

**PROJECT NO. 31417**

**RULEMAKING RELATING TO           §       PUBLIC UTILITY COMMISSION**  
**THE DISCOUNT FOR LOW-       §   OF TEXAS**  
**INCOME ELECTRIC CUSTOMERS   §**

**ORDER ADOPTING AMENDMENTS TO §§25.454, 25.475, and 25.478  
AS APPROVED AT THE FEBRUARY 23, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to P.U.C. Substantive Rules §25.454, relating to Rate Reduction Program, §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and §25.478, relating to Credit Requirements and Deposits, with changes to the proposed text as published in the December 30, 2005 issue of the *Texas Register* (30 TexReg 8776). As proposed, §25.454 will: comport with the provisions of the Public Utility Regulatory Act (PURA) relating to discounts for low-income customers, as revised in the 79th Legislative Session; specify what happens to benefits for customers qualified for the rate reduction program when funding and authorization to expend funds are not sufficient for a discount to be provided and an eligibility list to be administered; specify what happens to benefits for customers qualified for the rate reduction program when the discount cannot be provided, but when an eligibility list is available to Retail Electric Providers (REPs) for the continuation of the late penalty waiver benefit; and set forth provisions for voluntary low-income programs to be administered by REPs. As proposed, §§25.454, 25.475 and 25.478 will: provide that if an up-to-date list of eligible low-income electric customers is available for use, applicants and customers who qualify for the rate reduction program will be given the opportunity to pay deposits greater than \$50 in two installments, and shall be notified of that option in the written notice of a deposit request and in the Terms of Service document; set forth the documentation

that a REP can require an applicant or customer to provide to prove the applicant's or customer's eligibility; and require REPs to provide a letter upon a customer's request, stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. The provisions will also provide that if an up-to-date list of eligible low-income electric customers is not available for use, a REP will be required to extend this deposit installment option to any residential customers or applicants who qualify for the rate reduction program and notify residential customers of that option in the written notice of a deposit request. Additionally, the REP may require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate and requests on a non-discriminatory basis. This rule is a competition rule subject to judicial review as specified in PURA, Texas Utilities Code §39.001(e). Project Number 31417 is assigned to this proceeding.

The commission received comments on the proposed amendments from Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (Consumers); Mutual Energy SWEPCO d/b/a "ME SPP"; and the REP Coalition, comprised of CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy Company, Reliant Energy, Stream Energy, TXU Energy Retail Company LP, WTU Retail Energy, the Alliance for Retail Marketers (comprised of APS Energy Services, Constellation New Energy, Inc., Direct Energy, Entergy Solutions Limited, Green Mountain Energy Company, Strategic Energy, and Stream Energy), and the Texas Energy Association for Marketers (comprised of Accent Energy, Cirro Energy, Entergy Solutions Ltd, Star Tex Power, Stream Energy, and Tara Energy), and Competitive Assets (on behalf of its REP clients, and specifically including: Spark Energy, Stream Energy, Alliance Power Company, LLC, Bridgepoint Power & Light, LLC, Econnergy Energy

Company, Freedom Power, Hino Electric, Tara Energy and TriEagle Energy). The commission received reply comments from the REP Coalition.

**§25.454. Rate Reduction Program**

The REP Coalition commented that they were uncertain of the meaning of the word “actual” in the proposed phrase “actual rate reductions” in new §25.454(i). The REP Coalition recommended that the word “actual” be deleted, and that clarifying language be added to the sentence to specify that the rate reductions described are those for “low-income customers that can be reimbursed from the system benefit fund...”

*Commission response*

**The commission agrees with the REP Coalition and has made the recommended changes.**

The REP Coalition commented that §25.454(i), as proposed, uses the phrases “late fee” and “late penalty” interchangeably, and recommended use of the term “late penalty” for consistency with §25.480(c)(1).

ME SPP commented that they are not allowed to impose late fees or penalties on residential customers’ bill, and therefore the provisions of new §25.454(i) would not apply to ME SPP.

*Commission response*

**The commission agrees with the REP Coalition and has made the recommended changes.**

The REP Coalition commented that §25.454(i)(1)(E), as proposed, contains a requirement that REPs notify customers twice a year on the subject of late penalty waivers. The REP Coalition inferred that the commission intended to parallel proposed §25.454(g)(3)(E), which requires that when the Low-Income Telephone and Electric Utility Program (LITE-UP) has sufficient funding, REPs will notify customers twice a year about the availability of the rate reduction program. The REP Coalition commented that the provision is appropriate in proposed §25.454(g)(3)(E) because customers that are not automatically enrolled are notified that they can self-enroll for the benefits. However, the REP Coalition stated that including a similar requirement in proposed §25.454(i)(1)(E) is inappropriate because self-enrollment is not available under the scenario contemplated by proposed §25.454(i)(1), and because eligible customers will automatically receive the waivers. The REP Coalition recommended that §25.454(i)(1)(E) be deleted.

*Commission response*

**The commission agrees with the REP Coalition and has made the recommended changes.**

The REP Coalition commented that §25.454(i)(3) provides explicit authorization for a REP to use the Low-Income Discount Administrator (LIDA) list for voluntary low-income programs. The REP Coalition commented that the provision would be clearer if it were moved to subsection (j), which provides guidance on other aspects of voluntary low-income programs. The REP Coalition proposed clarifying language indicating that other non-discriminatory criteria may be used to qualify customers, in order to make it clear that the LIDA list is not the only criterion that a REP may use. The REP Coalition also proposed a clarification in subsection (j).

The REP Coalition commented that proposed §25.454(i)(3) and (j) contain similar phrasing, with (i)(3) making reference to a “voluntary rate reduction program” and (j) describing a “voluntary low-income program.” The REP Coalition recommends that the term “voluntary low-income program” be used.

*Commission response*

**The commission agrees with the REP Coalition and has made the recommended relocation of the language in §25.454(i)(3) to (j). The commission notes that this subsection (j) is now proposed as subsection (k). Further, the commission agrees with the clarifications proposed by the REP Coalition.**

The REP Coalition stated that the distinction between the requirements in subsections (i)(4)(A) and (i)(4)(B) is unclear. The REP Coalition recommended that (A) be stricken, and that the requirements of (B) and (4) be combined into one provision.

