

**PROJECT NO. 54212**

<b>TERMS AND CONDITIONS OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ACCESS BY A COMPETITIVE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RETAILER TO THE DELIVERY</b>	<b>§</b>	
<b>SYSTEM OF CERTAIN MOUS AND</b>	<b>§</b>	
<b>ELECTRIC COOPERATIVES</b>	<b>§</b>	

**ORDER ADOPTING NEW 16 TAC §25.219  
AS APPROVED AT THE MARCH 23, 2023, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.219, relating to Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that Implements Customer Choice After May 1, 2023. The commission adopts this rule and accompanying tariff with changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8197).

The adopted rule and accompanying pro-forma tariff set the terms and conditions of access by a competitive retailer to the delivery system of a municipally owned utility or electric cooperative implementing customer choice after May 1, 2023.

The commission received comments on the proposed rule from Alliance for Retail Markets and the Texas Energy Association for Marketers (collectively, the REP Coalition), Lubbock Power and Light (LP&L), South Texas Electric Cooperative (STEC), STEC and Texas Electric Cooperatives, Inc (STEC and TEC) and Texas Public Power Association (TPPA).

*General Comments*

LP&L expressed support for this rule and tariff. LP&L noted that the revisions and updates are vital to its entry into the competitive retail electricity market.

*§25.219(a) – Purpose and Application*

Proposed subsection (a) defines the purpose and application of the rule as establishing and governing the non-discriminatory terms and conditions of access by competitive retailers to the delivery system of a municipally owned utility or electric cooperative that implements customer choice after May 1, 2023.

LP&L and TPPA noted that while subsection (a) outlines the purpose of the rule, it does not clearly specify the applicability of the rule. LP&L suggested a second sentence be added to state that the rule only applies to municipally owned utilities and electric cooperatives that implement customer choice after May 1, 2023. Further, LP&L recommended the commission clearly state that §25.215, relating to Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice, does not apply to a municipally owned utility or electric cooperative covered by §25.219. TPPA and the REP Coalition agreed.

LP&L also recommended that the meaning of “implements customer choice” be defined in the rule as the date on which the municipally owned utility or electric cooperative opens its market to retail customers. The REP Coalition agreed with this recommendation.

*Commission Response*

The commission agrees with LP&L, TPPA, and the REP Coalition and modifies subsection (a) to clarify the application of the rule. The commission further modifies the rule to clarify that §25.219 applies to municipally owned utilities and electric cooperatives that implement, or are preparing to implement, customer choice after May 1, 2023 and that these entities are not required to comply with §25.215. The addition of “or are preparing to implement” is necessary, because subsection (c) of the rule requires the entity in question to file its tariff with the commission *before* it implements customer choice.

The commission agrees with the recommendation of LP&L and the REP Coalition to clarify in the rule that the date a municipally owned utility or electric cooperative opens its territory to retail competition is the date it implements customer choice. The commission modifies the rule accordingly.

**§25.219(c) – Access Tariff**

Proposed subsection (c) sets forth the requirements that “each” municipally owned utility or electric cooperative must follow in order to file its access tariff with the commission. These requirements include the municipality owned utility or electric cooperative using its own name in lieu of “[Utility]”.

The REP Coalition recommended that the term “Utility” in subsection (c) be changed to “Company” to help prevent confusion with how utility is defined in PURA §11.004. Specifically,

the PURA definition of utility does not include municipally owned utilities and electric cooperatives.

*Commission Response*

**The commission declines to replace “Utility” with “Company” as suggested by the REP Coalition. “[Utility]” is used throughout the tariff as a placeholder for the municipally owned utility or electric cooperative to insert its own name into the tariff in the appropriate locations. The commission disagrees that the use of the term “Utility” in subsection (c) will be confused with the use of the term in PURA §11.004, because the term is only used in the rule to describe the requirement that the municipally owned utility or electric cooperative substitute its own name for that term in the tariff. The rule explicitly applies to municipally owned utilities and electric cooperatives, and a single use of “Utility” to properly reference the tariff terminology does not undercut the clear and direct language of the rule. Moreover, the commission does not agree that the recommended term “Company” would be an improvement. Companies are commonly understood to refer to commercial entities, so referring to municipally owned utilities and electric cooperatives as companies may also result in misunderstandings of the rule.**

TPPA commented that proposed subsection (c) is unclear. TPPA argued that the phrase “each” municipally owned utility and electric cooperative” could be read to require all municipally owned utilities and electric cooperatives, including those who have not entered customer choice, to file a tariff. TPPA suggested clarifying that the requirement to file an access tariff applies only to

municipally owned utilities and electric cooperatives that have chosen to implement customer choice. The REP Coalition agreed with TPPA that a clarification is required. TPPA and the REP Coalition offered suggested language.

*Commission Response*

**The commission agrees with TPPA and the REP Coalition that this subsection should be clarified to ensure the requirement only applies to municipally owned utilities and electric cooperatives that have chosen to implement customer choice after May 1, 2023. The commission makes clarifying changes to the rule.**

*§25.219(d) – Pro-Forma Retail Access Tariff*

The REP Coalition proposed that the figure be labeled §25.219 rather than §25.215.

*Commission Response*

**The commission agrees with the REP Coalition and relabels the figure accordingly.**

*Access Tariff: Chapter 1, Definitions, Tampering*

The proposed access tariff defines tampering as:

Any unauthorized alteration, manipulation, change, modification, or diversion of [Utility]'s facilities, including Metering Equipment, that could adversely affect the integrity of billing data or the [Utility]'s ability to collect the data needed for billing or settlement. Tampering includes, but is not limited to, harming or defacing [Utility]'s facilities, physically or electronically disorienting the Meter, attaching objects to the

Meter, inserting objects into the Meter, or other electrical or mechanical means of altering billing and settlement data or other electrical or mechanical means of altering Delivery Service.

