

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

#### §25.107. Certification and Obligations of Retail Electric Providers (REPs).

(a) **Applicability.**

- (1) This section contains the certification and reporting requirements applicable to a retail electric provider (REP).
  - (A) A person must obtain a REP certificate under this section before purchasing, taking title to, or reselling electricity to provide retail electric service. A person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under this section. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information in accordance with subsections (i) and (h) of this section.
  - (B) A person that does not purchase, take title to, or resell electricity to provide electric service to a retail customer is not a REP and must not act as a REP without obtaining a certificate under this section. A REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider.
  - (C) A person who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004, is not, for that reason, required to be certified as a REP.
- (2) This section also applies, where specifically stated, to an independent system operator or transmission and distribution utility (TDU).
- (3) A person certified as an Option 1 REP via an application submitted prior to the effective date of this section must come into compliance with the requirements of this section by March 5, 2024. Prior to March 5, 2024, a person certified as an Option 1 REP via an application submitted prior to the effective date of this section must meet the requirements of this section as it was in effect on April 1, 2023.
  - (A) A REP must complete and file a commission approved compliance update form that demonstrates the REP is in compliance with this section on or before March 5, 2024.
  - (B) A REP who does not demonstrate compliance with this section on or before March 5, 2024, may be subject to a suspension of acquiring new customers under subsection (l) of this section.

(b) **Definitions.** The following words and terms when used in this section have the following meanings unless the context indicates otherwise.

- (1) **Affiliate** -- As defined in §25.5 of this title (relating to Definitions).
- (2) **Assumed name** -- has the meaning assigned in Chapter 71 of the Texas Business and Commerce Code.
- (3) **Continuous and reliable electric service** -- Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP.
- (4) **Control** -- The term control (including the terms controlling, controlled by and under common control with) means the direct or indirect possession of binding authority to direct or cause the direction of the management, policies, operations, or decision-making of a person, whether through ownership of voting securities, by contract, formation documents, or otherwise. A principal is a controlling person. A third-party provider may be a controlling person.
- (5) **Default** -- As defined in a TDU tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement, ERCOT standard form market participant agreement (SFA), or any similar agreement with an applicable independent organization other than ERCOT.
- (6) **Executive officer** -- An entity's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making

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functions. Executive officers of subsidiaries may be deemed executive officers of the entity if they perform such policy making functions for the entity.

- (7) **Guarantor** -- A person that provides an irrevocable guaranty agreement using the standard form approved by the commission under this section.
  - (8) **Investment-grade credit rating** -- A long-term unsecured credit rating issued by the bond credit rating companies Moody's Investors' Service (Moody's), Standard & Poor (S&P), or Fitch of at least "Baa3" from Moody's or "BBB-" from S&P or Fitch.
  - (9) **Option 1 REP** -- A REP that provides its service offerings to any customer class based on geographic service area.
  - (10) **Option 2 REP** -- A REP that limits its service offerings to specifically identified customers, each of whom contracts for one megawatt or more of capacity.
  - (11) **Option 3 REP** -- A REP that sells electricity exclusively to a retail customer, other than a small commercial or residential customer, from a distributed generation facility owned by a power generation company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators) located on the same geographic site as the customer.
  - (12) **Person** -- An individual or any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation. Person does not include an electric cooperative or a municipal corporation.
  - (13) **Principal** -- Includes:
    - (A) A sole proprietor;
    - (B) A partner of a partnership;
    - (C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);
    - (D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;
    - (E) A shareholder with more than 10% equity of the REP, if a public company; or
    - (F) A person who exercises control and has apparent or actual authority to exercise such control over either the REP or a principal that is otherwise described by this subsection. A consultant, third-party provider, or fiduciary of a company such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.
  - (14) **Shareholder** -- The legal or beneficial owner of any of the equity of any business entity as the context and applicable business entity requires, including, stockholders of corporations, members of limited liability companies and equity partners of partnerships.
  - (15) **Tangible net worth** -- Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.
  - (16) **Third-party provider** -- An entity to which a REP outsources or plans to outsource any retail or wholesale electric functions. A contractor, consultant, agent, or any other person not directly employed by the REP can be a third-party provider. A third-party provider is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.
- (c) **Application processing.**
- (1) A person can apply to certify as a REP or amend a REP certification by submitting a complete application on a form approved by the commission. Commission staff will review each application for sufficiency and submit a recommendation to the presiding officer within 20 days after the application is filed. The presiding officer will make a determination of sufficiency of the application within ten days of receipt of commission staff's recommendation. If the presiding officer finds that the application is deficient, the presiding officer must notify the applicant. The applicant will have ten days from the issuance of the

