

**PROJECT NO. 37214**

<b>RULEMAKING TO IMPLEMENT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CHANGES TO CUSTOMER</b>	<b>§</b>	
<b>DISCLOSURES AS REQUIRED BY HB</b>	<b>§</b>	<b>OF TEXAS</b>
<b>1822</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENT TO §25.475  
AS APPROVED AT THE NOVEMBER 20, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.475, relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers with changes to the proposed text as published in the August 14, 2009 issue of the *Texas Register* (34 TexReg 5461). The amendment implements certain portions of House Bill (HB) 1822 from the 81<sup>st</sup> Regular Legislative Session (2009). The amendment is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). The amendment is adopted under Project Number 37214.

The commission received comments on the proposed amendment from Fox Smolen and Associates, Inc (Fox Smolen); Office of Public Utility Counsel (OPC); CenterPoint Energy; Reliant Energy Retail Services, LLC, Gexa Energy, LP, Green Mountain Energy Company and Stream Energy (Reliant et al.); Oncor Electric Delivery Company, LLC, AEP Texas Central Company, AEP Texas North Company, and Texas New Mexico Power Company (Joint TDUs); Retail Electric Companies, consisting of ARM (Constellation New Energy, Inc; Direct Energy, LP; First Choice Power; Green Mountain Energy Company; Gexa Energy, LP; Integrys Energy Services of Texas, LP; Sempra Energy Solutions, LLC; and Stream Energy), CPL Retail, Reliant Energy Retail Services, LLC, TEAM (consisting of Accent Energy; Amigo Energy; Cirro

Energy; Green Mountain Energy; Just Energy; Hudson Energy Services; StarTex Power; Stream Energy; Tara Energy; and TriEagle Energy); TXU Retail Company, LLC; and WTU Retail Energy; and Steering Committee of the Cities Served by Oncor (Oncor Cities).

#### Comment Summary

##### *§25.475(a)*

Retail Electric Companies pointed out that the effect of striking the language in (a) would be to reverse the decision to grandfather contracts and recommended the language be amended to preserve the grandfathering of the existing contract documents.

Retail Electric Companies also commented that it will take time and resources to again modify systems and processes to comply with changes to the disclosure rule and requested an implementation date of March 1, 2010 for the new contract expiration requirements. At a minimum retail electric providers (REPs) would need to modify supply procurement strategies to conform to new contract expiration notice timelines (30-60 days for residential and 14-60 for small commercial). Retail Electric Companies added that if the commission determines that REPs must send both mail and electronic notice to customers then that will require major system changes and March 1 would be a very aggressive timeline to achieve compliance. They also proposed that until March 1, 2010 the rule in existence today continue to apply. OPC felt that the REPs claims were unfounded since HB 1822 is not intended to be a huge burden on the industry. OPC stated that REPs have been on notice for quite some time that changes were coming and were to be effectuated to provide customer's notice of their fixed price contract expiration dates.

OPC believed that further delay will only lend to the continued confusion and frustration of Texas electric customers.

*Commission Response*

**The commission agrees with Retail Electric Companies that the fixed price contracts entered into before the effective date of the amendment should not be required to comply with the requirements of the amendment, and that the current requirements should remain in effect for those contracts. The commission believes the requirements of the amendment should be implemented as soon as possible and therefore believes that companies should be compliant by April 1, 2010. The commission changes the rule to make it effective April 1, 2010.**

*§25.475(b)*

OPC suggested adding a definition of small commercial customer as a customer with a demand less than 500 KW or 1,000 kW as set forth in PURA, during any 12-month period to ensure more Texas small commercial businesses enjoy the protections extended to residential and other small commercial customers. OPC expressed concerns regarding typical small businesses which may exceed the 50 kW threshold set in the customer protection rules but not the 1,000 kW threshold set out in PURA, since these may be mom-and-pop businesses, churches, schools, or others types of businesses that do not have the power to negotiate or the opportunity to bargain around the standard form contracts provided by their REPs of choice and may not have legal representation or expertise in selecting electric service plans. OPC requested the commission change the definition throughout its rules, including §25.471 and §25.5.

Retail Electric Companies stated that OPC appears to point to the definition of small commercial customer in PURA §39.202(o) to support its argument to change the definition. However, Retail Electric Companies argued that the only legal effect of the PURA definition of small commercial customer is to determine which customers were eligible for “Price to Beat” service which expired on January 1, 2007. Consequently, Retail Electric Companies did not believe there was relevant statutory guidance from PURA §39.202 and that the statutory guidance came from PURA §39.101, which establishes numerous rights for customers but does not distinguish between customer classes. Retail Electric Companies pointed out that the commission has addressed the appropriate threshold on several occasions but has thoughtfully chosen to keep the level at 50 kW. Retail Electric Companies argued that the level has been 50 kW for nearly a decade and should remain at that level as most of the provisions of the customer protection rules are irrelevant to commercial customers over 50 kW and are costly for REPs to provide.