*Commission response*

**The commission agrees with the REP Coalition and has made the recommended changes.**

**§25.475, Information Disclosures to Residential and Small Commercial Customers**

The REP Coalition strongly opposed the requirement in §25.475(d)(5)(E)(v), as proposed, that would require all residential customers to be offered the option to pay a security deposit in two installments. The REP Coalition therefore recommended that the commission retain the existing

language for this subsection, without the amendments shown in the commission's proposal for publication.

*Commission response*

**Consistent with the REP Coalition's comments, and the commission discussion of §25.478, the commission retains the existing language for this subsection. However, the commission replaces the word "customer" with the words "customer or applicant" for consistency with §25.478.**

The REP Coalition recommended that the commission amend §25.475(g)(4)(L), which requires that the Your Rights as a Customer disclosure inform the customer of the "availability of discounts for qualified low-income customers." The REP Coalition commented that the commission should eliminate the requirement because requiring its inclusion can only serve to create confusion for customers who believe the discount is available when in fact it may not be.

*Commission response*

**The commission notes that under §25.454(c)(2)(C) as proposed, the disclosure requirement in §25.475(g)(4)(L) and various other provisions would be suspended when funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers. This treatment of the provisions was proposed rather than amending a number of rules to address their possible suspension. This provision should provide adequate notice to REPs, because they should refer to the rate reduction rule when taking any required actions regarding electric rate reductions or**

**discounts. Several other provisions in proposed §25.454(c)(2)(C) would also result in suspensions of other rules, and the REP Coalition did not propose that the suspension of those provisions be addressed in the other rules. Therefore, the commission declines to amend this provision.**

**§25.478, Credit Requirements and Deposits**

The REP Coalition strongly opposed §25.478(e)(3), as proposed, which would extend to all residential customers and applicants the benefit previously reserved for rate reduction customers that deposits over \$50 may be paid two installments. This provision would also add the requirement that customers be notified of this option when a REP requests a deposit. The REP Coalition stated three main arguments against the proposal that deposits be paid in installments: it will be detrimental to the competitive market; it is unfairly burdensome to REPs; and it conflicts with other rule provisions. Additionally, the REP Coalition requested that if the installment option for all residential customers is required, that the additional notice requirement be stricken.

The REP Coalition commented that the provision would be detrimental to the competitive market because: the REPs' current product offerings are structured around the opportunity to collect a security deposit from customers who present a credit risk in advance of providing several weeks of electric service on credit; it would represent a major change in the market structure, which could notably change the way that REPs serve residential customers and have serious unintended consequences for customers; the commission would alter the balance of a long-studied issue and vacate its 2004 ruling that such an option is inappropriate, unreasonable and burdensome; and most customer defaults occur within the first few months of service, the majority of which occur

within the first month alone. The REP Coalition stated that currently, a REP collects approximately 80 days of deposit, which is approximately equal to the length of customer service if the customer does not pay its first bill. As proposed, half of the deposit would be due in 10 days and the other half on day 40 of receiving service. The first likely date of disconnection would be day 65, which would leave the REP with 25 days of service unpaid. The REP Coalition further added that unintended consequences may result, which may affect all customers a REP serves. REPs may restructure the residential segment of their business; reduce the amount of time that they provide service on credit; delay serving a customer for 40 days until the full security deposit has been paid; rely on a more stringent definition of what constitutes satisfactory credit; or cease customer accommodation practices such as built-in grace periods, customer-requested extensions or lower deposits.

The REP Coalition commented that the provision would be detrimental to the competitive market because the proposal is unfairly burdensome to REPs. They stated that it is not supportable to assume that late payment penalties are sufficient to off-set bad debt. When a customer does not pay, the REP is saddled with the bad debt and has incurred and continues to incur other costs associated with the debt owed, including overhead associated with collection efforts. The REP Coalition commented that late penalty payments and deposit requirements are distinct tools that assist REPs with different bad debt issues. Late penalties generally address slow pay situations in which the REP carries bad debt for a short period of time, while deposits generally address no-pay situations. The REP Coalition stated that REPs need all available tools to effectively manage bad debt and late fees, and the right to disconnect for non-payment and the ability to require an

upfront deposit as a condition of service are distinct, integral and necessary components of a REP's collections and bad debt management efforts.

The REP Coalition commented that the proposal creates an internal conflict with the provisions of §25.478 that address timing, which cannot be reconciled with the proposed amendments. The REP Coalition cited §25.478(c)(3), relating to initial deposits for applicants and existing customers which states that a customer “may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit,” and §25.478(d), which has a similar provision regarding existing customers. Subsection (c)(1) was not cited by the REP Coalition, but states that if satisfactory credit is not demonstrated “a REP may require the applicant to pay a deposit prior to receiving service.”

ME SPP did not oppose the proposal, but submitted that the expense involved in programming modifications and the revisions to existing publications may exceed the benefits of the proposed new requirement.

Consumers supported the proposal, and gave numerous reasons for that support. It would produce results and meet the intent of making sure all customers have some flexibility in meeting security deposit requirements. It would help customers who may not have sufficient funds to pay a deposit in full including: lower wage workers paid on a weekly basis; elderly customers on fixed incomes paid once a month; and many customers who are not low-income who still have problems paying a large deposit. Consumers stated that based on higher deposits now allowed by the customer protection rules (73 days average use) applicants for competitive service who cannot

establish adequate credit and are required to pay the maximum amount allowed for a deposit can expect to pay a deposit ranging from \$309.60 to \$475.92 for 1000 kWh average monthly use, based on calculations from the December 2005 Monthly Bill Comparison. Consumers added that the provision would: give customers some leeway and measure of control to be able to budget; help customers who might otherwise have bill payment problems from the outset, having overextended themselves to pay a high deposit; and increase competition by allowing more customers options to shop for electric service.

In reply comments, the REP Coalition disagreed with Consumers that the changes in the deposit payment rule are appropriate. The REP Coalition recommended that this provision not be adopted because the commission's proposed amendments severely limit the ability of competitors to recover payment for services rendered, and would unnecessarily harm the competitive market.

