

PROJECT NO. 36131

RULEMAKING RELATING TO	§	PUBLIC UTILITY COMMISSION
DISCONNECTION OF ELECTRIC	§	
SERVICE AND DEFERRED PAYMENT	§	OF TEXAS
PLANS	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §§25.454, 25.480, AND 25.483
AS APPROVED AT THE APRIL 1, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.454 relating to Rate Reduction Program, §25.480 relating to Bill Payment and Adjustments, and §25.483 relating to Disconnection of Service. The purpose of these amendments is to modify eligibility requirements for deferred and level payment plans, protections for low-income customers and customers with medical conditions. To the extent a customer enters into an agreement with its REP and takes advantage of the deferred or level payment plan required by this rule, the rule also allows REPs to place a switch-hold to prevent the customer from changing retail providers without paying the deferred balance the customer owes to the REP.

Among other things, the amendments will help certain eligible customers who may not meet the existing payment plan requirements avoid disconnections as a result of high bills that result from hot or cold weather. The amendments would remove the requirement for REPs to offer deferred payment plans to customers during non-extreme weather. The current requirement to offer deferred payment plans at any time to any qualified customer requests is believed to contribute to high levels of non-payment and the commission believes that the more targeted provisions of the amendments will benefit more vulnerable customers that need additional time to pay a high bill while reducing the non-payment issues that have arisen under the current rules. REPs will now

be required to make deferred payment plans available to all customers during extreme weather emergencies; during declared states of disaster; when a customer has been underbilled, and during the months of January, February, July, August, and September for certain eligible customers.

The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA) §39.001(e). Project Number 36131 is assigned to this proceeding.

Cliff Crouch, Retail Market Analyst, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Crouch has determined that for each year of the first five years the amendments are in effect the primary anticipated public benefits of the amendments will be the increased ability for certain customers to qualify for deferred payment plans under certain circumstances and the reduced non-payment of bills that have arisen under the current rules. No adverse economic effect is anticipated on small businesses or micro-businesses as a result of enforcing these amendments. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the amendments. These costs associated with retraining personnel to understand the amendments, modifications to payment system and managing new payment plans will vary from business to business, and are difficult to ascertain. However, it is believed that the benefits to the public and the REPs accruing from implementation of the amendments will outweigh these costs.

Mr. Crouch has also determined that for each year of the first five years the amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, May 17, 2010. The request for a public hearing must be received within 20 days after publication of these amendments.

Initial comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by May 6, 2010 (20 days after publication) of these amendments. Reply comments may be submitted by May 21, 2010 (35 days after publication). Sixteen copies of initial comments and reply comments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 36131.

The commission is seeking comments on the proposed rules, as well as comments on the following questions, which may result in changes to the proposed rules:

Question 1. Are the provisions relating to unauthorized switch-holds appropriate?

Please suggest any modifications.

Question 2. If the disconnection of customers designated as critical care is allowed, what additional protections and procedures should be in place to ensure that the loss of electricity will not result in the loss of life?

Question 3. Does the switch-hold provision in §25.480(1) contain sufficient protections to ensure that a customer's ESI ID is not subject to a switch-hold for a relatively small debt to the REP?

- a. Should the rule include a minimum amount owed in order for a customer's ESI ID to be eligible for a switch-hold? If so, is \$500 the appropriate threshold?
- b. If a threshold is not adopted, what are the ramifications to the competitive market if a significant portion of the ESI IDs in the market are subject to a switch-hold at any given time?
- c. In §25.480(j)(1), the proposed rules require a REP to offer a deferred payment plan for bills that become due during an extreme weather emergency, and to customers in an area covered by a Governor's declaration of disaster. Should the rule also exempt such customers from the switch-hold? Should any other groups of customers—e.g., critical care, low-income, elderly—be exempt from the switch-hold?

Question 4. What are the costs and benefits of implementing the switch-hold as described in §25.480(l)? Are there alternative means for a REP to mitigate the business risk of a customer default, aside from imposing a switch-hold on the customer's ESI ID?

Question 5. Section 25.480(j) specifies the minimum down payment and number of installments for a deferred payment plan made available to eligible customers during the months of July, August, and September (as well as during January and February, subject to certain weather conditions). Should the rule specify the minimum down payment and number of installments for deferred payment plans to be made available during the remaining months of the year?

Question 6. If the switch-hold is invalidated by legislative or judicial action, should the rest of the rule remain in effect?

These amendments are proposed 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; §17.004 and §39.101, which authorize the commission to adopt and enforce rules that ensure various retail electric customer protections.