### *Commission Response*

**The commission agrees with the Retail Electric Companies that the commission has the authority to set a load threshold above which a customer may waive the commission’s various customer protection rules. The commission has entertained this issue on at least three occasions as the Retail Electric Companies point out. Most recently a question was asked in the proposal for publication of §25.475 in 2008 as to whether 50 kW was the appropriate threshold for waiver of the commission’s customer protection rules and the commission determined that the level should remain at 50 kW. The commission still**

**believes that 50kW is the appropriate level and therefore does not make the change to the threshold that OPC suggested.**

Reliant et al. requested the commission allow a direct pass-through of transmission and distribution utility (TDU) charges on variable price products to assure consistency among retail products. Reliant et al. stated that the electricity facts label (EFL) of a variable price product is required to display the total average price reflecting all recurring charges and a statement that the price quoted is the price that will be applied in the first billing cycle. However, the definition of fixed rate products and indexed rate products specifically allow TDU charges and other fees beyond a REP's control to be passed through to customers. Reliant et al. did not believe there was a sound basis for differentiating between fixed, indexed, and variable and restricting such a pass through could not have been intended when the commission included the requirement to state that the price will apply during the first billing cycle. Additionally, without changing certain billing systems, REPs cannot stop changes in TDU charges that are passed through as part of the price from flowing through automatically to customers, and even if billing systems were changed, REPs must try and capture the lost revenues in the future and would try to collect higher prices from existing customers to pay those charges on some sort of uplift basis to make the REPs whole. Reliant et al. concluded that it would be inconsistent and unsound public policy to interpret rules in a way that would preclude REPs from passing through such changes for variable price products.

The Joint TDUs and CenterPoint agreed that the commission should allow direct pass through of TDU charges on variable price products. The Joint TDUs pointed out that TDU charges are a

non-bypassable charge and must be paid by the REP regardless of whether the REP is paid by the customer for the charges. The TDUs believed that it was inconsistent for fixed rate and term products to be able to immediately reflect TDU rates while variable rate products cannot, and that possible outcomes would include REPs losing money, REPs being unable to offer variable products, or REPs opposing TDU rate changes. CenterPoint stated that it became aware of this problem during the discussions that led to the settlement of Docket Number 37200, CenterPoint's application for a financing order to securitize the distribution portion of its Hurricane Ike restoration costs and issue system restoration bonds. Under the financing order, CenterPoint as the servicer for the bonds is authorized to begin collecting the system restoration charges almost immediately after the bonds are sold. CenterPoint commented that the almost immediate collection of revenues to begin repayment of the bonds' principal and interest is one of the features that makes securitization bonds highly attractive to investors, which results in the bonds carrying lower interest rates that ultimately benefit retail customers. Given the benefit to consumers, CenterPoint argued that it is incongruous and counter-productive for a commission rule to cause REPs to suffer unrecovered costs as a result of the securitization procedures or changes in Electric Reliability Council of Texas (ERCOT) fees or regulatory actions.

*Commission Response*

**The commission agrees with Reliant et al., CenterPoint, and the TDUs that REPs should be allowed to recover actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not included in the**

**average price calculation. These changes may be passed directly through to customers on variable price products beginning with the first billing cycle. The commission changes the rule accordingly.**

*§25.475(c)*

REPs requested that the requirement to include the end date for a fixed rate product be placed in §25.479 relating to bill format. OPC agreed and added that requirements relating to the display of beginning and ending meter reads on customer billing statements are more appropriately included in §25.479 since that rule relates to all retail customers and §25.475 is limited to REP information disclosures to residential and small commercial customers.

*Commission Response*

**The commission agrees with the REPs that billing requirements should be contained in the billing format rule, §25.479, and makes the change in that rule since it is also currently open to implement HB 1822.**

*§25.475(c)(3)(B)*

Retail Electric Companies stated that the requirement that a REP's estimate be based on the TDU meter reading will be problematic especially given that the commission recently reduced the standard switching time to only seven days; the end of the term may not coincide with the TDU's meter reading schedule.

Fox Smolen stated that one of the most troublesome elements of contracts are the different ways in which REPs describe and interpret the contract term. For instance, some REPs define or interpret the contract “term” differently. Some REPs define or assume that the contract begins on the date the contract is signed and calculate the expiration date of the contract as twelve months from that date; others assume the contract starts on the date the ESI ID is switched; and other contract terms are for 12 meter reads. Therefore, providing notice as required by HB 1822 will assist Texas small commercial customers in knowing when they may opt for a new plan with their current REP or shop around and choose another REP.