STEC recommended that the definition of tampering be modified to read “including Metering Equipment *or other action* that could adversely effect the integrity of billing data...” to expand the scope of activities included in the definition. The REP Coalition agreed, but recommended the new phrase be placed after the list of other tampering actions to avoid any potential confusion: “modification, diversion *or other action impacting* [Utility]’s facilities...”.

#### *Commission Response*

**The commission declines to expand the definition of “tampering” as recommended by STEC and the REP Coalition. The proposed definition of tampering has been in use in the investor owned utility access tariff for years, and commenters do not provide any grounds for modifying this well-established definition or examples of actions that should be considered tampering but are not captured by the definition.**

#### *Access Tariff Section 3.1 Applicability*

Section 3.1 of the access tariff describes the applicability of the tariff.

The REP Coalition recommended that section 3.1 include language setting forth a performance standard that the municipally owned utility or electric cooperative use reasonable diligence to comply with the operational and transactional requirements, timelines in the tariff, and any related requirements. The REP Coalition argued that this standard is in the pro forma tariff for investor-

owned utilities and would be appropriate here to ensure the municipally owned utility or electric cooperative tries with reasonable diligence to abide by the tariff.

STEC and TEC argued that a "reasonable diligence" performance standard is both unnecessary and less straightforward than the statutory performance standard. Under PURA §40.056 and 41.056, municipally owned utilities and electric cooperatives must provide other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities for retail customers. STEC and TEC pointed out that if a municipally owned utility or electric cooperative fails to comply with these provisions of PURA, the commission may prohibit the municipally owned utility or electric cooperative from providing retail service outside of its certificated retail service area until its actions are remedied.

*Commission Response*

**The commission agrees with the REP Coalition to add the reasonable diligence standard from the pro forma tariff for investor owned utilities to this access tariff. However, the commission adds this language to section 3.2, which contains general requirements and is a more appropriate location for this provision. The commission disagrees with STEC and TEC that PURA §40.056 and §41.056 provide a more straightforward performance standard. These statutory provisions provide a process and remedy for when a municipally owned utility or electric cooperative engage in anticompetitive behavior. A reasonable diligence performance standard does not conflict with these statutory provisions, which will continue to apply to municipally owned utilities and cooperatives.**

*Access Tariff Section 3.2, General*

Section 3.2 of the access tariff requires a municipally owned utility or electric cooperative to state that it has no ownership interest in any electric power and energy it delivers.

STEC proposed a change to section 3.2 to require the municipally owned utility or electric cooperative to state that it has no ownership interest in any electric power or energy supplied by third-party competitive retailers or delivered to retail customers that purchase electric energy from third-party competitive retailers. STEC expressed that many municipally owned utilities and electric cooperatives own generation or have long-term generation contracts and, therefore, would have an ownership interest in the electricity each supplies to its own retail customers. STEC commented that under the proposed tariff many cooperatives and municipally owned utilities would be precluded from participation in the competitive electricity market. The REP Coalition did not dispute the basis for the request but suggested language that removed the specification of “third-party” competitive retailers.

*Commission Response*

**The commission agrees with STEC that a municipally owned utility or electric cooperative may own generation to serve its customers. Accordingly, the commission modifies the tariff to only require the municipally owned utility or electric cooperative to state that it does not have an ownership interest in electric power and energy it delivers to retail customers that purchase electric energy from third-party competitive retailers. The commission disagrees with the REP Coalition’s proposed language, which does not specify “third-party” competitive retailers. A municipally owned utility or electric cooperative may have an**



**ownership interest in the generation it provides to its own customers. It must not have an ownership interest in the electricity supplied by third party retailers.**

*Access Tariff Section 4.3.B.1 Initiation of Access Where Construction Services are not Required*

The REP Coalition pointed out that there should not be brackets around “utility” in “good utility practice,” because this is a specific industry term that should not be modified.

*Commission Response*

**The commission agrees with the REP Coalition and removes the brackets accordingly.**

*Access Tariff Section 4.3.C, Requests for Discretionary Services Including Construction Services*

Section 4.3.C of the access tariff delineates the process for requesting discretionary services from a municipally owned utility or electric cooperative by a retail customer or a competitive retailer that is requesting on behalf of the retail customer.

The REP Coalition proposed a change to section 4.3.C to clarify that the municipally owned utility or electric cooperative must acknowledge receipt of a competitive retailer’s electronic service request and notify the competitive retailer about service completion date in the field. LP&L responded that there are differences in communication depending on whether communications are made through the competitive retailer, retail customer, or both. LP&L commented that the REP Coalition’s proposed edits would need to be clarified further to ensure that the communications

for the specific services would be through the process identified by the applicable municipally owned utility or electric cooperative and laid out in section 4.3.

*Commission Response*

**The commission agrees that the additional detail suggested by the REP Coalition would improve the tariff. The commission also agrees with LP&L that whether discretionary services may be requested by a competitive retailer on behalf of a retail customer is determined by the municipally owned utility or electric cooperative. The commission modifies the tariff to reflect that a competitive retailer may request discretionary services on behalf of a retail customer by mutual consent of the competitive retailer and the municipally owned utility or competitive retailer. The commission also modifies the tariff to include the additional clarifications requested by the REP Coalition.**

*Access Tariff Section 4.3.F, Identification of the Premises and Selection of Rate Schedules*

Section 4.3.F of the access tariff provides a list of actions a municipally owned utility or an electric cooperative must take to establish, assign, and maintain ESI IDs in accordance with provisions set by applicable legal authorities. The section also requires a municipally owned utility or electric cooperative to select appropriate rate schedules for the delivery service provided. The section states that for service to a new retail customer at an existing premise, the municipally owned utility or electric cooperative will bill actual demand of the existing retail customer.