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

§25.454. Rate Reduction Program.

(a) – (f) (No change.)

(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) – (2) (No change.)

(3) **A REP shall:**

(A) – (D) (No change.)

(E) notify customers three times a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;

(F) – (G) (No change.)

(h) – (k) (No change.)

(l) **Effective date.** The effective date of this section is December 1, 2010.

§25.480. Bill Payment and Adjustments.

(a) - (b) (No change.)

(c) **Penalty on delinquent bills for electric service.**

~~(1) — A REP may charge a one-time penalty not to exceed 5.0% on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The one-time penalty, not to exceed 5.0%, may not be applied to any balance to which the penalty has already been applied.~~

~~(2) — A bill issued to a state agency, as defined in Texas Government Code, Chapter 2251, shall be due as provided in Chapter 2251.~~

(d) **Overbilling.** (No change.)

(1) – (4) (No change.)

~~(5) — A bill issued to a state agency shall bear interest if overdue as provided in Texas Government Code Chapter 2251.~~

(e) - (f) (No change.)

(g) **Alternate payment programs or payment assistance.**

(1) (No change.)

(2) **Bill payment assistance programs.**

(A) (No change.)

(B) In its annual report filed pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs), each REP shall summarize~~Each REP shall provide an annual report on June 1 of each year to the commission summarizing:~~

(i) - (ii) (No change.)

- (iii) the assistance agency or agencies selected to disburse funds to residential customers; ~~and~~
- (iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers; ~~and-~~
- (v) the number of customers who had a switch-hold applied during the year.

(C) (No change.)

(h) **Level and average payment plans.** A REP shall ~~make offer~~ a level or average payment plan available to its customers consistent with this subsection. A customer receiving service from a provider of last resort (POLR) may be required to select a competitive product offered by the POLR REP to receive the level or average payment plan ~~who are not currently delinquent in payment to the REP. Consistent with the REP's terms of service, the REP may bill or credit any overbilling or underbilling, as appropriate, at least once every twelve months. A REP may collect under recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.~~

(1) A REP shall make level or average payment plan available to a residential customer eligible to receive a rate reduction pursuant to §25.454 of this title (relating to Rate Reduction Program). If the REP applies a switch-hold as a result of the customer entering into the level or average payment plan, the customer must be informed by the REP in writing that a switch-hold will apply and any balance deferred must be paid and the customer removed from the level or average payment plan before the customer will be allowed to change service to another provider. If the amount of the deferred balance does not appear on each bill the customer receives, the REP must inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.

(2) A REP shall make level or average payment plan available to a customer who is not currently delinquent in payment to the REP. Delinquent in payment shall mean:

(A) A customer whose normal billing arrangement provides for payment after the rendition of service is delinquent if the date specified for payment of a bill has passed and the customer has not paid the full amount due.

(B) A customer whose normal billing arrangement provides for payment before the rendition of service is delinquent if the customer has a negative balance on the account for electric service.

(3) A REP shall bill or credit any over- or under-recovery or apply the over- or under-recovery to the customer's level or average payment amount every six months. Alternatively, a REP may recalculate the customer's average consumption and adjust the customer's required minimum payment as frequently as every billing period. A REP may collect under-recovered costs from a customer upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers every six months, or upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a level or average payment plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.

(i) (No change.)

(j) **Deferred payment plans and other alternate payment arrangements.**

(1) A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the current bill. A deferred payment plan may be established ~~in person~~ ~~or~~ by telephone, but all deferred payment plans shall be confirmed in writing by the REP.

~~(A)(1)~~ A REP shall offer a deferred payment plan to customers, upon request, for bills that become due during an extreme weather emergency, pursuant to §25.483(i)~~(j)~~ of this title.

~~(B)~~ During a state of disaster declared by the governor pursuant to Texas Government Code §418.014, a REP shall offer a deferred payment plan to customers, upon request, in the area covered by the declaration.

~~(C)(2)~~ A REP shall offer a deferred payment plan to a customer who has been underbilled, ~~pursuant to as described in~~ subsection (e) of this section.

~~(2)~~ A REP shall make a payment plan available to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in July, August, or September. A REP shall make a payment plan available to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in January or February if in the prior month ERCOT records a peak in demand that is higher than the winter peak that existed prior to the winter of 2009-2010. A REP is not required to offer a payment plan if the customer is on an existing payment plan pursuant to this paragraph.