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- notice to cure the deficiencies. If the deficiencies are not cured within ten days, the presiding officer may notify the applicant that the certification request is rejected without prejudice.
- (2) While an application for certification or amendment is pending, an applicant must notify the commission of any material change to the information provided in the application within ten days of any such change in accordance with subsection (h)(2) of this section.
  - (3) Except where good cause exists to extend the time for review, the presiding officer will issue an order approving, rejecting, or approving with modifications, an application within 90 days of finding an application sufficient.
  - (4) For applications to certify as an Option 1 REP, the presiding officer will deny an application if the configuration of the proposed geographic area would unduly discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.
  - (5) An Option 2 REP application for certification that meets all other requirements of this section except for the provision of customer affidavits under subparagraph (d)(2)(I) may be conditionally granted by the presiding officer. If such an application is conditionally granted, the applicant must, within 30 days from the date the application is granted, file in the docket the affidavit or affidavits required by subsection (d)(2)(I). The application will be withdrawn and the application denied with respect to each customer for whom the applicant fails to timely file the required affidavit. Within 45 days after the application is conditionally granted, commission staff must file a status report indicating whether each of the required affidavits were timely filed. The presiding officer will then issue a follow-up order confirming the approval of the application as to each customer for whom the required affidavit was filed and denying the application as to each customer for whom the required affidavit was not filed.
  - (6) **Document format.** If a provision of this subsection specifies a certain format for a document that must be filed with or submitted to the commission, an applicant must file or submit that document in the native format specified. A document filed in its native format must permit basic data manipulation functions, such as copying and pasting of data.
- (d) **Basic requirements.**
- (1) A REP must maintain its certification by complying with the following subparagraphs on an ongoing basis.
    - (A) Only provide retail electric service under the name or names set forth in an approved application for certification or subsequent amendment application. A REP's certificate must contain the REP's legal business name and all assumed names under which it proposes to provide service.
    - (B) Not use more than five assumed names in the REP's regular course of business.
    - (C) Maintain an active business registration with the Texas Secretary of State.
    - (D) Maintain current and accurate contact information including:
      - (i) the applicant's primary contact name and title, street and mailing address, business telephone number and toll-free number, business e-mail address, and applicant's web address;
      - (ii) for the pendency of the application or amendment, the authorized representative's name, title, street and mailing address, telephone number, e-mail address, and web address;
      - (iii) regulatory contact name, title, street and mailing address, telephone number, e-mail address and web address;
      - (iv) customer complaint contact name, title, street and mailing address, telephone number including a toll-free number, e-mail address and web address;

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- (v) emergency contact's name, title, telephone number, and e-mail address, and web address; and
  - (E) Maintain current and accurate office information including:
    - (i) An office that has street address located within Texas that is open during normal business hours for the purpose of providing customer service and making available to commission staff books and records sufficient to establish the REP's compliance with Public Utility Regulatory Act (PURA) and commission rules; the office must have the following contact information where the REP's staff can be directly reached:
      - (I) a business telephone number and toll-free number,
      - (II) a business e-mail address and web address, and
      - (III) a business postal address that is not a post office box.
    - (ii) The applicant's state of formation or incorporation, and the address of the applicant's primary business office; and
    - (iii) A mailing address, if different from the applicant's Texas office address or primary business office address; and
    - (iv) The name and address of the applicant's registered agent for the purpose of receiving service of process.
  - (F) Comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other protocols established by the applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.
  - (G) Comply with the registration and certification requirements of the applicable independent organization and its system rules and protocols, or each contract for services with a third-party provider that is required to be registered with or certified by the applicable independent organization.
  - (H) Maintain adequate staffing and employee training to meet all service level commitments.
  - (I) Respond within five working days to any commission or commission staff request for information, unless otherwise provided by the commission, commission staff, or other applicable law.
- (2) An applicant must provide the following information to the commission to certify as a REP under this section.
- (A) An application for certification or amendment to a certificate must be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.
  - (B) Information related to the applicant's status as a legal entity, including information related to its tax status and authority to do business in Texas to verify the information required under paragraphs (1)(A)-(C) of this subsection. The following information must be provided:
    - (i) A copy of the applicant's Texas Secretary of State registration and filing numbers associated with the registration . A business name must not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