LP&L recommended modifications to section 4.3.F to clarify that for a new retail customer at an existing premise, the municipally owned utility or electric cooperative will bill actual demand of the existing retail customer subject to chapter 5 of its delivery service tariff and applicable legal authorities. LP&L explained that section 4.3.F needs more flexibility to accommodate the various kinds of demand charges associated with seasonal differences, demand ratchets, etc. that a municipally owned utility or electric cooperative may charge a new retail customer at an existing premise. LP&L provided language.

*Commission Response*

**The commission agrees with LP&L that a new retail customer at an existing premise may have different demand patterns than the existing customer at that premise. The commission modifies the language in this section to provide flexibility to the municipally owned utility or electric cooperative to bill new customers at an existing premise appropriately while their demand is established.**

*New Proposed Access Tariff Section 4.3.L, Critical Care and Critical Load Customer Designation*

The REP Coalition pointed out that the proposed tariff does not address critical care or critical load customers. The REP Coalition noted that PURA §17.005(f), for municipally owned utilities, and 17.006(f), for electric cooperatives, contemplate that these entities will have critical care residential customers, critical load industrial customers, and other critical load according to commission rules adopted under PURA §38.076. The REP Coalition commented that while it is appropriate for details of the processes surrounding critical care and critical load designations to

exist in other documents, pro forma tariff should address at a high level the existence and communication regarding such designations. The REP Coalition provided language.

*Commission Response*

**The commission agrees that the tariff should address critical care and critical load customer levels at a high level. However, the commission's rules to implement PURA §38.076 have not been fully implemented, so the precise obligations of competitive retailers are not yet fully established. Accordingly, the commission modifies the tariff to require that the municipally owned utility and competitive retailer will, by mutual consent, establish procedures to enable both entities to comply with all requirements established in applicable legal authorities related to critical care and critical load customer designations.**

*Access Tariff Section 4.4.A.4, Billing Cycle*

Section 4.4.A.4 of the access tariff requires invoiced charges to be based on a cycle of approximately one month, unless otherwise stated in the municipally owned utility's or electric cooperative's delivery service tariff or in section 4.8.A.3, Out of Cycle Meter Reads, of this tariff.

The REP Coalition pointed out that the heading of section 4.8.A.3 is incorrectly referenced as Out of Cycle Meter Reads, and that it should be updated to reflect the accurate heading of the section, Meter Readings For The Purpose Of A Self-Selected Switch Or To Verify Accuracy Of Meter Reading.

*Commission Response*

**The commission modifies section 4.4.A.4 of the tariff to correctly reference the heading of section 4.8.A.3.**

*Access Tariff Section 4.4.A.5, Remittance*

Section 4.4.A.5 of the access tariff contains the requirements regarding remittance of payment.

The heading for the section is “REMITTANCE.”

The REP Coalition suggested changing the heading of section 4.4.A.5 to “REMITTANCE FOR CONSOLIDATED BILLING,” because the requirements of this section only applies when the municipally owned utility or electric cooperative sends a consolidated bill.

*Commission Response*

**The commission agrees with the REP Coalition that section 4.4.A.5 only applies when the municipally owned utility or electric cooperative sends a consolidated bill and changes the heading accordingly.**

*Access Tariff Section 4.4.C.1, Calculation and Transmittal of Delivery Service Invoices by [Utility]*

Section 4.4.C.1 of the access tariff delineates the process and requirements for a municipally owned utility or electric cooperative to calculate and transmit electronic invoices for delivery system charges to a competitive retailer that chooses to issue a consolidated bill.

STEC recommended striking a requirement that, if requested by the competitive retailer, the municipally owned utility or electric cooperative provide information on any billing determinants that were not provided on the electronic invoice. STEC explained that it is not clear which billing determinants would be invoiced that are not provided on an electronic invoice in accordance with Texas SET.

The REP Coalition opposed this recommendation. It argued that this requirement is important for billing disputes that are addressed via MarkeTRAK (a dispute resolution tool used in the ERCOT marketplace). The REP Coalition explained that the applicable TX SET transaction provides multiple options for what billing information can be sent to account for the different billing determinants within various entities' tariffs under different rates and rate classes. Billing information sent may sometimes not be accurate for the applicable rate schedule or premise under the applicable tariff. Thus, a competitive retailer may need to be able to request more information to address any billing issues that arise.

### *Commission Response*

**The commission declines to modify the tariff to remove the requirement that a municipally owned utility or electric cooperative provide the competitive retailer with any information on billing determinants that were not provided on an electronic invoice, if requested. The commission agrees with the REP Coalition that in some cases the billing determinants sent on the invoice may not be accurate for the applicable rate schedule or premise under the applicable tariff. In these instances, the competitive retailer may need to request additional information on the billing determinants.**

STEC's proposed redline of this section also removed, without explanation, a requirement that the start and end dates for the billing periods match the start and end dates of the meter reading for the premises. The REP Coalition opposed eliminating this requirement. It argued that MarkeTRAK requires that dates submitted via the tool reflect the dates of the start and end meter reads. Therefore, the REP Coalition continued, deleting this requirement from the access tariff would obfuscate MarkeTRAK requirements.