~~(A)~~ The following residential customers are eligible for a deferred payment plan under this paragraph:

~~(i)~~ customers receiving, or eligible to receive, the LITE-UP discount pursuant to §25.454 of this title, unless the customer is already enrolled on an average or level payment plan pursuant to subsection (h)(1) of this section;

~~(ii)~~ customers designated as critical care and chronic condition customers under §25.497 of this title (relating to Critical Care and Chronic Condition Customers); or

~~(iii)~~ customers who have expressed an inability to pay unless the customer:

~~(I)~~ has been disconnected during the preceding 12 months;

~~(II)~~ has submitted more than two payments during the preceding 12 months that were found to have insufficient funds available; or

- (III) has received service from the REP for less than three months, and the customer lacks:
- (-a-) sufficient credit; or
- (-b-) a satisfactory history of payment for electric service from a previous REP or utility.
- (B) The REP shall make available, at the customer's option, the plans described in clauses (i) and (ii) of this subparagraph.
- (i) A deferred payment plan with the initial payment amount no greater than 50% of the amount due. The deferred amount shall be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments.
- (ii) The opportunity to pay based on a level or average payment plan instead of the balance then currently due. If the customer is on a level or average payment plan, no additional deferral beyond the terms of the level or average payment plan is required. If the REP applies a switch-hold as a result of the customer entering into the level or average payment plan, the customer must be informed by the REP that a switch-hold will apply and any balance deferred must be paid and the customer removed from the level or average payment plan before the customer will be allowed to change service to another provider. If the amount of the deferred balance does not appear on each bill the customer receives, the REP must inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.
- (C) The REP shall not seek an additional deposit as a result of a customer's entering into a deferred payment plan under this paragraph.
- ~~(3) For customers who have expressed an inability to pay, a REP shall offer a deferred payment plan unless the customer:~~
- ~~(A) has been issued more than two termination or disconnection notices during the preceding 12 months; or~~

~~(B) has received service from the REP for less than three months, and the customer lacks:~~

~~(i) sufficient credit; or~~

~~(ii) a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility).~~

~~(3)(4) A~~ Any deferred payment plan offered by a REP shall not refuse a customer participation in a deferred payment plan such a program on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

~~(4)(5) A~~ REP may voluntarily offer a deferred payment plan ~~to~~ offered by a REP for customers who have expressed an inability to pay and have received a disconnection notice ~~shall provide that the delinquent amount be paid in equal installments over at least three billing cycles, unless the customer requests a lesser number of installments. A REP may require an initial payment not to exceed 25% of the delinquent amount of the outstanding balance to initiate the agreement, with the remainder to be paid in equal installments over at least the next three billing cycles.~~

~~(5)(6) A~~ copy of the deferred payment plan shall be provided to the customer and:

(A) shall include a statement, in a clear and conspicuous type, that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name of REP). By entering into this agreement, you understand that you must pay the total amount of your deferred payment plan before you will be able to change service to another provider." In addition, where the customer and the REP's representative or agent meets in person, the representative shall read the preceding statement to the customer;

(B) may include the one-time a penalty in accordance with subsection (c) of this section ~~not to exceed 5.0% for late payment~~ but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

- (D) shall state the total amount to be paid under the plan;
- (E) shall state the specific amount of each installment;
- (F) shall allow for the disconnection of service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection; and
- (G) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

~~(6)(7)~~ A REP may pursue disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be disconnected until appropriate notice has been issued, pursuant to §25.483 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of subsection (j)~~(2)(3)~~ of this section shall not apply with respect to a customer who has received notice of a disconnection due to failure to meet the terms of a deferred payment plan.

(k) (No change.)

(1) **Switch-hold.**

(1) While a customer is on a deferred payment plan or level or average payment plan pursuant to subsection (j) or (h)(1) of this section, the REP may request that the TDU place a switch-hold on the ESI ID, which shall prevent a switch transaction from being completed for the ESI ID and shall prevent a move-in transaction from being completed pending documentation that the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title, the switch-hold shall continue to remain in place. The switch-hold shall remain in effect until the REP of record notifies the TDU to remove the switch-hold because the customer has satisfied the deferred payment plan or has been removed from the level or average payment plan after paying any

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

(A) The REP via a standard market process may request a switch-hold.

(B) The REP via a standard market process shall submit a request to remove the switch-hold when the terms of a deferred payment plan are satisfied and when a customer has been removed from level or average payment plan after paying any balance owed.

(C) When the REP of record issues a move-out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

(D) At the time of a mass transition, the TDU shall remove the switch-hold flag for any ESI ID that is transitioned to a provider of last resort (POLR) provider.