Fox Smolen recommended that the commission institute a safe harbor provision for customers if the date included on a customer’s bill is in error due to modifications made by the TDU’s annually published meter reading schedule since REPs cannot ensure that the TDU will always adhere to the published schedules. Fox Smolen also believed that REPs should not be held responsible for erroneous dates on the customers’ bills due to erroneous meter read dates provided by the TDU, and that customers should not be charged fees or penalties when switching to a new provider for inadvertently designating an erroneous contract end date because of a meter read date that has been changed by the TDU. Oncor Cities stated that REPs nonetheless have no problem assigning an end date to a contract when it benefits the REP to do so, *i.e.*, when the REP wants to charge early termination penalties. Retail Electric Companies stated that prohibiting termination penalties for 14 days before or after the actual switch date was not practical either since it essentially adds a month of termination fee waivers to the uncertainty outside of the REP’s control as to when the TDU will read the meter. Also as advanced meters are deployed

more widely more and more meter reads will be performed remotely and predictably, which will enable the TDU to more reliably commit to a specific date.

Oncor Cities stated that there should be no provision for estimating the contract date and that the end date of the contract should always be a specific date that is based on a date x amount of time after the contract was activated, and any delay in a meter read should not be a problem for customers. Retail Electric Companies did not believe that was a practical solution for the market as it exists today as REPs and their customers are subject to the meter reading schedules of the TDUs and the REP has no control over when the TDU will read the meter, nor do these comments take into account force majeure events such as Hurricane Ike which render meter reading virtually impossible.

*Commission Response*

**The commission agrees with Oncor Cities and Fox Smolen that estimation has caused a great deal of customer confusion because customers do not know what day they will be switched to another provider and when the contract ends. Due to the implementation of the commission's new switching rules, there is no longer a 45-day window for a switch and thus there is less uncertainty associated with a switch date. The commission recognizes that the exact date the customer will be switched to a new provider is still not known ahead of time and therefore grants some leeway to the REPs to choose how to present the end date of the contract. The commission understands that some REPs will be able to determine a specific contract termination date and other REPs may need to determine the contract termination date by referencing to the first meter read on or after a specific calendar date.**

**The commission determines that if a REP provides an exact calendar date for termination, then no termination penalty should apply within 14 days of that contract termination date. If the REP determines the contract termination date by referencing the meter read date after a certain period, then no termination penalty should apply from the time the customer receives the termination notice. The commission amends the rule accordingly.**

Retail Electric Companies agreed with the proposed rule that the start and end dates of the contract should be available to the customer upon request. Oncor Cities and TX ROSE disagreed. Oncor Cities stated that HB 1822 does not put the burden on consumers to request information; it puts the burden on REPs to provide such information on each statement.

*Commission Response*

**The commission agrees with Oncor Cities and Texas Rose that having the contract dates simply available to the customer upon request does not meet the spirit or requirements of HB 1822. The commission believes that the end date should be placed on the customer's bill as required by the statute. That requirement will be contained in §25.479 and has been deleted from this rule. The commission believes the start date may not be known when the customer signs up, but the end date should be a determinable date once the start date is known. When a REP elects to determine the contract termination date by reference to the first meter read date on or after a specific date, subsection (e)(1)(C)(iii) has been added so that the customer is not subject to termination penalties upon receipt of contract termination notice.**

Retail Electric Companies disagreed with OPC that PURA §39.112(c) requires REPs to include end dates of fixed rate products on bills rendered to both residential and small commercial customers, as §39.112 clearly applies only to fixed rate products provided to residential customers and the commission should ensure that the meaning of the phrase “the fixed rate product” is properly reflected in the rule.

*Commission Response*

**The commission agrees with Retail Electric Companies that HB 1822 does not require end dates of fixed rate products on bills for small commercial customers. However, the commission believes that knowing the end date of contract is important for small commercial customers as well as residential and adds the requirement to §25.479.**

*§25.475(d)(2)(B)*

Retail Electric Companies raised an issue concerning the option for a fixed price product that an allowed price change can be stated on a separate line item on the bill. Retail Electric Companies stated that this provision cannot always be implemented due to the way that TDUs implement rates. For example, recently the market was notified on a Friday that new rates would be implemented effective the previous day, which required cancelling and rebilling of invoices that had already been generated by the TDU. The Retail Electric Companies argued that the rules applicable to REPs must be conformed to accommodate how the commission is allowing TDU rate changes.

*Commission Response*

**The commission adopts §25.475(d)(2)(B) to provide the option of showing price changes on the bill or including in the bill a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions. A REP that cannot show the price change as a separate line item on the bill should therefore use the second option provided by the rule.**

*§25.475(e)*

Oncor Cities stated and TX ROSE agreed that the proposed amendment creates inconsistent protections between those afforded to residential and those afforded to small commercial. Oncor Cities requested that REPs should be required to send a written notice of contract expiration at least 30 days (or one billing cycle) prior to the date of contract expiration regardless of whether the customer is a residential or small commercial customer. Retail Electric Companies responded that the contract expiration notice requirements in PURA §39.112 apply only to fixed rate products provided to residential customers. There is no corresponding provision that requires 30 days' notice of contract expiration to small commercial customers. In addition, the longer the period in advance of contract expiration that a REP is required to provide notice, the greater the hedging costs the REP will incur.