*Commission Response*

**The commission declines to remove the requirement to have the start and end dates for the billing period match the meter reading start and end dates. This requirement is consistent with existing practice and with how information is submitted via MarkeTRAK.**

*Access Tariff Section 4.4.C.3, Invoice Corrections*

Section 4.4.C.3 lists the circumstances under which a municipally owned utility or electric cooperative must issue invoice corrections and specifies the process that must be followed.

The REP Coalition pointed out that an incomplete sentence that was intended to be deleted was unintentionally left in the document.

*Commission Response*

**The commission agrees with the REP Coalition and deletes the typographical error.**

*Access Tariff Section 4.4.D, Remittance of Invoiced Charges*

Proposed section 4.4.D of the access tariff states that payments for all charges except discretionary service charges invoiced to competitive retailer will be due 35 calendar days following the municipally owned utility's or electric cooperative's transmittal of a valid invoice.

The REP Coalition pointed out a conflict in the language that referenced 35 days in one area and 30 days in another sentence to refer to the same payment provision. The REP Coalition recommended correcting the reference to a 30-day requirement be modified to 35 days, which is consistent with the timeframe for the equivalent requirement in the access tariff for investor owned utilities.

*Commission Response*

**The commission agrees with the REP Coalition and corrects the reference to a 30-day requirement to a 35-day requirement, consistent with the requirement timeframes in the investor owned utility access tariff.**

*Access Tariff Section 4.4.D.3, Invoice Disputes*

Proposed section 4.4.D.3 of the access tariff sets out the procedures for resolving invoice disputes. Under the proposed tariff, an invoice following the resolution of a dispute is due within one business day of the resolution of the dispute.



STEC recommended modifying the deadline for a competitive retailer to pay a disputed invoice from one business day to three business days. STEC argued that this will provide the competitive retailer with adequate administrative time to process the invoice and issue payment.

*Commission Response*

**The commission agrees that three days is a reasonable amount of time for the competitive retailer to process and pay the disputed invoice and modifies the tariff accordingly.**

*Access Tariff Section 4.6.B.2, Default of [Utility] Related to Failure to Provide Meter Reading Data*

Proposed section 4.6.B.2 of the access tariff provides that a competitive retailer may pursue remedies for failure of a municipally owned utility or electric cooperative to provide meter reading data.

The REP Coalition noted that either the competitive retailer or the municipally owned utility or electric cooperative could discover a failure of meter reading data and recommended that the tariff reflect both scenarios. The REP Coalition also stated that the time period to cure the delinquency must run from the date the municipally owned utility or electric cooperative discovers such failure.

LP&L opined that the competitive retailer is in the best position to discover a failure in meter reading data. LP&L further commented that if the municipally owned utility or electric cooperative did find an error, it could lead to uncertainty about the parties' rights and timelines

related to discovery of missing data and curing of delinquency. Therefore, LP&L recommended that the language remain unchanged.

*Commission Response*

**The commission declined to amend section 4.6.B.2 to also consider scenarios where the municipally owned utility or electric cooperative discovers a failure in meter reading data. The commission agrees with LP&L that this would introduce uncertainty into the remedy timelines and that competitive retailers are in the best position to identify missing data.**

*Access Tariff Section 4.6.C.4, Default Related to De-Certification of a Competitive Retailer as a Retail Electric Provider or Loss of Municipal Registration*

Proposed section 4.6.C.4 requires a competitive retailer, upon loss of commission certification as a REP, to abide by 16 TAC §25.107, relating to Certification of Retail Electric Providers, with respect to notice and transfer of retail customers to another qualified competitive retailer or the provider of last resort (POLR).

The REP Coalition pointed out that commission practice has been to allow multiple POLRs to serve for each class and territory. The REP Coalition opined that even if the municipally owned utility or electric cooperative is selecting its own POLR, the tariff should be clear that one or more entities are permitted to serve as POLR.

*Commission Response*

**The commission agrees with the REP Coalition that multiple providers of last resort are permissible and modifies the tariff accordingly.**

*Access Tariff Section 4.7, Measurement and Metering of Service*

Proposed section 4.7 of the access tariff states that charges for electric power and energy are calculated using measurements obtained from metering equipment that is owned, installed, and read by the municipally owned utility or electric cooperative, by estimation, or by other methods defined in the entity's delivery service tariff.

To clarify what constitutes complete Interval Data, the REP Coalition recommended adding a provision that is included in the §25.215 version of the access tariff that specifies that the inclusion of missing interval data does not meet the requirement to provide complete interval data for a billing period. The REP Coalition explained that it is necessary that competitive retailers receive data for all the intervals to match the Texas Standard Electronic Transaction (Texas SET) transactions used by the competitive retail electric market.

*Commission Response*

**The commission agrees with the REP Coalition that missing interval data should not be considered complete interval data and modifies the tariff accordingly.**

*Access Tariff Section 4.8.A. Data from Meter Reading*

Proposed section 4.8 of the access tariff states that a municipally owned utility or electric cooperative must provide access to interval data for interval demand recorder customers through a web-portal or other means in real time if this data is not provided by ERCOT.

The REP Coalition recommended extending the requirement that a municipally owned utility or electric cooperative provide retail customers readings from an interval data recording meter in real time to any type of meter that records interval data. LP&L did not object to the proposed changes but recommended that providing such data in real time should not be mandatory. LP&L also stated that it hopes to make such data available in real time but is uncertain if that will be feasible upon its initial implementation of retail competition.