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- (ii) The applicant's Texas Comptroller of Public Accounts tax identification number, and all other relevant or other applicable certification or file numbers.
- (C) The applicant's current contact information required under paragraph (1)(D) of this subsection.
- (D) The applicant's current office information required under paragraph (1)(E) of this subsection.
- (E) Information on the applicant, including:
  - (i) a list of the applicant's subsidiaries and parent companies up to the ultimate corporate parent, and any sister companies that are registered or certified with the commission. Each company must be identified by name and, if applicable, type of commission registration or certification.
  - (ii) an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed under clause (i) of this subparagraph and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.
  - (iii) a list of all principals, provided in Microsoft Excel format;
  - (iv) a list of all executive officers, provided in Microsoft Excel format.
- (F) A statement affirming compliance with paragraphs (1)(F)-(I) of this subsection and a short summary describing how the applicant has complied, or for paragraph (1)(I) of this subsection how the applicant will comply, with each subparagraph.
- (G) The control number and item number where the applicant has filed its Emergency Operations Plan as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).
- (H) An applicant for an Option 1 REP certificate must designate one of the following categories as its geographic service area:
  - (i) The geographic area of the entire state of Texas;
  - (ii) A specific geographic area (indicating the zip codes applicable to that area);
  - (iii) The service area of one or more specific TDUs, municipal utilities, or electric cooperatives in which competition is offered; or
  - (iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.
- (I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of conditional commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of energy. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.
- (J) An applicant for an Option 3 REP certificate must:
  - (i) identify the name of the PGC that owns the distributed generation facilities and affirm that the PGC is registered under §25.109 of this title; and
  - (ii) provide a signed, notarized affidavit from an executive officer of the PGC confirming:
    - (I) the PGC operating the distributed generation facility conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title

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- (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);
- (II) the distributed generation facility is installed by a licensed electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and
  - (III) the distributed generation facility is installed in accordance with the National Electric Safety Code as adopted by the Texas Department of Licensing and Regulation and otherwise complies with all applicable local and regional building codes.
- (e) **Technical and managerial requirements.** An Option 1 REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, applicable independent organization protocols, and other applicable laws. This subsection does not apply to an Option 2 or Option 3 REP.
- (1) **Technical and managerial resource requirements.** The following are technical and managerial resource requirements a REP must maintain on an ongoing basis.
    - (A) One or more principals or employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. A third-party provider's experience may not be used to meet this requirement.
    - (B) One executive officer or employee in a managerial position who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may enter into a contract for a term not less than two years with a third-party provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$10,000,000.
    - (C) If providing retail electric service in the ERCOT region, compliance with all applicable ERCOT requirements, including:
      - (i) execution of a service agreement with a QSE;
      - (ii) maintaining the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;
      - (iii) providing outage notifications in accordance with § 25.53 of this title; and
      - (iv) completing ERCOT flight test obligations.
    - (D) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.
  - (2) **Technical and managerial documentation requirements.** The following information must be provided by an applicant to demonstrate compliance with the technical and managerial requirements under paragraph (1) of this subsection.
    - (A) A list of all third-party providers accompanied by a description of each third-party provider's responsibilities and delegation of authority, provided in Microsoft Excel format.
    - (B) Resumes showing prior experience of one or more of the applicant's principals or managerial employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, a resume showing one of the applicant's executive officers or managerial employees possess at least five years' experience in commodity risk management.
    - (C) If relying upon a third-party provider for commodity risk management services to satisfy the requirement for paragraph (1)(B) of this subsection, a copy of the executed contract is required.

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- (D) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding the applicant, the applicant's corporate parents, all sister companies and subsidiaries of the applicant, and affiliates of the foregoing that provide utility-like services such as telecommunications, internet, broadband, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons.
- (i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information must include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.
  - (ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the complaint history of the applicant's principals and affiliates, disciplinary record, and compliance record.
  - (iii) Any complaint information on file at the commission may also be considered when reviewing the application.
- (E) The following statements must be supported by a signed notarized affidavit made by an executive officer of the applicant.
- (i) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.
  - (ii) A statement that identifies whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.
  - (iii) A statement that the applicant will register with or be certified by the applicable independent organization and that the applicant will comply with the technical and managerial requirements of this subsection; and that third-party providers with whom the applicant has a contractual relationship are registered with or certified by the independent organization, as appropriate, and will comply with all system rules and protocols established by the applicable independent organization.
  - (iv) A statement that identifies and, if applicable, describes the applicant's relationship with any of the following persons.
    - (I) Identification of all of the applicant's principals, executive officers, employees, and third-party providers that:
      - (-a-) exercised direct or indirect control over a REP that experienced a mass transition of the REP's customers under §25.43 of this title (relating to Provider of Last Resort (POLR)) at any time within the six months prior to the mass transition;