*Commission Response*

**The commission agrees with Retail Electric Companies that there is no requirement to send a contract expiration notice to commercial customers in PURA. Since the commission will now require the REP to include the contract expiration date on each bill, the termination notice 30-60 days out is no longer necessary. The commission agrees with REPs that the**

**costs of providing termination notices to commercial customers 30-60 days out can greatly increase costs and the commission is not convinced that the benefit to the customer would exceed the costs to the REP.**

OPC agreed with Retail Electric Companies that a contract expiration notice could be sent to residential customers via mail or e-mail and need not be sent both ways.

*Commission Response*

**The commission agrees with Retail Electric Companies and OPC that the expiration notice may be sent by mail or e-mail and does not require the notice to be sent both ways.**

*§25.475(e)(1)(B)(ii)(II)*

Retail Electric Companies disagreed with the requirement that the REP provide on each bill to small commercial customers the billing cycle and month that the existing contract will expire. They proposed to keep the rule as it currently is for small commercial customers since Section 5 of HB 1822 focuses on expiration notices for residential customers in particular.

*Commission Response*

**The commission agrees with Retail Electric Companies that HB 1822 does not require this for commercial customers; however, the commission agrees that knowing the end date of a contract is important for commercial customers as well and adds that requirement to §25.479.**

*§25.475(e)(1)(C)(ii)*

Retail Electric Companies disagreed with the requirement to include the specific amount of the termination fees. The statute requires a description of the fees and not the amounts of such fees. Retail Electric Companies argued that the amounts may vary significantly depending on which product the customer is on and the date the notice was received and it would be costly to have to customize these notices to each individual customer. OPC disagreed with REPs and asserted that providing the specific amount of any termination fees meets the requirement of describing the early termination fee as required by the legislation. TX ROSE also disagreed and stated that the amount of the fee is the most important part of the description for the consumer. TX ROSE urged the commission to reject the notion that a description of fees does not include the amount of the fee. Oncor Cities urged the commission to reject the REPs' arguments as REPs routinely customize billing notices to reflect different rate plans and fairness dictates that customers know the amount of fees or charges that they face for early termination. OPC stated that this requirement should apply to small commercial customers as well as residential.

*Commission Response*

**The commission recognizes the Retail Electric Providers' concerns about cost to determine specific termination amounts and agrees that the statute requires a description of the termination fees and not the amount. The commission requires REPs to provide a description of any fees or charges associated with early termination but does not require the REP to calculate and provide the amount of termination as part of the contract termination notice.**

Oncor Cities stated that this provision can have the effect of penalizing a customer who wishes to promptly exercise the power to choose an electric provider as soon as he or she receives written notice that the fixed term contract is expiring. Under the proposed amendment, any customer who has received notification of a contract must wait at least two weeks before switching in order to avoid a penalty, and this creates an improper burden for the customer, and is bad for competition as it exacerbates customer stickiness in the market. TX ROSE stated that shopping for a new REP is a time consuming task. If the switch takes place in ten calendar days a 14 day window allows the consumer four days to get the notice, figure out what needs to be done and investigate options. Illness, out of town travel, vacation, and civic duties can make it impossible to switch REPs without paying a penalty or a high bill because of the increased rates charged after the contract expired. Therefore, Oncor Cities and TX ROSE proposed that any written notice of contract expiration include the clear language that a customer faces no early termination penalties for acting upon notice prior to the expiration of the contract. OPC agreed that REPs should be prohibited from charging early termination fees once the customer receives notice of the pending contract termination. Retail Electric Companies stated that the commission decided to allow for a 14-day termination fee waiver because it is not clear when a switch will be completed. However, changing the time for providing the contract expiration notice for residential customers to 30 days instead of 14 does not increase the level of uncertainty associated with the time of TDU meter reads. Also, the Retail Electric Companies restated that its proposal to eliminate statements about termination penalties under certain conditions provides an incentive to REPs to waive the fees when notice is provided in order not to make the termination notice statement.

*Commission Response*

**The commission determines that its requirement for REPs to place the contract termination date of fixed-rate products on each bill will provide customers with enough notice in advance of expiration to shop for a REP. If the contract expiration date for a residential customer is a specific date, no termination penalty shall apply 14 days prior to contract expiration. If the contract expiration date for a residential customer is by reference to the first meter-read date on or after a specific calendar date, then no termination penalty shall apply once the customer receives the written notice of contract expiration. For a small commercial customer, no termination penalty shall apply 14 days prior to contract expiration, regardless of whether the contract expiration is on a specific date or is defined by reference to a meter-read date. The commission makes changes to the rule accordingly.**

Retail Electric Companies proposed to clarify when statements required by this provision do not need to be included in the notice. Retail Electric Companies argued that since the proposed rule language states that the statements need not be included when there is no termination fee, it is clear for a contract that never had a termination fee but it is not clear for a situation where the product includes a termination penalty that the REP is choosing to waive. Retail Electric Companies state that making this modification will help avoid customer confusion that would be created by including bold statements that termination penalties apply when in reality they do not.