*Commission Response*

**The commission agrees with the REP Coalition that there are multiple meter types that record interval data, and that customers would benefit from having access to this data in real time when available. The commission also agrees with LP&L that municipally owned utilities and electric cooperatives should not be *required* to make this information available for all types of meters in real time. The commission modifies the tariff to permit municipally owned utilities and electric cooperatives to provide interval data in real time to customers “served with a meter that records interval data.” This modified language is still a permissive requirement but is broader than the proposed tariff language which was limited to interval demand customers.**

*Appendix A Section I*

Appendix A of the tariff is the signed agreement that states the terms and conditions that govern the relationship between a competitive retailer and municipally owned utility or electric cooperative. It contains information about how outages, service requests, and billing inquiries will be handled, including a requirement that the competitive retailer provide an address the municipally owned utility or electric cooperative can provide the competitive retailer with notice for late payments.

STEC recommended modifying the rule to require electronic mailing addresses instead of physical mailing addresses when providing notice of late payments to competitive retailers.

*Commission Response*

**The commission modifies the rule to require an electronic mailing address instead of a physical mailing address for the provision of notice of late payment to competitive retailers, as recommended by STEC. This modification will increase the efficiency with which competitive retailers are made aware of late payments.**

*Appendix A Proposed New Section II*

The REP Coalition suggested adding a new section II under Appendix A, designation of entity performing billing, that would memorialize the selection of the default billing method. This new section would require a competitive retailer to perform consolidated billing unless the retail customer affirmatively opts for dual billing and agrees to pay any associated discretionary charges as found in Chapter 5 of the tariff. The REP Coalition provided language.

STEC and TEC argued that the REP Coalition's proposal was problematic, because it eliminates the option for the municipally owned utility or electric cooperative to provide consolidated billing. STEC and TEC stated that setting a default position of single billing by the competitive retailer runs contrary to PURA §41.057, which states that an electric cooperative that opts into competition may continue to bill retail customers. STEC and TEC stated that the proposal is intended to allow a municipally owned utility or electric cooperative to insert its own language to reflect additional billing options. They also opined that the language is vague and does not accomplish the stated goal of memorializing the billing procedure selections set out in Chapter 4 of the tariff.

*Commission Response*

**The commission agrees with STEC and TEC that setting a default position of a single bill from the competitive retailer is contrary to the language of PURA §41.057, which grants municipally owned utilities and electric cooperatives the ability to provide consolidated billing. However, the commission agreed there is value in memorializing the selection of bill methods in the tariff. The commission adds a new section II to allow for the designation of the billing entity for when a retail customer requests to receive a single consolidated bill and for the designation of a billing entity for transmission and distribution charges when the customer does not request a single bill.**

*Appendix A Section V.*

Proposed section V of Appendix A requires a competitive retailer to warrant that it is certified as a retail electric provider by the commission.

STEC proposed to remove this requirement from section V, because municipally owned utilities and electric cooperatives who have entered retail competition are not required to be certified as retail electric providers.

LP&L disagreed and argued that the delivery service provider must be able to confirm that all entities planning to market to retail customers in its area are duly authorized to operate in Texas. LP&L proposed that a competitive retailer should either be certified as a retail electric provider by the commission or must be a municipally owned utility or an electric cooperative that is authorized to conduct business in Texas.

*Commission Response*

**The commission agrees with STEC that a municipally owned utility or electric cooperative that has entered retail competition is not required to be certified as a retail electric provider. However, it is appropriate for the tariff to require a competitive retailer to verify that it is authorized to sell electrical power and energy to retail customers in Texas. The commission modifies the tariff accordingly.**

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

The new rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically; PURA §32.101, which requires an electric utility to file its tariff with each regulatory authority; PURA §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; PURA §38.002, which grants the commission the authority, on its own motion or on complaint and after reasonable notice to adopt just and reasonable standards, classifications, rules, or practices an electric utility must follow in furnishing a service; PURA §39.107, which establishes customer choice in a service area; PURA §39.203 which grants the commission the authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice; PURA §40.054(c) which grants the commission the authority to establish terms and conditions for access, by other REPs to the municipally owned utility's distribution facilities for municipally owned utilities participating in customer choice; and PURA §41.054(c) which grants the commission the authority to establish terms and conditions for access, by other retail electric providers to the electric cooperative's distribution facilities for electric cooperatives participating in customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 38.001, 38.002, 39.107, 39.203, 40.054(c) and 41.054(c).



**§25.219. Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that Implements Customer Choice after May 1, 2023.**

- (a) **Purpose and Application.** This section and the pro-forma access tariff set forth in subsection (c) of this section establish and govern the non-discriminatory terms and conditions of access by competitive retailers to the delivery system of a municipally owned utility or electric cooperative that implements customer choice after May 1, 2023. This section applies to a municipally owned utility or electric cooperative that implements, or is preparing to implement, customer choice after May 1, 2023. For purposes of this section, the date a municipally owned utility or electric cooperative opens its territory to retail competition is the date it implements customer choice. A municipally owned utility or electric cooperative that implements customer choice after May 1, 2023 is not required to comply with §25.215 of this title (relating to Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice).
- (b) A municipally owned utility or electric cooperative that has implemented customer choice after May 1, 2023 must provide retail delivery service, including delivery service to a retail customer at transmission voltage, to retail customers. Retail delivery service must be provided in accordance with the rates, terms, and conditions set forth in the delivery service tariffs promulgated by the municipally owned utility or electric cooperative.
- (c) **Access tariff.** Not later than the 90th day before the date a municipally owned utility or electric cooperative to which this rule applies implements customer choice, the municipally

owned utility or electric cooperative must file with the commission its tariff governing access by competitive retailers to retail customers connected to the delivery system of the municipally owned utility or electric cooperative using the pro-forma access tariff in subsection (d) of this section. A municipally owned utility or an electric cooperative may add to or modify only Chapters 2 and 5 of the access tariff, reflecting individual characteristics and rates. Chapters 1, 3, and 4 of the pro-forma access tariff must be used exactly as written; these Chapters can be changed only through the rulemaking process. The access tariff, however, must contain the name of the municipally owned utility or electric cooperative in lieu of “[Utility]”.