(E) When the applicant for electric service is shown to be a new occupant not associated with the customer for which the switch-hold was imposed using the switch-hold process described in §25.126 of this title (relating to Adjustments Due to Meter Errors, Meter Tampering or Theft in Areas in Which Customer Choice is Available), the switch-hold flag shall be removed.

(F) For a move-in transaction sent by ERCOT indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.

(2) Paragraph (1) of this subsection shall be effective June 1, 2011.

(3) In the next TX SET release, market transactions shall be developed that support the following requirements.

- (A) REPs may request a switch-hold while a customer is on a deferred payment plan or level or average payment plan pursuant to subsection (h)(1) or (j) of this section.
- (B) TDUs shall provide indication of which ESI IDs have switch holds so that during a move-in enrollment a REP can identify whether a switch-hold applies and that specific documentation must be submitted to have the switch-hold removed. ERCOT shall make this information accessible to all REPs on the secure area of the ERCOT website.
- (C) A move-in subject to a switch-hold can be submitted for processing when the customer initially requests the move-in and such transaction will be held in the system for final processing depending on the approval or rejection of the move-in documentation. The TDU shall notify the submitting REP that there is a switch-hold on the ESI ID.
- (4) The requirements of §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) shall continue to apply while a customer is subject to a switch-hold. The notice required by §25.475(e) of this title shall include a statement reminding the customer that if a switch-hold is in effect, the balance deferred must be paid in full before the customer will be able to change to a new provider.
- (5) A customer who is subject to a switch-hold shall not be charged any separate fees for a switch-hold or any customer service or administrative fees related to the switch-hold.

(m) Unauthorized Placement or Continuation of a Switch-hold.

- (1) A REP may request a switch-hold only as allowed under this section and §25.126 of this title.
- (2) A REP shall be responsible for requesting that the TDU remove a switch-hold after the customer's obligation to the REP related to the switch-hold is satisfied. If a customer's obligation to the REP is satisfied by 2:00 PM on a business day, the REP shall send a request to the TDU to remove the switch-hold by 6:00 PM of

that same business day. The TDU shall remove the switch-hold by 2:00 PM of the following business day.

(3) If a REP erroneously places a switch-hold flag on an ESI ID and thus prevents a legitimate switch, the REP shall be considered to have committed a Class B Violation (as defined in §25.8(b) of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers)) for purposes of any administrative penalties imposed by the commission.

(n) **Effective date.** Unless otherwise noted in this section, the effective date of this section is December 1, 2010.

§25.483. Disconnection of Service.

(a) - (f) (No change.)

(g) **Disconnection of critical care or chronic condition residential customer~~ill and disabled~~.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a critical care or chronic condition residential customer pursuant to §25.497 of this title (relating to Critical Care Customers), except as provided in this subsection~~establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.~~

(1) The REP shall notify the customer and secondary contact with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be sent by mail. Except as provided in this subsection, the notice shall comply with the requirements of subsections (k) and (l) of this section.

~~Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:~~

~~(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and~~

~~any other similar public health official) call or contact the REP by the stated date of disconnection;~~

~~(B) Have the person's attending physician submit a written statement to the REP; and~~

~~(C) Enter into a deferred payment plan.~~

- (2) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for designation as a critical care customer, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnection notice from the REP. Nothing in this paragraph should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.~~The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.~~
- (3) Prior to disconnecting a critical care residential customer, a TDU shall contact the customer and the secondary contact listed on the commission-approved application form. If the TDU does not reach the customer and secondary contact by phone, the TDU shall visit the premise, and, if there is no response, shall leave a door hanger containing the pending disconnection information.~~If, in the normal performance of its duties, a TDU obtains information that a customer scheduled~~

~~for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection, or to provide prior notice of the disconnection, when not otherwise required.~~

(4) If the TDU refuses to disconnect a critical care residential customer pursuant to this subsection, it shall cease charging all transmission and distribution charges and surcharges for that premise to the REP.

(h) - (j) (No change.)

(k) **Disconnection notices.** A disconnection notice for nonpayment shall:

(1) (No change.)

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed or, if the customer has agreed to receive communications from the REP by email, be a separate email with the words "disconnection notice" or similar language in the subject line. The REP may send the disconnection notice concurrently with the request for a deposit;

(3) - (4) (No change.)

(l) - (m) (No change.)

(n) **Effective date.** The effective date of this section is December 1, 2010.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 5th DAY OF APRIL 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**