*Commission Response*

**The commission concludes that the REP who provides an exact date for the contract expiration date should provide a statement in the contract expiration notice stating that no**

**penalty shall apply fourteen days prior to the end date stated in the contract expiration notice and provided to the customer on its bill. Since the contracts that expire on a meter read on or after a certain date do not allow termination penalties after the termination notice is sent out, the termination notice should state that. The commission makes changes to the rule consistent with this.**

*§25.475(e)(1)(C)(iv)*

Oncor Cities stated that the proposed language raises questions as to whether REPs will always include important information about default plans in the expiration notice. Oncor Cities stated that the subsection should be modified to further encourage a REP to always include EFLs in contract notices such that there are clear disclaimers that the REP cannot provide pricing details and that the default renewal product may be substantially different and the rates may be higher. OPC agreed. Retail Electric Companies and TEAM stated that the additional language proposed by Oncor Cities is unnecessary and has an alarmist tone to it and is not appropriate for the contract expiration notice.

***Commission Response***

**The commission disagrees with Oncor Cities that the customer will not have the information contained in the EFL. The commission still requires an EFL be sent to the customer 14 days before the contract expires. The commission disagrees that language proposed by Oncor Cities for the termination notice is necessary. The commission believes that the requirements for the termination notice are adequate and does not make changes to the rule based on Oncor Cities' request.**

TEAM stated that this provision is unworkable as the customer may have selected a different renewal product or even a different REP based on the notice of contract expiration sent in the 30-60 day window and the customer could be confused if he or she had already taken action. In addition, the proposed amendment would impose additional costs to the REP for a second mailing that may not even be relevant to the customer. TEAM proposed that the EFL be available by reference on the powertochoose website or another website or toll-free number rather than be sent directly to the customer.

TX ROSE asked the commission to revise this provision to include the EFL for the new product to be included with the initial notice and that a REP should be prohibited from charging the early termination fee once the customer receives notice of the pending contract termination and change in electricity price. TEAM stated that this was unworkable because it would saddle REPs with significant exposure by requiring REPs to commit to a default price without an accompanying commitment from the customer that he will actually take power from the REP under the terms of the renewal product, and this goes beyond the requirements of HB 1822.

*Commission response*

**The commission disagrees with TEAM that the default EFL should not be sent to the customer. The commission has granted REPs leeway by allowing them to send the EFL after the termination notice has gone out in order to allow REPs more time to get an accurate price for the default product. However, the commission determines that it is**

**imperative that the customer have the information in hand in order to make a decision as to whether to stay on the default product or choose a new REP.**

§25.475(e)(2)(A)

Retail Electric Companies requested that during a call to re-enroll with a REP that the customer not be required to provide an ESI ID and the REP not be required to provide the identification number of the TOS and EFL under which the customer will be served. They stated that these requirements are time consuming and burdensome and provide customers with no additional benefit or protection.

*Commission Response*

**The commission agrees that many customers may not have easy access to the ESI ID information and that there is cost without added value to having it recorded. However, the commission disagrees that the REP should not be required to state which TOS and EFL under which the customer is being served. It is very important to the customer and to the commission to have this information when researching whether the customer is receiving the correct rate and the terms and conditions under which the customer is being served.**

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

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §17.003, which requires that the commission to adopt and enforce rules to require a retail electric provider to give clear and uniform information about rates, terms, and services; and §39.112, which requires a REP to provide certain information to a residential customer who has a fixed rate product.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.003, and 39.112.

**§25.475. General Retail Electric Provider Requirements and 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, in connection with the provision of service and marketing to residential and small commercial customers. This section is effective April 1, 2010. REPs are not required to modify contract documents related to contracts entered into before this date, but shall provide notice of expiration as required by subsection (e) of this section.
- (b) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context indicates otherwise.
- (1) **Contract** -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider).
  - (2) **Contract documents** -- The TOS, EFL and YRAC.
  - (3) **Contract expiration** -- The time when the initial term contract is completed. A new contract is initiated when the customer begins receiving service pursuant to the new EFL.
  - (4) **Contract term** -- The time period the contract is in effect.
  - (5) **Fixed rate product** -- A retail electric product with a term of at least three months for which the price (including recurring charges) for each billing period of the contract term is the same throughout the contract term, except that the price

may vary from the disclosed amount solely to reflect actual changes in the Transmission and Distribution Utility (TDU) charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

- (6) **Indexed product** -- A retail electric product for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. An indexed product may be for a term of three months or more, or may be a month-to-month contract.
- (7) **Month-to-month contract** -- A contract with a term of 31 days or less. A month-to-month contract may not contain a termination fee or penalty.
- (8) **Price** -- The cost for a retail electric product that includes all recurring charges excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.
- (9) **Recurring charge** -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be

applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.

