraph (D) of this paragraph within 30 days of the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section.

- (B) This subparagraph applies to a TDU that has not completed deployment of advanced meters.
- (i) This clause applies to a customer for whom the TDU has not, on the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section, installed an advanced meter because of the request of the customer. The TDU shall serve on such a customer by certified mail return receipt requested notice consistent with subparagraph (D) of this paragraph within 30 days of the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section.
- (ii) This clause applies to a customer for whom, after the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section, the TDU attempts to install an advanced meter as part of its advanced meter deployment plan but the customer requests non-standard metering service. The TDU shall promptly serve on such a customer by certified mail return receipt requested notice consistent with subparagraph (D) of this paragraph.
- (C) For circumstances not addressed by subparagraph (A) or (B) of this paragraph in which a customer requests from the TDU non-standard metering service, the TDU shall provide notice consistent with

subparagraph (D) of this paragraph within seven days of the customer's request, using an appropriate means of service.

- (D) Pursuant to subparagraphs (A)-(C) of this paragraph, a TDU shall notify a customer of the following through a written acknowledgement.
- (i) The customer will be required to pay the costs associated with the initiation of non-standard metering service and the ongoing costs associated with the manual reading of the meter, and other fees and charges that may be assessed by the TDU that are associated with the non-standard metering service;
  - (ii) The current one-time fees and monthly fee for non-standard metering service;
  - (iii) The customer may be required to wait up to 45 days to switch the customer's retail electric provider (REP), and may experience longer restoration times in case of a service interruption or outage;
  - (iv) The customer may be required by the customer's REP to choose a different product or service before initiation of the non-standard metering service, subject to any applicable charges or fees required under the customer's existing contract, if the customer is currently enrolled in a product or service that relies on an advanced meter; and
  - (v) For a customer that does not currently have an advanced meter, the date (60 days after service of the notice) by which the customer must provide a signed, written acknowledgement and payment of

the one-time fee to the TDU prescribed by subsection (e)(3) of this section. If the signed, written acknowledgement and payment are not received within 60 days, the TDU will install an advanced meter on the customer's premises.

- (E) The TDU shall retain the signed, written acknowledgement for at least two years after the non-standard meter is removed from the premises. The commission may adopt a form for the written acknowledgement.
- (F) A TDU shall offer non-standard metering through the following means:
  - (i) disabling communications technology in an advanced meter if feasible;
  - (ii) if applicable, allowing the customer to continue to receive metering service using the existing meter if the TDU determines that it meets applicable accuracy standards;
  - (iii) if commercially available, an analog meter that meets applicable meter accuracy standards; and
  - (iv) a digital, non-communicating meter.
- (G) The TDU shall not initiate the process to provide non-standard metering service before it has received the customer's payment and signed, written acknowledgement. The TDU shall initiate the approved standard market process to notify the customer's REP within three days of the TDU's receipt of the customer's payment and signed, written acknowledgement. Within 30 days of receipt of the payment of the one-time fee and the signed written acknowledgement from the customer, the TDU, using the

approved standard market process, shall notify the customer's REP of the date the non-standard metering service was initiated.

- (2) **Termination of non-standard metering service.** A customer receiving non-standard metering service may terminate that service by notifying the customer's TDU. The customer shall remain responsible for all costs related to non-standard metering service.
- (d) **Other TDU obligations.**
- (1) When a TDU completes a move-out transaction for a customer who was receiving non-standard metering service, the TDU shall install and/or activate an advanced meter at the premises.
  - (2) A TDU shall read a non-standard meter monthly. In order for the TDU to maintain a non-standard meter at the customer's premises, the customer must provide the TDU with sufficient access to properly operate and maintain the meter, including reading and testing the meter.
- (e) **Cost recovery and compliance tariffs.** All costs incurred by a TDU to implement this section shall be borne only by customers who choose non-standard metering service. A customer receiving non-standard metering service shall be charged a one-time fee and a recurring monthly fee.
- (1) Not later than 25 days after the effective date of this section, each TDU shall file a compliance tariff that is fully supported with testimony and documentation. The compliance tariff shall include one-time fees and a monthly fee for non-standard