- (d) Pro-Forma Retail Access Tariff. Tariff for Retail Access. Figure: 16 TAC §25.219(d)

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.219, relating Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that Implements Customer Choice After May 1, 2023 is hereby adopted with changes to the text as proposed.

**Signed at Austin, Texas the \_\_\_\_\_ day of MARCH 2023.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PETER M. LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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**KATHLEEN JACKSON, COMMISSIONER**

**TARIFF  
FOR  
COMPETITIVE RETAILER ACCESS**

[Name of Municipally Owned Utility or Electric Cooperative]

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## CHAPTER 1: DEFINITIONS

The following definitions apply to the Access Tariff of a Municipally Owned Utility or Electric Cooperative and to any Access Agreements made under the Access Tariff, unless specifically defined otherwise therein.

**ACCESS.** The ability of a Competitive Retailer to deliver electric energy to Retail Customers at the Point of Supply.

**ACCESS AGREEMENT.** The Access Agreement set forth in this Access Tariff that must be executed by [Utility] and Competitive Retailer before the Competitive Retailer can deliver Electric Power and Energy to [Utility]'s Delivery System and provide Electric Power and Energy to Retail Customers connected to [Utility]'s Delivery System.

**ACCESS TARIFF.** The document filed with and approved, except for Chapters 2 and 5, by the PUC pursuant to which [Utility] provides Access to Competitive Retailers. It is comprised of Rate Schedules, Access rules and regulations. The Access rules and regulations include definitions, terms and conditions, policies, and Access Agreements.

**ACTUAL METER READING.** A Meter Reading whereby [Utility] has collected information from the Meter either manually or through a direct reading, through telemetry, or other electronic communications.

**APPLICABLE LEGAL AUTHORITIES.** A Texas or federal law, rule, regulation or ruling of the Commission or any other regulatory authority having jurisdiction, an order of a court of competent jurisdiction, or a rule, regulation, ruling, procedure, protocol, guide, or guideline of ERCOT, the Independent Organization, or any entity authorized by the Independent Organization to perform registration or settlement functions.

**BANKING HOLIDAY.** Any day on which the bank designated by [Utility] as the repository for payment of funds due to [Utility] under this Access Tariff is not open for business.

**BILLING DEMAND.** Demand used for billing purposes as stated in the applicable Rate Schedule or Rider.

**BILLING DETERMINANTS.** Measured, calculated, or specified values used to determine [Utility]'s Delivery Charges that can be transmitted to the Competitive Retailer on an approved TX SET electronic transaction. These values may include, but are not limited to, measurements of kilowatt-hours (kWh), actual monthly Non-coincident Peak (NCP) Demand, annual NCP Demand, annual 4-CP Demand (coincident peak for four summer months), Billing Demand, Power Factor, fixed charges, number of lamps, Rate Schedules, and rate subclass.

**BUSINESS DAY.** Any day on which [Utility]'s corporate offices are open for business in accordance with Section 3.18, HOURS OF OPERATION.

**CENTRAL PREVAILING TIME.** As established by national time standards, either Central Standard Time or Central Day-Light time.

**CODES.** Federal, state, or local laws, or other rules or regulations governing electrical installations.

**COMMISSION, PUC or PUCT.** The Public Utility Commission of Texas.

**COMPETITIVE RETAILER.** A Retail Electric Provider, POLR or a Municipally Owned Utility or Electric Cooperative that offers customer choice in the competitive electric power market and is selling Electric Power and Energy or any other entity authorized to provide Electric Power and Energy in Texas.

**CONSTRUCTION SERVICE.** Services related to the construction, extension, installation, modification, repair, upgrade, conversion, relocation, or removal of [Utility]’s Delivery System facilities, including temporary facilities.

**CONSTRUCTION SERVICE CHARGE.** Charges imposed to recover costs associated with Construction Services.

**DELIVERY.** The movement of Electric Power and Energy through [Utility]’s electric lines and other equipment, including transformers, from the Point of Supply to the Point of Delivery.

**DELIVERY SERVICE.** A service performed by [Utility] for Retail Customers to effect the Delivery of Electric Power and Energy from the Point of Supply where it enters the Delivery System of [Utility] and is delivered to the Retail Customer to the Point of Delivery.

**DELIVERY SERVICE TARIFF.** A document promulgated by [Utility] describing the rates, terms and conditions of Delivery Service to Retail Customers, which may include [Utility]’s Facility Extension Policy and Construction Services, and applicable charges regarding same.

**DELIVERY SYSTEM.** [Utility]’s electric lines, meters and other equipment, including transformers used in the Delivery of Electric Power and Energy.

**DEMAND.** The rate at which electric energy is used at any instant or averaged over any designated period of time and which is measured kW or kVA.