*Commission response*

**It is the commission's intent that the option for low-income customers to pay deposits over \$50 in two installments be available regardless of the availability of a list of customers eligible for the rate reduction program. The commission agrees with Consumers' comments that the option to pay deposits over \$50 in two installments is beneficial for customers, enhancing their ability to shop for electric service. However, the commission also recognizes that the proposed language that all residential customers have the option to pay deposits over \$50 in two installments may have negative ramifications for REPs and the market. Therefore, the commission retains the existing language for this subsection. The commission notes that in restoring the existing language of this subsection in this**

proposal, the commission replaces the word “customer” with the words “customer or applicant” in the second and third sentences for consistency with the first sentence.

To fulfill the commission’s intent to give low-income customers the option to pay deposits over \$50 in two installments regardless of the availability of a list of customers eligible for the rate reduction program, the commission adds new subsection (j) to §25.454, and changes the proposed subsection (j) to subsection (k).

New subsection (j) will provide that if a list of eligible customers exists, REPs shall provide to low-income customers the option to pay deposits over \$50 in two installments. Because applicants for electricity will not appear on the list of a REP’s customers eligible for the rate reduction program, this subsection will describe what documents a REP may request the customer or applicant to provide to prove eligibility for the rate reduction program during times when there is an eligibility list, but no discount, and when there is an eligibility list and a discount. These documents include: a letter from the customer’s or applicant’s current or prior REP stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available; a bill from the customer’s current or prior REP that demonstrates that the customer is enrolled in the rate reduction program; or other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis. New subsection (j) will further require that upon customer request, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. This letter can be combined with a letter issued to a customer regarding bill payment history. If no eligibility

list exists, effective June 1, 2006, a REP will be required to extend the option to pay deposits over \$50 in two installments to any residential customers and applicants who qualify for the rate reduction program and a REP shall provide notice of this option in any written notice to a customer requesting a deposit. Under this provision, a REP may require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate and that the REP requests on a non-discriminatory basis. The commission believes that this language will help to ensure that the deposit installment option remains available to all low-income customers, while minimizing the administrative and economic burden on REPs.

The REP Coalition commented that should the proposal that all residential customers have the option to pay deposits over \$50 in two installments be adopted, the notice provision should not be adopted. The REP Coalition stated that the notice provision would be unprecedented with regard to customer security options; would exceed the previous requirement for low-income customers, which simply required it be included in any written notice; and would be unnecessary because customers who are interested will inquire about it without prompting, or will make note of it in the written notice.

*Commission response*

**The commission amends this provision consistent with the comments of the REP Coalition.**

**In adopting §25.478 the commission also modifies subsection (j) to delete an outdated reference indicating that REPs should comply with the provision no later than August 31,**

**2004. This subsection was not opened in the proposal, but the REP Coalition requested this amendment in Project Number 31538, *Review of Agency Rules Pursuant to the Administrative Procedure Act §2001.039 for FY 2000-2003*. The change is non-substantive, and the commission finds that it is appropriate to modify this subsection within this rulemaking.**

### **General Comments**

The REP Coalition commented that the absence of funding in the current biennium for the LITE-UP Texas discount, as it relates to compliance with the commission's rules, is a significant issue that needs to be addressed promptly by the commission and market participants. The REP Coalition stated that both REPs and low-income customers will benefit from the certainty provided by revisions to the commission's low-income rules to address the availability of funds for the program. The REP Coalition urged the commission to focus on refining its current proposal to amend §25.454, and associated provisions in §25.475. The REP Coalition stated that it would support adoption of amendments to these rules, as modified by the REP Coalition in its comments. However, the REP Coalition commented that it was "troubled" by the gradual expansion of the rulemaking to include a re-examination of security deposits for all residential customers, which has been thoroughly analyzed by the commission in two prior rulemakings.

Consumers commented that because of the dramatic effect of fuel price increases on the Price to Beat (PTB), low-income customers, most of whom are PTB customers, have shouldered more than their share of the cost increases without the benefit of those programs promised by the Legislature to help make rates more affordable. Consumers commented that most PTB customers

have seen their bills increase by at least 80% over the past three years with a 50% increase the last three to six months. The Consumers stated that it was incomprehensible that the low-income customers may now lose the last few protections that exist to mitigate the effects of these unprecedented rate increases.

Consumers stated that they were hopeful that the proposed rule amendments would provide for a mechanism to require the identification of low-income customers in the absence of funding for the low-income rate discount from the system benefit fund. Consumers proposed a number of options as to how the automatic enrollment process might be maintained to continue identifying eligible customers. These options included: working with the Legislative Budget Board to change the commission's budget to cover the costs; requiring REPs to subscribe to the LIDA to identify eligible customers; requiring the Electric Reliability Council of Texas (ERCOT) to perform the automatic enrollment function; requiring Transmission Distribution Utilities (TDUs) to subscribe to the LIDA and provide the information to REPs; and providing REPs with the list of customers eligible for Lifeline telephone service for which they would be required to develop a process to match the results with their customer records. Consumers noted that the last proposal would add some customers who were not previously eligible for the rate discount, given that the income eligibility for Lifeline service is 150% of the federal poverty level as opposed to 125% for the rate discount, but stated that the savings in LIDA costs involved with utilizing the Lifeline eligibility list should more than offset any losses attributable to that population for late fees. Consumers stated that if the commission cannot accept these options or some other option that would preserve the current prohibition on charging late fees to low-income customer, all late fees should be prohibited.

In reply comments, the REP Coalition responded that Consumers have taken a different approach with their comments by offering a list of recommendations unrelated to the language of the published rule that are well outside the scope of this rulemaking, and responded to select concepts. The REP Coalition disagreed with the suggestion that REPs or TDSPs subscribe to LIDA to receive a list of eligible customers and commented that it was not backed with any explanation of why it would be beneficial, or under what statutory or other legal authority the commission could require such payment. The REP Coalition commented that this would reduce the total amount of REPs' budgets for providing low-income assistance, and implies that REP assistance funds are better directed to administrative expenses than to individual customers. The REP Coalition disagreed with the suggestion that ERCOT perform automatic enrollment, and stated that any market or consumer benefit was unclear. The REP Coalition commented that this would require ERCOT to take on the job of LIDA without a budget, personnel or related experience. Though ERCOT has the technical capability and expertise to do this, there is no justification for requiring ERCOT to create a function that is handled aptly by the current LIDA. The REP Coalition commented that such a requirement would inappropriately redirect ERCOT funds away from planned market enhancements or cause an increase in ERCOT's administrative fee. The REP Coalition commented that under the proposal to use the eligibility list for Lifeline telephone service, even the consumers noted that an electric customer list resulting from this method would not comply with PURA §39.903. Additionally, the result would be that only households who have established telephone and electric service under identical names would be on the eligibility list, eliminating households where services are enrolled by different family

members and even those where the customer uses different variations of their name with different providers.

