

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter F. METERING.

§25.126. Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced.

- (a) **Applicability.** This section applies to a transmission and distribution utility (TDU) and a retail electric provider (REP) in an area in which customer choice is available. The implementation of this section shall take effect on July 1, 2010. This section does not limit a TDU's or REP's right to seek redress for meter tampering through civil and criminal proceedings.
- (b) **Back-billing and meter tampering charges.**
- (1) If any meter is found to be non-compliant with the accuracy standards required by §25.121(e) of this title (relating to Meter Requirements), or if the TDU has provided incorrect consumption or billing data to the REP, then consumption or billing data shall be corrected, and adjusted bills shall be rendered. The TDU shall not back-bill for any period in which the current customer was not the customer of record, or the current REP was not the REP of record. The TDU shall not assess any meter tampering fees, meter repair charges, or restoration charges due to meter tampering, if the current customer was not the customer of record when the meter tampering began, or if the current REP was not the REP of record when the meter tampering began.
 - (2) Back-billing under this subsection shall not exceed a period of:
 - (A) three months, if the TDU discovers a non-compliant meter or other equipment that has not been affected by meter tampering and the back-billing would result in additional electricity charges to the customer; or
 - (B) six months, if the TDU discovers a non-compliant meter that has been affected by meter tampering and the back-billing would result in additional charges or fees to the customer.
 - (3) The back-billing shall not be limited if the TDU discovers a non-compliant meter that has not been affected by meter tampering or has provided incorrect meter readings that are unrelated to meter tampering and the back-billing would result in a credit to the customer.
 - (4) In instances where the TDU finds it appropriate, the TDU may assess charges for services received by the customer prior to the six months back-billed to the REP, and the charges assessed beyond six months shall be sent to the end-use customer directly by the TDU. Charges assessed by the TDU pursuant to this paragraph may extend to periods in which the current REP of record was not the REP of record. Energy charges shall be determined using the ERCOT-wide bus average hub price as calculated by the independent system operator for the applicable time periods. The utility shall notify the current REP of record of the charges assessed to the customer beyond six months. The TDU shall pay the current REP of record 50% of the energy charges collected for the period of time in which that REP was the REP of record. The TDU shall provide the energy charges to the REP pursuant to a method agreed to by the REP and the TDU.
- (c) **Calculation of charges.** The charge for any period in which the meter was not in compliance with the accuracy standard shall be based on an estimate using the standards for calculation as stated in the Tariff for Retail Delivery Service, Section 4.8.1.4, adopted pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
- (d) **TDU responsibilities concerning metering accuracy.** A TDU shall undertake all reasonable efforts to minimize losses associated with inaccurate meters and meter tampering, including the prompt detection and investigation of circumstances in which a meter is not accurately recording and reporting consumption. The TDU shall also take the steps necessary to deter meter tampering and to

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mitigate the adverse impacts of inaccurate meters on the metering and billing of electricity consumption.

- (1) Once meter tampering is determined to have taken place, the TDU shall restore normal meter registration and reading within three business days. If the tampering involves a bypass of the meter, and the TDU cannot eliminate the bypass, the TDU shall, within this period, disconnect service to the premises.
- (2) Following disconnection, the TDU shall provide written notice of disconnection to the customer of record and notice to the REP using a standard market process.
- (3) The TDU shall, concurrent with the back-billing, supply the REP with the revised estimated meter read resulting from consumption at the premises that the TDU has determined was not previously billed as a result of the meter tampering. The electronic transaction transmitting the estimated meter read to the REP shall clearly denote that the meter read is an estimate and shall state the reason for the estimation.
- (4) All applicable meter repair and restoration charges shall be sent in a single transaction by the TDU and shall not be spread over several months. The TDU shall send corresponding back-billing transactions concurrently with the transaction for meter repair and restoration charges.
- (5) The TDU shall investigate, and remedy if necessary, all instances of meter tampering reported under this section within ten business days from the date the tampering was reported to the TDU.
- (6) The TDU may not invoice the current REP for any back-billed TDU charges related to meter tampering or for any meter repair and restoration charges, until the TDU has placed a switch-hold on the affected ESI pursuant to subsection (g) of this section and collected and prepared the following information in support of a determination of meter tampering. The TDU shall make the information specified in this paragraph electronically and readily available to the REP of record through a secure method, without requiring the REP of record to first request the information. The TDU shall also provide the affected customer this information within five business days of the customer's request. The TDU shall provide reasonable and timely access to the physical items specified in subparagraph (D) of this paragraph to any requesting REP of record or customer.
 - (A) Photographs of the premises including a general photograph of the residence/business (showing address number if available), a wide shot photograph of the meter against the wall or where attached to the premises, and close-ups of the meter and/or diversion evidence (prior to removing the meter cover if the tampering is obvious and after removing the meter cover if the damage is inside the meter), and any other relevant evidence that can be photographed;
 - (B) A detailed description of the detection and investigation methodology employed by the TDU;
 - (C) Documentation of the methodology or rationale used by the TDU to determine the date or approximate date upon which the meter ceased accurately registering consumption at the premises and the detailed calculation and methodology for estimating consumption subject to back-billing, and the methodology used to calculate the back-billing;
 - (D) The affected meter and other metering equipment that the TDU may need to remove from the premises because the tampering involved an unauthorized alteration, manipulation, change or modification of that equipment, and any available object used for meter tampering;
 - (E) Any other reliable and credible information that supports its conclusion that the meter was tampered with, while maintaining confidentiality of anonymous tips provided to the TDU; and