**DISCRETIONARY SERVICES.** Customer specific services as outlined in the Rate Schedule, Chapter 5 of this Tariff.

**ELECTRIC COOPERATIVE.** An electric cooperative as defined in PURA §11.003(9).

**ELECTRIC POWER AND ENERGY.** The kWh, the rate of delivery of kWh, and ancillary services related to kWh that a Competitive Retailer provides to Retail Customers.

**ELECTRIC SERVICE IDENTIFIER or ESI ID.** The basic identifier assigned to each Point of Delivery used in the registration system and settlement system managed by ERCOT or another Independent Organization.

**ELECTRIC RELIABILITY COUNCIL OF TEXAS (ERCOT).** The Electric Reliability Council of Texas, Inc. as defined in P.U.C. SUBST. R. 25.5, Definitions.

**ESTIMATED METER READING.** The process by which the majority of Billing Determinants are estimated when an Actual Meter Reading is not obtained.

**FACILITY EXTENSION POLICY.** The [Utility] policy that covers such activities as extensions of standard facilities, extensions of non-standard facilities, extensions of facilities in excess of facilities normally provided for the requested type of Delivery Service, upgrades of facilities, electric connections for temporary services, and relocation of facilities.

**FIELD OPERATIONAL DAY.** Any day but Sunday, or a holiday designated in or pursuant to HOURS OF OPERATION.

**FIRST AVAILABLE SWITCH DATE (FASD).** As defined in ERCOT Nodal Protocols Section 15, CUSTOMER .

**GOOD UTILITY PRACTICE.** This term will have the meaning ascribed thereto in P.U.C. SUBST. R. 25.5, *Definitions*, or its successor.

**INTERVAL DATA.** Meter data that reports electricity usage in 15-minute intervals.

**INDEPENDENT ORGANIZATION.** The organization authorized to perform the functions prescribed by PURA §39.151.

**KILOVOLT AMPERES or kVA.** 1000 volt-amperes.

**KILOWATT or kW.** 1000 watts.

**KILOWATT-HOUR or kWh.** 1000 watt-hours.

**METER.** A device, or devices, together with any required auxiliary equipment, for measuring the amount of Electric Power and Energy delivered.

**METER DATA.** The data contained within, or generated by, the Meter that is used by [Utility] to calculate charges for service pursuant to this Tariff. This term includes Interval Data, if available.

**METERING EQUIPMENT.** Required auxiliary equipment that is owned by [Utility] and used with the Meter to accurately measure the amount of Electric Power and Energy delivered. Metering equipment under this definition does not include communication, storage, and equipment necessary for customer access to data.

**METER READING or METER READ.** The process whereby [Utility] collects the information recorded by a Meter. Such reading may be obtained manually, through telemetry or other electronic communications, or by estimation, calculation or conversion in accordance with the procedures and practices authorized under this Tariff.

**METER READING SCHEDULE.** No later than December 15 of each calendar year, [Utility] must post its schedule for reading each Meter on its website so that Competitive Retailers and Retail Customers may access it. [Utility] must notify Competitive Retailer of any changes to this schedule 60 days prior to the proposed change. [Utility] is responsible for reading the Meter within two Business Days of the date posted in this schedule.

**MUNICIPALLY OWNED UTILITY.** A utility owned, operated, and controlled by a municipality or by a nonprofit corporation the directors of which are appointed by one or more municipalities and includes any chilled water program operated by the utility, as defined in PURA §11.003(11)) Definitions.

**NON-BUSINESS DAY.** Any day that [Utility]'s business offices are not open for business, in accordance with Chapter 5.

**POINT OF DELIVERY.** As determined by [Utility], the point where the Electric Power and Energy leaves [Utility]'s Delivery System and is delivered to a customer.

**POINT OF SUPPLY.** The point where the Electric Power and Energy enters [Utility]'s Delivery System.

**POWER FACTOR.** The ratio of real power, measured in kW, to apparent power, measured in kVA, for any given load and time, generally expressed as a percentage.

**PREMISES.** A tract of land or real estate or related commonly used tracts, including buildings and other appurtenances thereon.

**PROVIDER OF LAST RESORT or POLR.** A REP certified in Texas that has been designated by the Commission to provide a basic, standard retail service package to requesting or default customers or an entity selected by a municipally owned utility or electric cooperative to act as a provider of last resort.

**PURA.** Public Utility Regulatory Act, Texas Utilities Code, Title II.

**RATE SCHEDULE.** A statement of the method of determining charges for Delivery Service, including the conditions under which such charges and method apply, as outlined in Chapter 5. As used in this Tariff, the term Rate Schedule includes all applicable riders.

**REGISTRATION AGENT.** Entity designated by the Commission to administer settlement and Premises data and other processes concerning a Retail Customer's choice of a Competitive Retailer in the competitive retail electric market in Texas.

**RETAIL CUSTOMER.** An end-use customer who purchases Electric Power and Energy and ultimately consumes it. Whenever used in the context of Construction Services, the term Retail Customer also includes property owners, builders, developers, contractors, governmental entities, or any other organization, entity or individual that is not a Competitive Retailer making a request for such services to [Utility].

**RETAIL CUSTOMER'S ELECTRICAL INSTALLATION.** All conductors, equipment, or apparatus of any kind on Retail Customer's side of the Point of Delivery, except [Utility]'s Metering Equipment, used by or on behalf of Retail Customer in taking and consuming Electric Power and Energy delivered by [Utility].

**RETAIL ELECTRIC PROVIDER or REP.** As defined in PURA §31.002(17)) Definitions, a person, certificated under PURA §39.352, that sells Electric Power and Energy to Retail Customers.