In reply comments the REP Coalition stated that their members would continue to urge the Legislature to restore funding and resume the prior benefits to low income customers, and stated its belief that the funding will ultimately be restored by the Legislature. Therefore, the commission should avoid any changes in this proceeding that would dismantle the eligibility determination process used prior to September 1, 2005, which worked well and should be reinstated when funding is restored.

Consumers commented that the proposed rule fails to resolve the issue of REPs being in violation of the customer protection rules for charging late fees to low-income customers. In reply comments, the REP Coalition took exception to the Consumers' assertions that REPs are currently in violation of the commission's rules by charging late fees to low-income customers. Any requirement to not charge late fees under the existing rules ended with the last LITE-UP discount because the rule only applies to customers receiving the discount. The REP Coalition added that REPs have continued to waive late fees for the customers whom the REP believes would receive the discount if it were available.

Consumers stated that the proposed provisions on identifying low-income consumers for the purpose of establishing eligibility for the late fee exemption or qualification for REP sponsored rate discounts could be labeled "The Do-Nothing Rule" and only better define the commission's

authority to do something, but mean nothing without a firm plan for implementing the solution. Consumers commented that the draft rule proposes no solution or alternate proposal.

Consumers commented that if the commission and industry are unable to resolve the customer enrollment problem, then steps should be taken to alter the late fee provisions to assure that low-income customers are not harmed. Consumers commented that a safety net provision for late fees is still necessary and suggested that late fees be prohibited for all customers. Consumers stated that they are not convinced that late fee payments are essential to a REP's operations, that in previous rulemakings regarding the customer protection rules, the REPs as a whole argued that late fees in and of themselves are often ineffective in getting customers to pay on time. The REP Coalition responded that they have not been able to confirm whether the Consumers' statement is a correct quote because no citation was provided. However, it was either taken out of context or it is an isolated statement that does not represent the current opinion of any of the REP Coalition signatories. The REP Coalition added that late fees are effective in encouraging customers to pay bills on time, and it is an important tool REPs have available to reduce bad debt, and that this is why late fees are common in most industries as well as for municipal electric and water systems. The REP Coalition provided examples of late fees including, but not limited, to Austin Energy which imposes a 5% late payment fee for electric service, and Fannin Electric Cooperative, which charges \$10 on all past due accounts.

Consumers commented that since late fees are assessed automatically and without any apparent connection to a cost center such as collection activities, Consumers are concerned that the payments are simply used to generate additional profits.

Consumers commented that all revenue received by REPs comes from only one source--its customers--and they have a right to know how the money they pay is being spent. They added that up to January 1, 2002, the industry successfully managed its bad debt without late fees. Consumers recommended that the commission consider amending the late fee provisions so that customers are only charged on amounts more than 30 days past due, or if the late fee provisions remain the same, they recommended that the commission require REPs to contribute a percentage of the late fees they collect on a monthly basis to support a fund to pay the costs of automatic enrollment in lieu of system benefit funds. The REP Coalition replied that these comments are unrelated to the rule that the commission has published for comment, and that this suggestion “completely guts” the function of late fees as an interim, less intrusive incentive prior to disconnection for non-payment. It would also “further erode” the ability of late penalties to offset the carrying costs to REPs for nonpayment. The REP Coalition stated that without the ability for REPs to apply this cost-recovery mechanism to late-payments, all customers would be subject to increased prices. Additionally, to apply a late penalty on a date other than the past due date, some REPs may be required to perform significant, expensive systems changes.

*Commission response*

**The Consumers’ comments are beyond the scope of this rule. The late payment penalty is set out in §25.480 of this title, relating to Bill Payments and Adjustments, and no amendment to this rule was proposed in this rulemaking proceeding. The comments of the REP Coalition and Consumers relating to late payment penalties did not address the proposed amendments, and, therefore the commission makes no changes to the proposed**

**rules based on those comments. How the commission might fund an eligibility list to identify low-income customers and modifications to the late penalty provisions is also outside the scope of this rulemaking.**

**In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent.**

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2005): (1) §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; (2) §39.101(e) which provides that the commission has the authority to adopt rules necessary or appropriate rules for minimum service standards, relating to customer deposits; and (3) §39.903 which grants the commission the authority to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.903.

**§25.454. Rate Reduction Program.**

- (a) **Purpose.** The purpose of this section is to define the low-income electric rate reduction program, establish the rate reduction calculation, and specify enrollment options and processes.
- (b) **Application.** This section applies to retail electric providers (REPs), as defined in Public Utility Regulatory Act §39.106, that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).
- (c) **Funding.** The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:
- (1) The requirements of subsections (e), (f) and (g) of this section are suspended until sufficient funding and spending authority are available.

- (2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended until sufficient funding and spending authority are available:
- (A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);
  - (B) §25.457(h)-(i) of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives);
  - (C) §25.475(g)(4)(L) of this title (relating to Information Disclosures to Residential and Small Commercial Customers); and
  - (D) §25.43(d)(3)(D), (q)(1)(A)-(B), (q)(2)(A), and (q)(3)(A) of this title (relating to Provider of Last Resort).
- (3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended until an eligibility list is available as provided in subsection (i) of this section.
- (d) **Definitions.** The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Discount factor** — The amount of discount an eligible low-income customer must be provided by any REP, or MOU or Coop, when applicable, in the customer's area, expressed as cents per kilowatt-hour (kWh).
  - (2) **Discount percentage** — The percentage of discount established by the commission and applied to the lower of the price to beat (PTB) or provider of last resort (POLR) rate in a particular service territory.