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- (-b-) exercised direct or indirect control over a market participant at any time within the six months prior to a market participant having had its ERCOT SFA terminated or a similar agreement for an applicable independent organization other than ERCOT terminated;
      - (-c-) exercised direct or indirect control of a market participant within the prior six months of a market participant having exited an electricity or gas market with outstanding payment obligations that remain outstanding; or
      - (-d-) have been barred, in any way, participation by commission order.
    - (II) If a relationship exists as described in subclause (I) of this clause, the applicant must include in the affidavit for each such relationship:
      - (-a-) the name of the person;
      - (-b-) the name of the REP that experienced a mass transition of its customers under §25.43 of this title or market participant whose ERCOT SFA or similar agreement for an applicable independent organization was terminated or exited a market with outstanding payment obligations;
      - (-c-) details about the person's relationship with the REP or market participant;
      - (-d-) factual statements about the events that necessitated this response, including, if applicable, whether and, if so, how the REP that experienced a mass transition of its customers under §25.43 of this title settled all outstanding payment obligations;
      - (-e-) the person's current relationship or position with the applicant; and
      - (-f-) the extent of the person's apparent or actual authority to act in such a way that may be perceived as having direct or indirect control over the applicant.
  - (v) A statement affirming that the persons listed under paragraph (g)(1) of this section do not control the applicant and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section.
- (F) To document compliance with subsection (e)(1)(C) of this section, an applicant must provide:
  - (i) all relevant information related to each service agreement executed with a QSE, including:
    - (I) the term of the service agreement and date the service agreement began;
    - (II) the name of the QSE;
    - (III) the QSE's contact name and title;
    - (IV) the QSE's physical address;
    - (V) the QSE's e-mail address and web address; and
    - (VI) the QSE's business telephone number and toll-free number;
  - (ii) a confirmation that applicant has the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;
  - (iii) a confirmation that applicant will provide outage notifications in accordance with §25.53 of this title; and



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- (iv) a confirmation that applicant has or will soon complete ERCOT’s flight test obligation.
- (f) **Financial requirements.** An Option 1 REP must, on an ongoing basis, maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.
  - (1) **Access to capital.** A REP must maintain the requirements of subparagraph (A) or (B) of this paragraph on an ongoing basis.
    - (A) A REP may maintain an executed version of the commission approved standard form irrevocable guaranty agreement.
      - (i) The guarantor must be:
        - (I) One or more affiliates of the REP;
        - (II) A financial institution with an investment-grade credit rating; or
        - (III) A provider of wholesale power supply for the REP, or one of such power provider’s affiliates, with whom the REP has executed a power purchase agreement.
      - (ii) The guarantor must have:
        - (I) An investment-grade credit rating; or
        - (II) Tangible net worth greater than or equal to \$100 million, a minimum current ratio (defined as current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load.
    - (B) A REP may maintain an irrevocable stand-by letter of credit with a face value as determined in clause (i) of this subparagraph, based on the number of electronic service identifiers (ESI IDs) the REP serves in the manner prescribed by clauses (ii) and (iii) of this subparagraph. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders’ equity in accordance with clauses (iv) and (v) of this subparagraph.
      - (i)

Number of ESI IDs	Required Value of Letter of Credit
< 50,000	\$750,000
≥ 50,000	\$1,500,000

- (ii) The number of ESI IDs includes all customer classes to which a REP provides retail electric service.
- (iii) As the number of ESI IDs served by the REP increases, the irrevocable stand-by letter of credit must be adjusted to reflect the required value as determined in clause (i) of this subparagraph. As the number of ESI IDs served by the REP decreases, the irrevocable stand-by letter of credit may be adjusted to reflect the required value as determined in clause (i) of this subparagraph.
- (iv) For the first 24 months a REP is serving load, a REP must not make any distribution or other payment to any shareholders, affiliates, or corporate parent’s affiliates if, after giving effect to the distribution or other payment, the REP’s shareholders’ equity is less than one million dollars. Distributions or other payments include dividend distributions, redemptions and repurchases of equity securities, and loans to shareholders or affiliates.

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- (v) After a REP has continuously served load for 24 months, a prescribed amount of maintained shareholders' equity is no longer required.
- (2) **Customer deposits and prepayments.** A REP certified to collect customer deposits must comply with this paragraph and the requirements of §25.478 of this title (relating to Credit Requirements and Deposits). A REP certified to collect customer prepayments must comply with this paragraph and the requirements of §25.498 of this title (relating to Prepaid Service).
  - (A) A REP must maintain customer deposits and prepayments in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit.
    - (i) If a REP is certified to collect both customer deposits and prepayments then the REP must use and maintain either an escrow account, segregated cash account, or irrevocable stand-by letter of credit to protect customer deposits and prepayments. If a REP uses an escrow account or segregated cash account, the same account must be used for customer deposits and prepayments. More than one irrevocable stand-by letter of credit can be provided to protect customer deposits and prepayments.
    - (ii) For customer deposits, the escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of the REP's outstanding customer deposits held at the close of each calendar month.
    - (iii) For customer prepayments, a REP must maintain, at minimum, protection for all customer prepayments that equals or exceeds \$50. The balance of an escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of customer prepayment funds equal to or exceeding \$50 held at the close of each calendar month.
  - (B) Any irrevocable stand-by letter of credit provided under this paragraph must be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection.
- (3) **Bankruptcy disclosure.** If a REP files a petition for bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, including being in default with the applicable independent organization or with a TDU:
  - (A) The REP must notify the commission within three working days of this event and must file with the commission a summary of the nature of the event; and
  - (B) The notification must be filed in the commission control number established for notices prescribed under this paragraph. If the REP has filed a petition for bankruptcy, then the REP must include in its filing the petition that initiated the bankruptcy.
- (4) **Financial documentation requirements.** The following must be provided by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection, as applicable. Additionally, the applicant must provide the month and last day of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year. The applicant must also provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.
  - (A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the applicant provides must be the most recently released report by the credit reporting agency.
  - (B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by audited or unaudited financial statements of the guarantor for the most recently completed quarter.