- (10) **Term contract** -- A contract with a term in excess of 31 days.
- (11) **Variable price product** -- A retail product for which price may vary according to a method determined by the REP, including a product for which the price, can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can be only a month-to-month contract.

(c) **General Retail Electric Provider requirements.**

(1) **General Disclosure Requirements.**

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs and YRACs distributed by a REP or aggregator shall be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

- (i) Using the term or terms "fixed" to market a product that does not meet the definition of a fixed rate product.
- (ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.

- (iii) Suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP will provide a customer with better quality of service from the TDU.
  - (iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any REP or aggregator.
  - (v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term.
- (B) Written and electronic communications shall not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, shall include the REP's certified name or commission authorized business name, or the aggregator's registered name, and the number of the certification or registration.
- (C) The TOS, EFL, and YRAC shall be provided to each customer upon enrollment. Each document shall be provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.
- (D) A REP shall retain a copy of each version of the TOS, EFL, and YRAC during the time the plan is in effect for a customer and for four years after

the contract ceases to be in effect for any customer. REPs shall provide such documents at the request of the commission or its staff.

(2) **General contracting requirements.**

- (A) A TOS, EFL, and YRAC shall be complete, shall be written in language that is clear, plain and easily understood, and shall be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents shall include a link or internet address to the full text of the law.
- (B) All contract documents shall be available to the commission to post on its customer education website (if the REP chooses to post offers to the website).
- (C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving. There shall be no early termination fee assessed to the customer as a result of the customer's relocation if the customer provides a forwarding address and, if required, reasonable evidence that the customer no longer occupies the location specified in the contract.
- (D) A TOS and EFL shall disclose the type of product being described, using one of the following terms: fixed rate product, indexed product or a variable price product.

- (E) A REP shall not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.
  - (F) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.
  - (G) For a variable price product, the REP shall disclose on the REP's website and through a toll-free number the current price and, for residential customers, one year price history, or history for the life of the product, if it has been offered less than one year. A REP shall not rename a product in order to avoid disclosure of price history. The EFL of a variable price product or indexed product shall include a notice of how the current price and, if applicable, historical price information may be obtained.
  - (H) A REP shall comply with its contracts.
- (3) **Specific contract requirements.**
- (A) The contract term shall be conspicuously disclosed.
  - (B) The start and end dates of the contract shall be available to the customer upon request. If the REP cannot determine the start date, the REP may estimate the start date. After the start date is known, the REP shall specify the end date of the contract by:
    - (i) specifying a calendar date; or
    - (ii) reference to the first meter read on or after a specific calendar date.

(C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.

(4) **Website requirements.**

(A) Each REP that offers residential retail electric products for enrollment on its website shall prominently display the EFL for any products offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information shall not be required.

(B) The EFL for each product shall be printable in no more than a two page format. The EFL, TOS, and YRAC for any products offered for enrollment on the website shall be available for viewing or downloading.

(d) **Changes in contract and price and notice of changes.** A REP may make changes to the terms and conditions of a contract or to the price of a product as provided for in this section. Changes in term (length) of a contract require the customer to enter into a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.

(1) **Contract changes other than price.**

(A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric

product, during its term; but may change any other provision of the contract, with notice under paragraph (3) of this subsection.

(B) A REP may not change the terms and conditions of a month-to-month product, indexed or variable price products, unless it provides notice under paragraph (3) of this subsection.

(2) **Price changes.**

(A) A REP may only change the price of a fixed rate product, an indexed product, or a variable product consistent with the definitions in this section and according to the product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.

(B) For a fixed rate product, each bill shall either show the price changes on one or more separate line items, or shall include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.

(C) Each residential bill for a variable price product shall include a statement informing the customer how to obtain information about the price that will apply on the next bill.

(3) **Notice of changes to terms and conditions.** A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the contract will be applied to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

(4) **Contents of the notice to change terms and conditions.** The notice shall:

(A) be provided in or with the customer's bill or in a separate document;

- (B) include the following statement, “Important notice regarding changes to your contract” clearly and conspicuously in the notice;
  - (C) identify the change and the specific contract provisions that address the change;
  - (D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;
  - (E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty shall apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and
  - (F) state in bold lettering that establishing service with another REP may take up to seven business days.
- (e) **Contract expiration and renewal offers.** The REP shall send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP shall send the notice by mail to a residential customer or shall send the required notice to a customer’s e-mail address if available to the REP and if the customer has requested to receive contract-related notices electronically. The REP shall send the notice

to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has requested to receive contract-related notices electronically. Nothing in this section shall preclude a REP from offering a new contract to the customer at any other time during the contract term.