- (3) **Low-Income Discount Administrator (LIDA)** — A third-party vendor with whom the commission has a contract to administer the rate reduction program.
  - (4) **Rate reduction** — The total discount to be deducted from a customer's electric bill. This reduction is derived from the discount factor and total consumption in accordance with subsection (e)(3) of this section.
  - (5) **REP** — For the purposes of this section, a retail electric provider and an MOU or Coop that provides retail electric service in an area that has been opened to customer choice.
- (e) **Rate reduction program.** All eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.
- (1) The commission shall periodically establish a discount percentage. The discount percentage may be set at a level no greater than 20%.
  - (2) The commission staff shall calculate and post on the commission website ([www.puc.state.tx.us](http://www.puc.state.tx.us)) the discount factor for an eligible low-income customer in accordance with this subsection.
    - (A) The discount factor shall be separately calculated for each transmission and distribution utility service area and shall be recalculated when the PTB or POLR rate changes or the commission revises the discount percentage.
    - (B) The discount factor shall be calculated by applying the discount percentage to the lower of the POLR rate or the standard residential PTB rate. The

discount amount shall reflect any seasonal variation in the lower of the PTB or the POLR rate.

- (C) If the discount factor changes for any area because of a change to the discount percentage or a change to the PTB or POLR rate for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website.
- (3) All REPs shall provide the rate reduction to eligible low-income customers.
- (A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill.
  - (B) The rate reduction shall be calculated by multiplying the customer's total consumption (kWh) for the billing period by the discount factor (in cents/kWh) in effect during the billing cycle in which the bill is rendered. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied.
  - (C) The customer's discount amount shall be clearly identified as a line item on the electric portion of the customer's bill, including the description "LITE-UP Discount."
  - (D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for rate reductions they provide to eligible low-income customers.

- (f) **Customer enrollment.** Eligible customers may be enrolled in the rate reduction program through automatic enrollment or self-enrollment.
- (1) Automatic enrollment is an electronic process to identify customers eligible for the rate reduction by matching client data from the Texas Health and Human Services Commission (HHSC) with customer-specific data from REPs.
- (A) HHSC shall provide client information to LIDA in accordance with subsection (g)(1) of this section.
- (B) REPs shall provide customer information to LIDA in accordance with subsection (g)(3) of this section.
- (C) LIDA shall compare the customer information from HHSC and REPs, create files of matching customers, enroll these customers in the rate reduction program, and notify the REPs of their eligible customers.
- (2) Self-enrollment is an alternate enrollment process available to eligible electric customers who are not automatically enrolled and whose combined household income does not exceed 125% of federal poverty guidelines or who receive food stamps or medical assistance from HHSC. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:
- (A) Distributing and processing self-enrollment applications, as developed by the commission, for the purposes of initial self-enrollment, and for re-enrollment of self-enrolled and automatically enrolled customers;
- (B) Maintaining customer records for all applicants;
- (C) Providing information to customers regarding the process of enrolling in the low-income discount program; and

- (D) Determining customers' eligibility by matching customer information submitted through self-enrollment forms with customer data provided by REPs and reviewing proof of income documentation submitted by customers.
- (3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy.
- (4) The following procedures govern a customer's re-enrollment.
- (A) A self-enrolled customer may re-enroll by submitting a completed self-enrollment form.
  - (B) A customer who was formerly, but is no longer, automatically enrolled may re-enroll through self-enrollment.
  - (C) LIDA shall send a customer who is eligible to re-enroll a self-enrollment form which specifies a date for submitting the completed form that is not more than 30 days after the date the form is mailed. If the customer submits a completed form before the date specified on the form and LIDA determines that the customer is eligible for re-enrollment, the customer shall receive the rate reduction without interruption.
  - (D) If a customer does not return a properly completed form before the time specified by LIDA, the customer's rate reduction may be interrupted until LIDA determines that the customer is eligible.

- (5) The eligibility period of each customer will be determined by the customer's method of enrollment.
- (A) The eligibility period for self-enrolled customers is seven months from the date of enrollment.
- (B) Automatically enrolled customers will continue to be eligible as long as the customers receive HHSC benefits. Once a customer no longer receives HHSC benefits, the customer will continue to receive the rate reduction benefit for a period of no more than 60 days, during which the customer may self-enroll.
- (6) A customer who believes that a self-enrollment application has been erroneously denied may request that LIDA review the application, and the customer may submit additional proof of eligibility.
- (A) A customer who is dissatisfied with LIDA's action following a request for review under this paragraph may request an informal hearing to determine eligibility by the commission staff.
- (B) A customer who is dissatisfied with the determination after an informal hearing under subparagraph (A) of this paragraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).
- (g) **Responsibilities.** In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

(1) **HHSC shall:**

- (A) assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving HHSC benefits as detailed in the memorandum of understanding between HHSC and the commission; and
- (B) assist in the distribution of promotional and informational material as detailed in the memorandum of understanding.

(2) **LIDA shall:**

- (A) receive customer lists from REPs on a monthly basis through data transfer;
- (B) retrieve the database of clients from HHSC on a monthly basis;
- (C) conduct the self-enrollment, automatic enrollment, and re-enrollment processes;
- (D) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;
- (E) make available to each REP, on a date prescribed by the commission on a monthly basis, a list of low-income customers eligible to receive the rate reduction;
- (F) notify customers that have applied for the rate reduction through the self-enrollment process of their eligibility determination and notify automatically enrolled and self-enrolled customers of their expiration of eligibility, and opportunities for re-enrollment in the rate reduction program;

- (G) answer customer inquiries regarding the rate reduction program, and provide information to customers regarding enrollment for the rate reduction program and eligibility requirements;
  - (H) resolve customer enrollment problems, including issues concerning customer eligibility, the failure to provide discounts to customers who believe they are eligible, and the provision of discounts to customers who do not meet eligibility criteria; and
  - (I) protect the confidentiality of the customer information provided by the REPs and the client information provided by HHSC.
- (3) **A REP shall:**
- (A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;
  - (B) retrieve from LIDA the list of customers who are eligible to receive the rate reduction;
  - (C) upon commission request, monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3000 kWh in a month shall be considered a high-usage customer;

- (D) apply a rate reduction to the electric bills of the eligible customers identified by LIDA within the first billing cycle in which it is notified of a customer's eligibility, if notification is received no later than seven days before the end of the billing cycle, or, if not, apply the rate reduction within 30 calendar days after notification is received from LIDA;
  - (E) notify customers twice a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;
  - (F) assist LIDA in working to resolve issues concerning customer eligibility, including the failure to provide discounts to customers who believe they are eligible and the provision of discounts to customers who may not meet the eligibility criteria; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general LITE-UP processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and
  - (G) provide to the commission copies of materials regarding the rate reduction program given to customers during the previous 12 months upon commission request.
- (h) **Confidentiality of information.** All data transfers shall be conducted under the terms and conditions of confidentiality agreements to protect customer privacy and competitively sensitive information.