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- (i) Audited financial statements must include the independent auditor's report and accompanying notes.
  - (ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.
  - (iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.
  - (iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the guarantor's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.
- (C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.
- (i) Audited financial statements must include the independent auditor's report and accompanying notes.
  - (ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.
  - (iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.
  - (iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the REP's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.
- (D) Segregated cash accounts must be documented by a current account statement and the executed agreement with an unaffiliated person that controls the segregated cash account.
- (i) The account statement must clearly identify:
    - (I) the name of the financial institution where the applicant has established the account;
    - (II) the account number; and
    - (III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.
  - (ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:
    - (I) U.S. domestic bank; or
    - (II) a domestic office of a foreign bank with an investment-grade credit rating.
  - (iii) A REP must provide an executed agreement with a provider of credit that governs the control and management of the account. The provider of credit must not be affiliated with the applicant or the applicant's corporate parent. If the segregated cash account contains customer deposits, the agreement must specify that the customer deposits are not the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.
- (E) Escrow accounts must be documented by a current account statement and the executed escrow account agreement.

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- (i) The account statement must clearly identify:
    - (I) the name of the financial institution where the applicant has established the account;
    - (II) the account number; and
    - (III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.
  - (ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:
    - (I) U.S. domestic bank; or
    - (II) a domestic office of a foreign bank with an investment-grade credit rating.
  - (iii) The escrow account agreement must provide that the account holds only customer deposits, prepayments, or both, and that the customer deposits will be held in trust by the escrow agent and will not be the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.
- (F) Irrevocable stand-by letters of credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission. The original document of the irrevocable stand-by letter of credit must be provided in a manner established by the commission.
- (i) The irrevocable stand-by letter of credit must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:
    - (I) U.S. domestic bank; or
    - (II) a domestic office of a foreign bank with an investment-grade credit rating.
  - (ii) The irrevocable stand-by letter of credit must:
    - (I) be irrevocable for a period not less than twelve months;
    - (II) automatically renew, and only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff signs the notice of non-renewal to acknowledge that the notice was received 90 days before the expiration;
    - (III) be payable to the commission;
    - (IV) permit a draw to be made in part or in full;
    - (V) permit a draw to be made with the return of the original document or a photocopy;
    - (VI) permit a draw to be made, among other ways, through over-night mail;
    - (VII) permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit; and
    - (VIII) require commission staff approve all amendment requests to decrease the value of the irrevocable stand-by letter of credit prior the value of the irrevocable stand-by letter of credit decreasing. Amendments to decrease the value of the irrevocable stand-by letter of credit must be accompanied by a notarized affidavit signed by an executive officer of the REP and include, as applicable, the

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current number of ESI IDs the REP serves, the value of customer deposits and prepayments the REP is liable for.

- (G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission's demands on behalf of the applicant. A copy of the executed irrevocable guaranty agreement must be provided in the manner established by the commission.
  - (i) The guarantor's obligation to satisfy a commission demand for payment must be in an amount not less than \$1,500,000 and must be absolute, and the guarantor may not avoid its obligation for any reason.
  - (ii) The irrevocable guaranty agreement must automatically renew and only expire if prior notice is provided to the commission at least 90 days before expiration. Commission staff must sign a notice of non-renewal to acknowledge that the notice was received at least 90 days prior to the date of expiration. Any notices or amendments must be provided to the commission in a commission approved method. Until the 90 days advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain completely and absolutely liable to the extent provided by the terms of the agreement.
- (H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.
- (5) **Commission draw on financial instruments.** The commission may seek full or partial funds from a REP's financial resources in any of the following circumstances:
  - (A) An applicable independent organization performs a mass transition of a REP's customers under §25.43 of this title;
  - (B) The commission issues an order revoking a REP's certificate;
  - (C) ERCOT terminates a REP's SFA or the applicable independent organization terminates a similar agreement and the REP's financial resource expires in 30 days less; or
  - (D) The commission's executive director determines that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols; and the financial resource expires in 30 days or less.
- (6) **Proceeds from financial instruments.**
  - (A) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection may be used to satisfy the following obligations of a REP, in the following order of priority:
    - (i) first, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title (relating to Low-Income List Administrator);
    - (ii) second, if available, to assist in the payment of residential customer deposits to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title;
    - (iii) third, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title, and to retail electric providers that