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- (F) A sworn affidavit from an employee or other representative of the TDU attesting to the veracity of the information.
- (7) The information specified in paragraph (6) of this subsection shall be retained by the TDU for 24 months from the date the TDU invoices the REP pursuant to paragraph (6) of this subsection and, if a legal proceeding is initiated during those 24 months, the information shall be retained by the TDU until the final resolution of that proceeding, or 24 months, whichever is later.
- (e) **Notification of meter tampering.** The TDU shall notify the REP within one business day, upon a determination that meter tampering has occurred through a standard market process. The TDU shall also notify the customer within two business days of the determination of meter tampering.
 - (1) The notice to the customer shall be either provided to the customer in the form of a door hanger, or mailed to the premises address assigned to the ESI ID or an address provided by the REP if there is no valid postal premises address assigned to the ESI ID.
 - (2) The notice shall include the following information in the same format as follows:

[TDU Letterhead]

Date: _____

Address: _____

ESI-ID: _____

NOTICE OF METER TAMPERING

We have identified electric meter tampering, or theft of electric service at this location.

You may be billed for any applicable fees relating to repairing or replacing the electric meter and other facilities, and for electricity usage not previously billed as a result of the tampering or theft. A bill for these charges will be issued by your retail electric provider (REP). If the meter tampering occurred prior to the time you became the customer of record at this location, you may be billed for any of your electricity usage that was previously unbilled. If the meter tampering began after you became customer of record at this location and your current REP was providing your electric service at that time, you may also be billed meter repair and restoration charges. Your REP may also authorize disconnection of service for nonpayment. You will not be able to switch your service to another REP until you have satisfied your obligation to pay these charges.

- (f) **Burden of Proof.** If a retail customer challenges the TDU's determination of meter tampering, or the imposition of charges based on any such determination, in a contested case proceeding before the commission, the TDU shall bear the burden of proof that meter tampering occurred.
- (g) **Switch-hold and disconnection of service.** Upon determination by the TDU that tampering has occurred at a premises, the TDU shall on the same day place a switch-hold on the ESI ID, which shall prevent a switch or move-in transaction from being completed for the ESI ID. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title (relating to Disconnection

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of Service), 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 its payment obligations for back-billings and meter repair charges due to tampering, or until such time as removal of the switch-hold is otherwise authorized by this section. 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.

- (1) The REP via a standard market process shall submit a request to remove the switch-hold once satisfactory payment is received from the retail customer for the back-billings and meter repair and restoration charges.
- (2) For a customer receiving service under §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), a TDU shall disconnect service within one day of its receipt of the REP's request for disconnection if the TDU has determined that tampering with the customer's meter has occurred.
- (3) At the time of a mass transition, the TDU shall remove the switch-hold for any ESI ID that is transitioned to a provider of last resort (POLR). No later than the business day following the completion of the last mass transition switch, the TDU shall provide all POLR providers a list of ESI IDs previously subject to a switch-hold.
- (4) When the REP of record issues a move-out request for an ESI ID under a switch-hold, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