(1) **Contract Expiration.**

- (A) If a customer takes no action in response to a notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP shall serve the customer pursuant to a default renewal product that is a month-to-month product.
- (B) Written notice of contract expiration shall be provided in or with the customer's bill, or in a separate document.
  - (i) If notice is provided with a residential customer's bill, the notice shall be printed on a separate page. A statement shall be included on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."
  - (ii) If the notice is provided in or with a small commercial customer's bill, the REP must include a statement on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or

- (iii) If notice is provided in a separate document, a statement shall be included on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, “Contract Expiration Notice. See Enclosed.” for residential customers or for small commercial customers, “Contract Expiration Notice” or “Contract Expiration Notice. See Enclosed.”
- (C) A written notice of contract expiration (whether with the bill or in a separate envelope) shall set out the following:
  - (i) The date as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.
  - (ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination **penalty** shall apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer’s fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.
  - (iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold

lettering no smaller than 12 point font that no termination penalty shall apply to residential customers after receipt of the contract expiration notice, **or that no termination penalty shall apply to small commercial customers for 14 days prior to the contract end date.** No such statement is required if the original contract did not contain a termination fee.

- (iv) A description of any renewal offers the REP chooses to make available to the customer and the location of the TOS and EFL for each of those products and a description of actions the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.
- (v) A copy of the EFL for the default renewal product if the customer takes no action, or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.
- (vi) A statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that shall be included as part of the notice of contract expiration. The TOS for the default renewal product shall be

included as part of the notice, unless the TOS applicable to the customer's existing service also applies to the default renewal product.

- (vii) A statement that the default service is month-to month and may be cancelled at any time with no fee.

(2) **Affirmative consent.** A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:

- (A) Indicate the customer's name, billing address, service address (for small commercial customers, the ESI ID may be used rather than the service address);
- (B) Indicate the identification number of the TOS and EFL under which the customer will be served;
- (C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL and YRAC;
- (D) Indicate the price(s) which the customer is agreeing to pay;

- (E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;
  - (F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and
  - (G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.
- (f) **Terms of service document.** The following information shall be conspicuously contained in the TOS:
- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).
  - (2) **Pricing and payment arrangements.**
    - (A) Description of the amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
    - (B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;
    - (C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric

product, including an application fee, charges for default in payment or late payment, and returned checks charges;

- (D) 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 TOS; and
- (E) A description of payment arrangements and bill payment assistance programs and low income energy efficiency programs offered by the REP.

(3) **Deposits.** If the REP requires deposits from its customers:

- (A) a description of the conditions that will trigger a request for a deposit;
- (B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;
- (C) 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;
- (D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits);
- (E) 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 of this title; and
- (F) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) **Rescission, Termination and Disconnection.**

- (A) In a conspicuous and separate paragraph or box:

- (i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and
  - (ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or e-mail address that the customer may use to rescind service.
- (B) A statement as to how service can be terminated and any penalties that may apply;
- (C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and provides evidence that it is moving, if required, and a forwarding address; and
- (D) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.
- (5) **Antidiscrimination.** 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. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility

payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.

- (6) **Other terms.** Any other material terms and conditions, including exclusions, reservations, limitations of liability, or special equipment requirements, that are a part of the contract for the retail electric product.
  - (7) **Contract expiration notice.** For a term contract, the TOS shall contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The TOS shall also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which shall be a month-to-month product.
  - (8) A statement describing the conditions under which the contract can change and the notice that will be provided if there is a change.
  - (9) **Version number.** A REP shall assign an identification number to each version of its TOS, and shall publish the number on the terms of service document.
- (g) **Electricity Facts Label.** The EFL shall be unique for each product offered and shall include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.
- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable),

certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) **Pricing disclosures.** Pricing information shall be disclosed by a REP in an EFL. The EFL shall state specifically whether the product is a fixed rate, variable price or indexed product.

(A) For a fixed rate product, the EFL shall provide the total average price for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer.

(B) For an indexed product, the EFL shall provide sample prices for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, resulting from a reasonable range of values for the inputs to the pre-defined pricing formula.

(C) For a variable price product, the EFL shall provide the total average price for electric service for the first billing cycle reflecting all recurring charges, including any TDU charges that may be passed through and excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer. Actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charge to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not

included in the average price calculation may be directly passed through to customers beginning with the customer's first billing cycle.

- (D) The total average price for electric service shall be expressed in 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 2,000 kilowatt hours per month; and
  - (ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month. If demand charges apply assume a 30 percent load factor.
- (E) If a REP combines the charges for retail electric service with charges for any other product, the REP shall:
  - (i) If the electric product is 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 product without purchasing the other products or services, state the total charges for all products and services as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.
- (F) The following shall be included on the EFL for specific product types:

- (i) For indexed products, the formula used to determine an indexed product, including a website and phone number customers may contact to determine the current price.
- (ii) For a variable price product that increases no more than a defined percentage as indexed to the customer's previous billing month's price, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}." In the disclosure chart, the box describing whether the price can change during the contract period shall include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."
- (iii) For all other variable price products, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by

law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. In the disclosure chart, the box describing whether the price can change during the contract period shall include the following statement: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.” For residential customers, the following additional statement is required: “Please review the historical price of this product available at {insert specific website address and toll-free telephone number}.”