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- are designated to provide service in a mass transition event under §25.43 of this title;
- (iv) fourth, for services provided by the independent organization related to serving customer load;
  - (v) fifth, for services provided by a TDU; and
  - (vi) sixth, for administrative penalties assessed under Chapter 15 of PURA or commission rules.
- (B) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection must, to the extent that the proceeds are not needed to satisfy an obligation set out in subparagraph (A) of this paragraph, be paid to the applicable entity identified as the Applicant on the irrevocable stand-by letter of credit or the Guarantor on the irrevocable guaranty agreement.
- (g) **Persons prohibited from exercising control.** An Option 1 REP must maintain compliance with this subsection at all times. This subsection does not apply to an Option 2 or Option 3 REP.
- (1) In no instance may any of the following persons control the REP or be relied upon to meet the requirements of subsections (d) and (e) of this section:
    - (A) A person who was a principal of a market participant, at any time within the six months prior to the market participant:
      - (i) experiencing a mass transition of the REP's customers under §25.43 of this title;
      - (ii) having their ERCOT SFA, or similar agreement for an independent organization other than ERCOT terminated; or
      - (iii) exiting an electricity or gas market with outstanding payment obligations that, at the time of the application or amendment, remain outstanding; or
    - (B) A person who, by commission order, is prohibited from serving as a principal for any commission-regulated entity.
  - (2) If an independent organization or TDU is aware that a person who is otherwise barred from exercising direct or indirect control over a REP is acting in violation of this section or other commission substantive rules, the independent organization or TDU has an affirmative duty to report this information to the division of the commission charged with enforcement of the commission's substantive rules.
- (h) **Update or relinquishment of certification.** A REP must maintain and update the information required by subsections (d), (e), and (f) of this section, as applicable, on an ongoing basis.
- (1) A REP must electronically submit updated information in the manner established by the commission within five working days of any change to its contact information as identified in subsection (d)(1)(D) or this section.
  - (2) A REP must apply to amend its certification within ten working days from the occurrence of a material change to its certification. A REP may apply for the commission to approve a material change by filing an application to amend its certification before the material change is anticipated to occur. A material change includes:
    - (A) a change in control of the REP including a change in the controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP, but not including a change in the ownership percentages of individual owners;
    - (B) a name change (including addition or deletion of assumed names);
    - (C) for Option 1 REPs, a change in service area;
    - (D) for Option 1 REPs, a change in technical or managerial qualifications, including
      - (i) any information previously provided or attested to under the technical and managerial requirements of subsection (e)(1)(A) and (B) of this section that

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- correspond with the documentation requirements under subsection (e)(2)(B) and (C), and (E)(iv) and (v) of this section. Such information includes:
- (ii) personnel relied upon for experience, and
  - (iii) changes, termination, or expiration of a contract to provide commodity risk management services;
  - (iv) a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under subsection (e)(2)(E)(iv)(I) of this section, or a change in the applicant's relationship with such persons under subsection (e)(2)(E)(iv)(II) of this section, if such a relationship exists; and
  - (v) a change necessitating an updated statement affirming that the persons identified under subsection (g)(1) of this section do not control the REP and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section; and
- (E) for Option 1 REPs, a change in financial qualifications, including:
- (i) the REP's certificated method for maintaining its access to capital requirement of subsection (f)(1) of this section, including terminations made to the irrevocable guaranty agreement or power purchase agreement;
  - (ii) the certificated method for protecting its customer deposits and prepayments, and
  - (iii) the approved account for protecting customer deposits and prepayments;
- (F) a change in REP's type of certification as an Option 1, Option 2, or Option 3 REP; and
- (G) for Option 2 REPs, the addition or removal of customers served by the Option 2 REP.
- (3) A REP that no longer serves customers may relinquish its REP certificate by filing an application for relinquishment on a form prescribed by the commission. A REP that does not serve customers for two consecutive years must relinquish its certificate. Prior to relinquishing its certificate, the REP must no longer serve any customers. At least 45 days prior to ceasing operations, a REP that intends to cease operations as a REP and is not seeking to relinquish its REP certificate must file a notice in the commission control number established under this paragraph to notify the commission of a REP ceasing operations. A REP must not cease operations as a REP without prior notice of at least 45 days to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations. The REP must also notify, the Low Income Discount Administrator, the applicable independent organization, and all TDUs and the providers of last resort for service territories in which the REP serves customers. As applicable, a REP must also notify all electric cooperatives and municipally owned utilities in whose service territory the REP serves customers. If a REP improperly transfers customers without providing adequate notice, under §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another) then the REP may be subject to enforcement proceedings even after relinquishment of its certificate. Within the application to relinquish its certificate a REP must include a statement explaining whether customers' deposits were refunded to the customers or transferred to an alternative REP. The statement must be supported by a signed, notarized affidavit from an executive officer of the REP.
- (4) A REP that applies to amend its certification must:
- (A) state the effective date of each material change that prompted the amendment application; and
  - (B) identify whether it is currently providing service to customers in Texas.
- (i) **Reporting requirements.** An Option 1 REP must file with the commission an annual and a semi-annual report each year. Option 2 and Option 3 REPs do not have reporting obligations under this section.
- (1) The annual report is due on March 5, or