- (1) The data acquired from HHSC is subject to a HHSC confidentiality agreement and shall only be used for the purposes of enrolling customers in the rate reduction program, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.
  - (2) All data transfers from REPs to LIDA shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information. The data acquired from REPs shall be used only for the purposes of enrolling customers into LITE-UP, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.
  - (3) LIDA shall treat information relating to customer eligibility for the rate reduction as proprietary and confidential data and may not use it for any other purpose.
- (i) **Eligibility List for Continuation of Late Penalty Waiver Benefits.**
- (1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income customers that can be reimbursed from the system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsection (f)(1) of this section if funds were available. The procedures set forth in subsection (f)(1) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks

undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

- (A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, ESI ID, service provider account number, and premise code;
- (B) retrieve from LIDA the list of customers who would be eligible for automatic enrollment in the rate reduction program if funds were available;
- (C) monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3,000 kWh in a month shall be considered a high-usage customer;
- (D) assist LIDA in working to resolve issues concerning customer eligibility; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

- (E) provide other information and assistance, upon request of the commission, to assist in implementation of this section.
- (2) If funding is available to include self-enrollees in the list of eligible customers, the commission may, in its discretion, set forth processes for determining eligibility in a procedural guide. The processes, to the extent feasible, will be consistent with subsections (f) and (g) of this section.
- (3) If pursuant to subsection (i) of this section, the commission, through the LIDA or other means, provides the REPs with a list of eligible customers §25.480(c)(1) of this title, which requires that a customer receiving a low-income discount pursuant to the Public Utility Regulatory Act §39.903(h) may not be assessed a late penalty, shall be continued based on the customer's eligibility for the discount, rather than the customer's receipt of the discount.
- (j) **Deposit Installment Benefits.**
- (1) If LIDA is maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, then a customer or applicant who qualifies for the rate reduction program is eligible to pay deposits over \$50 in two installments, pursuant to §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).
- (A) A REP who requires a customer or applicant to provide sufficient information to the REP to demonstrate that the customer or applicant qualifies for the rate reduction program may request the following information:

- (i) a letter from the customer's or applicant's current or prior REP stating that the applicant is on the list of customers who would be eligible for the rate reduction if funds were available;
    - (ii) a bill from the current or prior REP that demonstrates that the customer or applicant is enrolled in the rate reduction program; or
    - (iii) other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis.
  - (B) Upon the request of a customer, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. This letter may be combined with a letter issued to a customer regarding bill payment history.
- (2) Effective June 1, 2006, if LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits over \$50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate and that the REP requests on a non-discriminatory basis. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.
- (k) **Voluntary Programs.** Nothing in this section is intended to impair a REP's ability to voluntarily provide a low-income discount or other benefits to low-income customers.

- (1) The list of low-income customers who would be eligible for the rate reduction if funds were available, or other non-discriminatory criteria, may be utilized by a REP as evidence of a customer's eligibility for the REP's voluntary low-income program, if offered.
- (2) In the event a REP chooses to voluntarily offer a discount or other benefits to low-income customers, the REP shall treat any information obtained regarding the customer's financial status or enrollment in a government program as confidential information and shall not disclose the information to any other party or use the information for any purpose other than enrollment in a voluntary low-income program.

**§25.475. Information Disclosures to Residential and Small Commercial Customers.**

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, providing service to residential and small commercial customers.
- (b) **General disclosure requirements.** All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by REPs and aggregators:
- (1) shall be provided in a readable format, written in clear, plain, easily understood language;
  - (2) shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law; and
  - (3) upon receipt of a license or certificate from the commission, shall include the REP's certified name or the aggregator's registered name, and the number of the license or registration.
- (c) **Advertising and marketing materials.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product to a customer, then the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials.
- (1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price or environmental

quality for an electricity product of the REP with respect to a product offered by another REP shall include the Electricity Facts Label. In lieu of including an Electricity Facts Label, the following statement shall be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Call (name, telephone number, and website (if available) of the REP)." A REP shall provide an Electricity Facts Label (and terms of service document if requested by the customer), relating to a service or product being advertised to each person who requests it.

- (2) **Television and radio advertisements.** A REP shall include the following statement in any television or radio advertisement that makes a specific claim about price or environmental quality for an electricity product of the REP with respect to a product offered by another REP: "You can obtain important standardized information that will allow you to compare this product with other offers. Call (name, telephone number and website (if available) of the REP)." This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. A REP shall provide an Electricity Facts Label (and terms of service if requested by the customer), to each person who requests it.
- (3) **Internet advertisements.** Advertisements on the internet shall comply with the provisions of paragraph (2) of this subsection. Each REP shall prominently display the Electricity Facts Label for any products offered by the REP for enrollment on the website without the consumer having to enter any personal information other

than zip code and type of service being sought (residential or commercial). The Electricity Facts Label shall be printable in a one-page format.

- (4) **Outdoor advertisements.** Advertisements on outdoor signs such as billboards shall comply with the provisions of paragraph (2) of this subsection. If the REP's phone number is included on the advertisement, the phone number shall not be required in the disclaimer statement.

(d) **Terms of service document.**

- (1) For each electric service or electric product that it offers to residential or small commercial customers, a REP shall create a terms of service document. Each terms of service document shall be subject to review by the commission and shall be furnished to the commission or its staff upon request.
- (2) For services and products that a REP makes widely available to residential and small commercial customers, a REP shall assign an identification number to each version of its terms of service document, and shall publish the number on the terms of service document.
- (3) The terms of service document shall be provided to new customers and, if the service or product is being made widely available to residential and small commercial customers, to any eligible customer that requests the terms of service. An updated terms of service document shall also be provided to current customers at any time that the REP materially changes the terms and conditions of service with its customers. Upon request, a customer may receive an additional copy of the terms of service document under which it is receiving service.