(h) **Move-ins with a valid switch-hold.**

- (1) If a retail applicant for electric service selects a REP and the selected REP submits a move-in transaction for an ESI ID that has an existing switch-hold as defined in subsection (g) of this section due to meter tampering, the TDU shall notify the selected REP that the move-in transaction is rejected via a standard market process. If the selected REP determines the applicant's premise has an existing switch-hold, the selected REP may request removal of the switch-hold prior to submitting a move-in transaction.
- (2) The selected REP shall use best efforts to promptly determine whether the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed and, if so, obtain adequate documentation that the move-in request is legitimate. Adequate documentation shall include a copy of a signed lease, an affidavit of a landlord, closing documents, a certificate of occupancy, a utility bill dated within the past two months from a different premise, or other comparable documentation in the name of the retail applicant for electric service, and shall include a signed statement from the applicant stating that the applicant is a new occupant of the premises and is not associated with the preceding occupant.
- (3) Upon receipt of such information from the applicant, the selected REP shall ensure that the applicant's financial information, driver's license number, and social security number and federal tax ID number are protected from improper release. Another REP or a TDU that receives such information from the selected REP shall also protect such information from release.
- (4) The selected REP shall initiate the use of ERCOT's MarkeTrak issue process to request removal of the switch-hold and provide the supporting documentation to the TDU. This request and supporting documentation shall be subsequently provided to the current REP of record through the MarkeTrak process.
- (5) The current REP of record may submit other information in response to the supporting documentation submitted by the selected REP, using the MarkeTrak process. This additional

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information shall be made available to the TDU and the selected REP through the MarkeTrak process. Within four business hours of receiving the request to remove the switch-hold and supporting documentation, the TDU shall determine whether the switch-hold should be removed by confirming the documentation provided under subsection (h)(2) of this section is adequate. In making this decision, the TDU shall take into consideration any additional information submitted by the current REP of record. If the TDU determines the documentation is inadequate, the selected REP and the current REP of record shall be immediately notified through the MarkeTrak process that the request to remove the switch-hold is rejected, and the switch-hold shall remain in effect pursuant to subsection (g) of this section. If the TDU concludes that the documentation is adequate, it shall immediately grant the request to remove the switch-hold and both the selected REP and current REP record shall be immediately notified of the removal through the MarkeTrak process. After being notified of the removal of the switch-hold, the selected REP shall resubmit the move-in transaction to initiate the move-in request.

- (6) A TX SET transaction or process developed specifically for the purpose of addressing the treatment of switch-holds in the context of move-in transactions shall be used as a substitute for the equivalent process described in this subsection once that TX SET transaction becomes available. The Electric Reliability Council of Texas (ERCOT) shall develop this TX SET transaction process as soon as possible.
- (7) For a move-in transaction 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.

(i) **Additional requirements.**

- (1) By April 1 of each calendar year, each TDU shall file with the commission a report detailing the following for the previous calendar year concerning meter tampering:
 - (A) Total number of customers for which meter tampering was determined by the TDU;
 - (B) The number of customers back-billed and the average of the following charges per customer:
 - (i) utility delivery charges; and
 - (ii) meter repair, and restoration charges.
 - (C) Total number of cases referred to law enforcement for prosecution that included photographs, a descriptive incident report, affidavit, and notification to law enforcement of the availability of physical evidence in the case;
 - (D) Total number of cases prosecuted;
 - (E) Switch-hold statistics, including the number of ESI IDs for which a switch-hold was placed, the number of ESI IDs placed under a switch hold for three months, six months, one year, or longer; and
 - (F) The number of premises for which a TDU assessed charges directly to the customer pursuant to subsection (b)(4) of this section.
- (2) The utility shall maintain adequate staff responsible for monitoring suspicious activity related to meter tampering in its service territory. The utility shall establish a process for REPs and customers to report meter tampering. The TDU shall also include a customer hotline telephone number or email address on its website, prominently displayed on its front page for electric service.
- (3) The utility shall maintain a record of meter tampering investigations. The record shall include a timeline by ESI ID, starting with the date information is reported by a REP, landlord, TDU employee or other individual on meter tampering, the date the TDU completed the investigation, and the date the TDU issued the back-billing to the REP. The utility shall make this information available to the commission upon request.

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- (4) The utility shall engage in a customer information campaign to educate customers on the safety hazards associated with electricity theft, diversion, and meter tampering.

- (j) **Proprietary Customer Information.** The prohibition against the release of proprietary customer information in §25.472 of this title (relating to Privacy of Customer Information) does not prohibit the release of customer proprietary information to the registration agent, a REP, a POLR provider, or a TDU when the information is necessary to complete a market transaction described in this section. Customer proprietary information provided in accordance with this section shall be treated as confidential, shall be securely destroyed by the current REP of record after 24 months, and shall be used only for the purposes of evaluating whether to lift a switch-hold and cannot be used for any other purpose, including but not limited to marketing or sales efforts by the current REP.