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- (A) 65 days after the end of the REP's fiscal year; or
  - (B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 65 days after the end of the guarantor's fiscal year.
- (2) The semi-annual report is due on August 15, or
- (A) 225 days after the end of the REP's fiscal year; or
  - (B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 225 days after the end of the guarantor's fiscal year.
- (3) The annual and semi-annual report must include the following information.
- (A) A signed, notarized affidavit from an executive officer affirming that the certificate holder is not in material violation of any of the requirements of its certificate under this section and that the information reported in the entire report is true and correct.
  - (B) Any changes in ownership, control, corporate restructuring, or transfer of a REP certificate.
  - (C) Any changes in management, experience, and persons relied on for certification in subsection (e) of this section including the person or third-party provider acting as the REP's risk manager.
  - (D) A list of all principals, provided in Microsoft Excel format.
  - (E) A list of all executive officers, provided in Microsoft Excel format.
  - (F) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided in Microsoft Excel format.
  - (G) For a REP providing retail electric service in the ERCOT region, a copy of the REP's current LSE contact information kept on file with ERCOT, including a copy of each Notice of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. If the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, the REP must also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all notices of change of information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.
  - (H) Demonstration of ongoing compliance with the financial requirements of subsection (f) of this section.
    - (i) This can include:
      - (I) calculations demonstrating a guarantor's adequate tangible net worth and financial ratios,
      - (II) proof that a REP maintains adequate shareholders' equity,
      - (III) a statement of the value of customer deposits and prepayments the REP is currently liable for, and
      - (IV) a current account statement demonstrating that the balance of the account in which customer deposits and prepayments are held 100% covers the value of customer deposits and prepayments the REP is liable for.
    - (ii) A REP must submit relevant documentation as required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f)(1) and (2) of this section.
    - (iii) Financial statements provided as part of the annual and semi-annual report must be as of the end of the most recent fiscal quarter.
- (4) In addition to the information required in paragraph (3) of this subsection, the annual report must also include the following information.



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- (A) Any changes in a REP's contact information identified in subsection (d)(1)(D) of this section.
  - (B) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.
  - (C) The information required by §25.491 of this title (relating to Record Retention and Reporting Requirements) and other commission rules, as applicable.
- (5) Reporting under this subsection does not change the requirement for a REP to amend its certification to reflect the change in accordance with subsection (h) of this section.
- (j) **Protection of TDU financial integrity.**
- (1) A TDU must not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission substantive rules.
  - (2) A TDU must create a regulatory asset for bad debt expenses, net of collateral posted under paragraph (1) of this subsection and bad debt already included in its rates, resulting from a REP's default on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset will be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.
- (k) **Revocation of a REP certificate.** A certificate granted under this section may be revoked for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. The revocation of a REP's certificate requires the cessation of all REP activities in the state of Texas, in accordance with commission order. The commission may impose an administrative penalty on a person for a violation of PURA, commission substantive rules, or protocols adopted by an independent organization. Significant violations include, but are not limited to:
- (1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;
  - (2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;
  - (3) Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;
  - (4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;
  - (5) Failure to maintain continuous and reliable electric service to a customer or customers under this section;
  - (6) Failure to maintain financial resources in accordance with subsection (f) of this section;
  - (7) The inability to meet financial obligations on a reasonable and timely basis;
  - (8) Failure to timely remit payment for invoiced charges to an independent organization;
  - (9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other protocols established by an applicable independent organization;
  - (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
  - (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
  - (12) Termination of the REP's SFA with ERCOT or similar agreements with an applicable independent organization other than ERCOT;