- (4) A REP shall retain a copy of each version of the terms of service during the time that the plan is offered and for two years after that version of the terms of service is no longer offered and no customer is being served under that version of the terms of service.
- (5) The following information shall be conspicuously contained in the terms of service document:
- (A) The REP's certified name, mailing address, Internet website address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference);
  - (B) The Electricity Facts Label as specified in subsection (f) of this section, unless the Electricity Facts Label is provided as a separate document at the same time as the terms of service document is provided;
  - (C) A statement as to whether there is a minimum term of service, any automatic renewal provisions, how service can be cancelled, and any fees associated with cancellation of service;
  - (D) A statement as to whether there are penalties to terminate service before the end of the minimum term of service, and the amount of those penalties, and whether there are any conditions under which those penalties will not apply;
  - (E) If the REP requires deposits from its customers:
    - (i) a description of the conditions that will trigger a request for a deposit;

- (ii) the maximum amount of the deposit or the manner in which the deposit amount will be determined;
  - (iii) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;
  - (iv) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478(a) of this title (relating to Credit Requirements and Deposits);
  - (v) the right of a customer or applicant who qualifies for the rate reduction program to pay a required deposit that exceeds \$50 in two equal installments pursuant to §25.478(e)(3) of this title; and
  - (vi) for an affiliate REP or Provider of Last Resort (POLR), the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.
- (F) The description of any charges resulting from a move-in or switch that may be passed through by the transmission and distribution utility (TDU) and paid by the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
- (G) The itemization of any services that are included in the customer's terms of service, including:
- (i) the specific methods and prices by which the customer will be charged for electric service and

- (ii) the price for each service or product other than electric service. If a REP has bundled the charges for these other services together, the total price for services other than electric service;
- (H) The itemization of any quantifiable charges and fees that may be imposed on the customer by the REP, such as an application fee, charges and fees for default, late payment, returned checks, cancellation of service, and termination of service;
- (I) A description of payment arrangements and bill payment assistance programs offered by the REP;
- (J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations, and conditions of the terms of services offered by the REP;
- (K) In a conspicuous and separate paragraph or box:
  - (i) A description of the right of a new customer to rescind service without fee or penalty of any kind within three federal business days after receiving the terms of service document pursuant to §25.474(j) of this title (relating to Selection of Retail Electric Provider); and
  - (ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile machine number or email address that the customer may use to rescind service.
- (L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race,

creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services; and

- (M) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the terms of service document.

(e) **Notice of changes in terms and conditions of service.**

- (1) A REP shall provide written notice to its customers at least 45 days in advance of any material change in the terms of service document. The notice shall identify the material change and clearly specify what actions the customer needs to take to terminate the terms of service agreement without a penalty, the deadline by which such action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding changes to your terms of service." The notice shall clearly state that the customer may decline any material change in the terms of service and terminate the terms of service agreement without a penalty. Notice of the change is not required for material changes that benefit the customer or for changes that are mandated by a regulatory agency. Notice is not required for changes in rates if the terms of service clearly specify the manner in which rates may be adjusted (i.e., variable rate products).

- (2) A REP may utilize an automatic renewal clause. Any service renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 31 days and such clause may be repeatedly activated unless cancelled by the customer or unless the REP materially changes the terms of service.

(f) **Electricity Facts Label.**

- (1) **Pricing disclosures.** Pricing information disclosed by a REP in an Electricity Facts Label shall include:

- (A) For the total cost of electric services, exclusive of applicable taxes:

- (i) If the billing is based on prices that will not vary by season or time of day, the total average price for electric service reflecting all recurring charges, including generation, transmission and distribution, and other flat rate charges expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for the following usage levels:

- (I) For residential customers, 500, 1,000, and 1,500 kilowatt hours per month; and

- (II) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month;

- (ii) If the billing is based on prices that vary by season or time of day, the average price for electric service, reflecting all recurring charges and based on the applicable load profile approved by the

commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

- (I) For residential customers, 500, 1,000, and 1,500 kilowatt hours per month; and
  - (II) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month;
- (iii) If a REP combines the charges for electric service with charges for any other product, the REP shall:
- (I) If the electric services are sold separately from the other products, disclose the total price for electric service separately from other products; and
  - (II) If the REP does not permit a customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of the total electric service.
- (B) If the pricing plan includes prices that will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns — your actual price for electric service may be different depending on how and when you use electricity."
- (C) If the pricing plan envisions prices that will vary during the term of the service because of factors other than season and time of day, the statement: "This price disclosure is an example based on average service prices — your average price for electric service will vary according to your usage

and (insert description of the basis for and the frequency of price changes during the service period)."

- (D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed;
- (E) If the price of electric service will vary, the phrase "variable price" and a description of how the prices will change and when; and
- (F) The criteria used to calculate the average pricing disclosures for residential customers.

(2) **Service terms disclosures.** Specific service terms that shall be disclosed on the Electricity Facts Label are:

- (A) The minimum service term, if any; and
- (B) Early termination penalties, if any.

(3) **Fuel mix disclosures.** The Electricity Facts Label shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The break-down for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydropower, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year.

- (A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%".