(3) **Fee Disclosures.**

- (A) If customers may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL shall include a statement in the electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and shall disclose how the customer can determine the price and applicability of the special charge.

- (B) A listing of all fees assessed by the REP that may be charged to the customer and whether the fee is included in the recurring charges.
- (4) **Term Disclosure.** EFL shall include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.
- (5) **Renewable Energy Disclosures.** The EFL shall include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.
- (6) **Format of Electricity Facts Label.** REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL shall be printed in type no smaller than ten points in size, unless a different size is specified in this section, and shall be formatted as shown in this paragraph:

<b>Electricity Facts Label (EFL)</b>				
{Name of REP}, {Name of Product}, {Service area (if applicable)}, {Date}				
	Average Monthly Use	500kWh	1,000kWh	2,000kWh
	Average price per kWh	{x.x}¢	{x.x}¢	{x.x}¢
	For POLR use: Minimum price per kilowatt-hour.	{x.x}¢	{x.x}¢	{x.x}¢
<i>Electricity price</i>	{If applicable} On-peak {season or time}: {xxx} {If applicable} Average on-peak price per kilowatt-hour: {x.x}¢ {If applicable} Average off-peak price per kilowatt-hour: {x.x}¢ {If applicable} Potential surcharges corresponding to the given electric service. <b>{If variable that does not change within a defined percentage}</b> Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. <b>{If residential}</b> Please review the historical price of this product available at {insert website address and toll-free number}.  <b>{If variable that changes within a defined percentage}</b> Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month. <b>{If residential}</b> Please review the historical price of this product available at {insert website address and toll-free number}.			
	<i>Other Key Terms and questions</i>	See Terms of Service statement for a full listing of fees, deposit policy, and other terms.		

<i>Disclosure Chart</i>	Type of Product	(fixed rate indexed or variable)
	Contract Term	(number of months)
	Do I have a termination fee or any fees associated with terminating service?	(yes/no) (if yes, how much)
	Can my price change during contract period?	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change) In addition if the REP chooses to pass through regulatory changes the following shall be required: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.”
	What other fees may I be charged?	(List, or give direct location in TOS.)
	Is this a pre-pay or pay in advance product	(yes/no)
	Does the REP purchase excess distributed renewable generation?	(yes/no)
	Renewable Content	(This product is x% renewable)
	The statewide average for renewable content is	(% of statewide average for renewable content)
Contact info, certification number, version number <i>Additional information may be added below.</i>		

Type used in this format

Title: 12 point

Headings: 12 point boldface

Body: 10 point

- (7) **Version number.** A REP shall assign an identification number to each version of its EFL, and shall publish the number on the EFL.

(h) **Your Rights as a Customer disclosure.** The information set out in this section shall be included in a REP's "Your Rights as a Customer" document, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

- (1) A YRAC document shall be consistent with the TOS for the retail product.
- (2) The YRAC document shall inform the customer of the REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).
- (3) The YRAC document shall inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.
- (4) The YRAC document shall inform the customer of 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 by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.
- (5) The YRAC document shall inform the customer of the availability of:
  - (A) Financial and energy assistance programs for residential customers;

- (B) Any special services such as readers or notices in Braille or TTY;
  - (C) Special policies or programs available to residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems; and
  - (D) Discounts for qualified low-income residential customers.
- (6) The YRAC document shall inform the customer of the following customer rights and protections:
- (A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
  - (B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
  - (C) Protections relating to disconnection of service pursuant to §25.483 of this title;
  - (D) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
  - (E) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and
  - (F) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).
- (7) **Identity and contact information.** The REP's certified name and business name (dba), certification number, mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-

zone reference) at which the customer may obtain information concerning the product.

- (i) **Advertising claims.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials to the commission or its staff, upon request. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator shall comply with this section. REPs and aggregators are responsible for representations to customers and prospective customers by employees or other agents of the REP concerning retail electric service that are made through advertising, marketing or other means.
- (1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement shall be provided: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. Upon request, a REP shall provide to the commission the contract documents relating to a product being advertised and any

information used to develop or substantiate comparisons made in the advertisement.

- (2) **Television, radio, and internet advertisements.** A REP shall include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. 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. Upon request, a REP shall provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.
- (3) **Outdoor advertisements.** A REP shall include, in a font size and format that is legible to the intended audience, its certified name or commission authorized business name, certification number, telephone number and Internet address (if available).
- (4) **Renewable energy claims.** A REP shall authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Renewable and Green

Energy Verification). If a REP relies on supply contracts to authenticate its sales of renewable energy, it shall file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

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 §25.475 relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers is hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS on the 2<sup>nd</sup> day of December 2009.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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