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- (13) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;
  - (14) Failure to provide retail electric service to a customer or customers within 24 months of the certificate being granted by the commission or ceasing to provide retail electric service for a period of 24 months;
  - (15) Failure to serve as a POLR if required to do so by the commission under §25.43 of this title;
  - (16) Failure to timely remit payment for invoiced charges to a TDU under §25.214, of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities);
  - (17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);
  - (18) Failure to comply with the terms of a suspension under subsection (l) of this section;
  - (19) Failure to comply with §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and
  - (20) Other significant violations or a pattern of failures to meet the requirements of PURA, commissions rules or orders, or protocols adopted by the applicable independent organization.
- (l) **Suspension of a REP's ability to acquire new customers.** The commission may suspend a REP's ability to acquire new customers for a significant violation, as described by subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The suspension order may also impose administrative penalties or other conditions for reinstatement on a REP whose ability to acquire new customers has been suspended.
- (1) Commission staff may initiate a proceeding for suspension of a REP's ability to acquire new customers under this subsection by filing a petition for suspension.
    - (A) Commission staff must provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission).
    - (B) The REP may submit a request for hearing on the petition for suspension within 20 days after the date the REP receives notice of the petition. Notice is deemed to have been received upon the earlier of receipt of actual notice or three days after the order is mailed. A request for hearing received more than 20 days after the date the petition is received by the REP will be denied by the presiding officer.
    - (C) If the REP does not submit a request for hearing within 20 days after receiving notice of the petition for suspension, the presiding officer may administratively approve the petition for suspension under §22.35 of this title (relating to Informal Disposition). The commission delegates authority to the presiding officer to approve a petition for suspension under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title.
  - (2) The executive director may suspend a REP's ability to acquire new customers without prior notice or opportunity for a hearing in the form of a cease and desist order if the executive director determines that providing notice and an opportunity for a hearing is impracticable and that the conduct of the REP meets the criteria for issuing such an order under PURA §15.104(a)(2). In determining the practicability of providing notice and an opportunity for hearing, the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations. For purposes of determining whether the criteria of PURA §15.104(a)(2) are met, the statutory term continuous and adequate electric service includes continuous and reliable electric service as defined in this section. If the executive director issues a cease and desist order suspending a REP's ability to acquire new customers without prior notice or opportunity

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for a hearing, the procedural provisions of §25.54(d)(2) of this title (relating to Cease and Desist Orders) apply.

- (3) In addition to any other applicable requirements, an order suspending a REP's ability to acquire new customers must describe the conduct of the of the REP and the significant violations that support the issuance of the order. The order must also describe any conditions the REP must meet for reinstatement.
- (4) If appropriate, an order suspending a REP's ability to acquire new customers may also include specific, verifiable conditions for expedited reinstatement. The conditions for expedited reinstatement may require actions beyond those required to come into compliance with applicable law and may include verification from commission staff that the conditions for expedited reinstatement have been met, verification that commission staff has not identified any reasons the suspension should remain in effect, or a deadline for meeting one or more of the conditions. Expedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the pattern of conduct giving rise to the suspension supports a general concern about the REP's ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension. If appropriate, a compliance docket will be opened for filings relevant to this paragraph. If the REP fulfills the conditions for expedited reinstatement and files all required supporting documentation, commission staff must lift the suspension, notify ERCOT of the reinstatement, and file a notice of reinstatement as soon as practicable. If commission staff verification is required and commission staff does not agree that expedited reinstatement is appropriate under the terms of the suspension order, the REP may seek reinstatement under paragraph (6) of this subsection.
- (5) A REP that has its ability to acquire new customers suspended must cease, within three working days, the solicitation or enrollment of new customers and the applicable independent organization will be directed to report to commission staff, on a weekly basis, any new customers that have been added by the REP. In this subparagraph, the term "enrollment" means the act of executing a contract with an applicant for the provision of electric service but does not include renewing the contract of an existing customer.
- (6) A REP may request reinstatement by filing a petition for reinstatement. The commission delegates authority to the presiding officer to approve a petition for reinstatement under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title. In determining whether to lift the suspension, the presiding officer may consider, as appropriate, whether:
  - (A) the REP has resolved all violations underlying the suspension and fulfilled all conditions for reinstatement;
  - (B) the REP is in compliance with all or specific individual technical, managerial, and financial requirements in this section; and
  - (C) there exist any additional grounds that would support the suspension of the REPs ability to acquire new customers under this subsection.
- (7) A REP subject to suspension of acquiring new customers under this section must continue to serve existing customers and maintain compliance with PURA, commission substantive rules, and protocols adopted by the applicable independent organization. Suspension of the ability to acquire new customers does not impact a REP's obligation to timely initiate service to a customer that completed enrollment with the REP prior to the effective date of the suspension, even if the scheduled service initiation date falls within the suspension period.
- (8) Nothing in this subsection limits the commission's ability to revoke a REP's certificate, proceed with a draw on a REP's financial instruments, or impose administrative penalties. Commission staff retains the discretion to seek to revoke the certificate of a REP subject to suspension.