- (B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%".
- (4) **Emissions and waste disclosures.** The Electricity Facts Label shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide, particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection. Emissions and waste disclosures shall be based on data for the most recent calendar year.
- (A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.
- (B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.
- (C) The registration agent shall calculate the statewide system average rates to be used in accordance with this subsection.
- (5) **Renewable energy claims.** A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

(6) **Format of Electricity Facts Label.** Each Electricity Facts Label shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph:

<b>Electricity Facts</b>																							
[Name of REP], [Name of Product] [Service area (if applicable)] [Date]																							
<b>Electricity price</b>	Average monthly use:	500kWh    1,000kWh    1,500 kWh																					
	<b>Average price per kilowatt-hour:</b>	<b>[x.x]¢            [x.x]¢            [x.x]¢</b>																					
<p>This price disclosure is an example based on [criteria used to construct the example] – your average price for electric service will vary according to [relevant variation].</p> <p>[If applicable] Price fixed for [xx] months.</p> <p>[If applicable] On-peak [season or time]:[xxx]</p> <p>[If applicable] Average on-peak price per kilowatt-hour: [x.x]¢</p> <p>[If applicable] Average off-peak price per kilowatt-hour: [x.x]¢</p>																							
<b>Contract</b>	<p>Minimum term:[xx] months. Penalty for early cancellation:\$[xx]</p> <p><i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</i></p>																						
<b>Sources of power generation</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;"><b><i>This product</i></b></th> <th style="text-align: center;"><b><i>Texas</i></b> <i>(for comparison)</i></th> </tr> </thead> <tbody> <tr> <td>Coal and lignite</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Natural gas</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Nuclear</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Renewable energy</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Other</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: center;"><b>100%</b></td> <td style="text-align: center;"><b>100%</b></td> </tr> </tbody> </table>			<b><i>This product</i></b>	<b><i>Texas</i></b> <i>(for comparison)</i>	Coal and lignite	[xx]%	[xx]%	Natural gas	[xx]%	[xx]%	Nuclear	[xx]%	[xx]%	Renewable energy	[xx]%	[xx]%	Other	[xx]%	[xx]%	<b>Total</b>	<b>100%</b>	<b>100%</b>
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Carbon dioxide	89																						
Nitrogen oxides	112																						
Particulates	56																						
Sulfur dioxide	23																						
Nuclear waste	10																						
		<div style="display: flex; justify-content: space-around; width: 100%;"> <span style="background-color: #cccccc; padding: 2px;"><b>Better than Texas</b></span> <span style="background-color: #cccccc; padding: 2px;"><b>Worse than Texas</b></span> </div>																					
(Indexed values; 100=Texas average)																							

Type used in this format

Title: 14 point

Headings: 12 point boldface

Body: 10 point

- (7) **Distribution of Electricity Facts Label.** A REP shall distribute its Electricity Facts Label to its customers no less than once in a 12-month period and to the commission upon request. A REP is not required to distribute its Electricity Facts Label to a customer pursuant to this paragraph if it has provided a new Electricity Facts Label to that customer in the past six months.
- (g) **Your Rights as a Customer disclosure.** In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.
- (1) This disclosure shall initially be distributed at the same time as the REP's terms of service document and shall accurately reflect the REP's terms of service.
- (2) The REP shall distribute an update of this disclosure no less than once in a 12-month period to its customers.
- (3) Each REP's Your Rights as a Customer disclosure is subject to review and approval by the commission, upon request.
- (4) The disclosure shall inform the customer of the following:
- (A) The REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);
- (B) The customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to

make that request on behalf of the customer via the standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable;

- (C) Disclosures concerning the customer's ability to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
- (D) Notice of any special services such as readers or notices in Braille or TTY services for hearing impaired customers;
- (E) Special actions or programs available to those residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems;
- (F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
- (G) Cancellation of terms of service with or without penalty;
- (H) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
- (I) Protections relating to termination of service protections pursuant to §25.482 of this title (relating to Termination of Service) and disconnection of service pursuant to §25.483 of this title (relating to Disconnection of Service);
- (J) Availability of financial and energy assistance programs for residential customers;

- (K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List) and §26.37 (relating to Texas No-Call List);
- (L) Availability of discounts for qualified low-income residential customers;
- (M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);
- (N) Procedures for reporting outages;
- (O) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information);
- (P) Availability of POLR service and how to contact the POLR; and
- (Q) The steps necessary to have service restored or reconnected after involuntary suspension or disconnection.

(h) This section is effective June 1, 2004.

**§25.478. Credit Requirements and Deposits.**

- (a) **Credit requirements for residential customers.** A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.
- (1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.
  - (2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.
  - (3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph. A REP other than an affiliated REP or POLR may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).
    - (A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:
      - (i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;
      - (ii) is not delinquent in payment of any such electric service account;and

- (iii) during the last 12 consecutive months of service was not late in paying a bill more than once.
- (B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.
- (C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
- (D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.
- (E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically

indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

- (i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and
  - (ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*
- (4) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

- (5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.
- (b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.
- (c) **Initial deposits for applicants and existing customers.**
- (1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.
- (2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of

guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.

- (3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).

(d) **Additional deposits by existing customers.**

- (1) A REP may request an additional deposit from an existing customer if:
  - (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and
  - (B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.
- (2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.
- (3) A REP may terminate or disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued

concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) **Amount of deposit.**

- (1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant
  - (A) shall not exceed an amount equivalent to the greater of
    - (i) one-fifth of the customer's estimated annual billing or;
    - (ii) the sum of the estimated billings for the next two months.
  - (B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.
- (2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant
- (3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments.

Notice of this option for customers or applicants eligible for the rate reduction program shall be included in any written notice to a customer or applicant requesting a deposit. The customer or applicant shall have the obligation of providing sufficient information to the REP to demonstrate that the customer or applicant is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

- (f) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in December of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.
- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
  - (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.
- (g) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer

may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h) **Records of deposits.**

(1) A REP that collects a deposit shall keep records to show:

- (A) the name and address of each depositor;
- (B) the amount and date of the deposit; and
- (C) each transaction concerning the deposit.

(2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement.

A REP shall provide means for a depositor to establish a claim if the receipt is lost.

(3) A REP shall maintain a record of each unclaimed deposit for at least four years.

(4) A REP shall make a reasonable effort to return unclaimed deposits.

(i) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no

more than one late payment in a 12-month period during the term of the guarantee agreement.

- (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.
- (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.
- (4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.
- (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
  - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.
  - (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
- (6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) for nonpayment of the guaranteed amount only if the termination of service (or, where applicable, the

disconnection of service) was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Service) or §25.483 of this title.

(j) **Refunding deposits and voiding letters of guarantee.**

- (1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable.
- (2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.
- (3) If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee

agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

- (4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.
- (k) **Re-establishment of credit.** A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.
- (l) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.
- (m) This section is effective June 1, 2004.



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 §25.454, relating to Rate Reduction Program, §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and §25.478, relating to Credit Requirements and Deposits are hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2006.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**