metering service and shall also include the fees for other discretionary services performed by the TDU that are affected by the customer's selection of non-standard metering service. Each TDU shall be allowed to recover the reasonable rate case expenses that it incurs under this subsection as part of the one-time fee, the monthly fee, or both. The compliance tariff filing shall describe the extent to which the back-office costs that are new and fixed vary depending on the number of customers receiving non-standard metering service. Unless otherwise ordered, the TDU shall serve notice of the approved rates and the effective date of the approved rates within five working days of the presiding officer's final decision, to REPs that are authorized by the registration agent to provide service in the TDU's distribution service area. Notice under this paragraph may be served by email and, consistent with subsection (g) of this section, shall be served at least 45 days before the TDU begins offering non-standard metering service.

- (2) A TDU may apply to change the fees approved pursuant to paragraph (1) of this subsection. The application must be fully supported with testimony and documentation. Each TDU shall be allowed to recover the reasonable rate case expenses that it incurs under this subsection as part of the one-time fee, the monthly fee, or both. Unless otherwise ordered, the TDU shall serve notice of the approved rates and the effective date of the approved rates within five working days of the presiding officer's final decision, to REPs that are authorized by the registration agent to provide service in the TDU's distribution service area. Notice under this paragraph may be served by email and, if possible, shall be served at least 45 days before the effective date of the rates.

- (3) A TDU shall have a single recurring monthly fee for non-standard metering service and several one-time fees, one of which shall apply to the customer depending on the customer's circumstances. A one-time fee shall be charged to a customer that does not have an advanced meter at the customer's premises and will continue receiving metering service through the meter currently at the premises. For a customer that currently has an advanced meter at the premises, the fee shall vary depending on the type of meter that is installed to provide non-standard metering service, and the fee shall include the cost to remove the advanced meter and subsequently re-install an advanced meter once non-standard metering service is terminated. The one-time fee shall recover costs to initiate non-standard metering service. The monthly fee shall recover ongoing costs to provide non-standard metering service, including costs for meter reading and billing. Fixed costs not related to the initiation of non-standard metering service may be allocated between the one-time and monthly fees, and recovered through the monthly fee over a shortened period of time.
- (f) **Retail electric product compatibility.** After receipt of the notice prescribed by subsection (c)(1)(D) of this section, if the customer's current product is not compatible with non-standard metering service, the customer's REP shall work with the customer to either promptly transition the customer to a product that is compatible with non-standard metering service or transfer the customer to another REP, subject to any applicable charges or fees required under the customer's existing contract. If the customer is unresponsive, the REP may transition the customer without the customer's affirmative

consent to a market-based, month-to-month product that is compatible with non-standard metering service. Alternatively, if the customer is unresponsive the REP may transfer the customer to another REP pursuant to §25.493 (relating to Acquisition and Transfer of Customers from One Retail Electric Provider or Another) so long as the new REP serves the customer using a market-based, month-to-month product with a rate (excluding charges for non-standard metering service or other discretionary services) no higher than one of the tests prescribed by §25.498(c)(15)(A)-(C) of this title (relating to Prepaid Service). The REP shall promptly provide the customer notice that the customer has been transferred to a new product and, if applicable, to a new REP, and shall also promptly provide the new Terms of Service and Electricity Facts Label.

- (g) **Implementation.** A TDU shall begin offering non-standard metering service pursuant to this section the later of 160 days from the effective date of this section or 45 days after the notice to REPs prescribed by subsection (e)(1) of this section.

**§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**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.133, relating to Non-Standard Metering Service, and the amendments to §25.214, 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 on the 12<sup>th</sup> day of AUGUST 2013.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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