**SCHEDULED METER READING DATE.** Date [Utility] is scheduled to read the Meter according to the Meter Reading Schedule.

**SERVICE CALL.** The dispatch of a [Utility] representative to a Delivery Service address or other designated location for investigation of a complete or partial service outage, irregularity, interruption or other service-related issue.

**SWITCHING FEE.** Any fee or charge assessed to any Retail Customer or Competitive Retailer upon switching to the Competitive Retailer that recovers any utility cost or expenses not already included in [Utility]'s Delivery Charges included in Chapter 5 of this Tariff.

**TAMPER OR TAMPERING.** Any unauthorized alteration, manipulation, change, modification, or diversion of [Utility]'s facilities, including Metering Equipment, that could adversely affect the integrity of billing data or the [Utility]'s ability to collect the data needed for billing or settlement. Tampering includes, but is not limited to, harming or defacing [Utility]'s facilities, physically or electronically disorienting the Meter, attaching objects to the Meter, inserting objects into the Meter, or other electrical or mechanical means of altering billing and settlement data or other electrical or mechanical means of altering Delivery Service.

**TARIFF.** A document describing rates, terms and conditions of electric service.

**TEXAS SET, TX SET OR SET.** A Standard Electronic Transaction as defined by the protocols adopted by the Commission or the Independent Organization.

**TRANSITION CHARGES.** Charges reasonably designed to recover the stranded investment over an appropriate period of time, and as authorized by Utilities Code Chapter 40 or 41, as applicable.

**UNMETERED SERVICE.** Delivery Service to Premises without a Meter.

**UTILITY'S DELIVERY SYSTEM.** The portion of the Delivery System that is owned by [Utility].

**VALID INVOICE.** An invoice transaction that contains all the information required by TX SET and is in compliance with TX SET standards as set forth in the TX SET Implementation Guides and Commission Rules and has not been rejected in accordance with the TX SET Implementation Guides and Commission Rules

**CHAPTER 2: DESCRIPTIONS OF [UTILITY'S] CERTIFICATED SERVICE  
AREA**

## **CHAPTER 3: GENERAL TERMS AND CONDITIONS OF ACCESS APPLICABILITY**

### **3.1 APPLICABILITY**

This Access Tariff governs the terms and conditions of the provision of Access by [Utility] to Competitive Retailers to the Delivery System of [Utility] for the purpose of selling Electric Power and Energy to Retail Customers within the retail service area of [Utility] who are connected to the Delivery System of [Utility]. The provisions of this Access Tariff will uniformly apply to all Competitive Retailers. Terms and Conditions for the Delivery of Electric Power and Energy to Retail Customers are set out in a separate Delivery Service Tariff. [Utility] provides Delivery Service directly to Retail Customers at their respective Points of Delivery in conjunction with the provision of Access.

### **3.2 GENERAL**

Utility will construct, own, operate, and maintain its Delivery System in accordance with Good Utility Practice for the Delivery of Electric Power and Energy to Retail Customers that are located within [Utility]'s service territory and served by Competitive Retailers. [Utility] has no ownership interest in any Electric Power and Energy it delivers to Retail Customers that purchase electric energy from third-party Competitive Retailers. [Utility] will provide to all Competitive Retailers access to the Delivery System pursuant to this Tariff (and [Utility]'s Delivery Service Tariff, if applicable), which Tariff(s) establishes the rates, terms and conditions, and policies for such Access and Delivery Service. [Utility] must provide access to the Delivery System on a nondiscriminatory basis to all Competitive Retailers and must provide Delivery Service on a nondiscriminatory basis to all Retail Customers and Competitive Retailers. This Tariff is intended to provide uniform Delivery Service to all Competitive Retailers within [Utility]'s service area.

[Utility] will use reasonable diligence to comply with the operational and transactional requirements and timelines as specified in this Tariff and to comply with the requirements set forth by Applicable Legal Authorities to effectuate the requirements of this tariff.

### **3.3 CHARGES ASSOCIATED WITH DELIVERY SERVICE**

All charges associated with a Delivery Service provided by [Utility] must be authorized by the municipal governing body, or a body vested with the power to manage and operate a municipally owned utility, or the board of directors of an electric cooperative, and are included as Tariff charges in Section 5.2, RATE SCHEDULES.

### **3.4 AVAILABILITY OF TARIFF**

Copies of this Access Tariff are available in standard electronic format on the website of the Commission and on the website of [Utility]. [Utility] must post on its website a copy of its Delivery Service Tariff.

### **3.5 CHANGES TO ACCESS TARIFF**

This Access Tariff may be revised, amended, supplemented, or otherwise changed from time to time in accordance with the laws of the State of Texas and the rules and regulations of the PUC, and such changes, when effective, will have the same force and effect as the present Access Tariff. [Utility] retains the right to file a petition for rulemaking, requesting a change in Chapters 1, 3, and 4 of its Access Tariff and will comply with all laws and rules concerning the provision of notice concerning any such application. [Utility] must file accurate and current rates for Access in Chapter 5. If an Access rate is altered, [Utility] is responsible for providing the current rate information in a timely manner. Any agreement made pursuant to this Access Tariff will be deemed to be modified to conform to any changes in this Access Tariff as of the date of the effectiveness of such change. No agent, officer, director, employee, or representative of [Utility] has authority to modify the provisions of this Access Tariff or to bind [Utility] by any promise or representation contrary to the terms of this Access Tariff except as expressly permitted by the PUC. For changes in Chapters 2 and 5, municipal governing body, or a body vested with the power to manage and operate a municipally owned utility, or the board of directors of an electric cooperative must authorize the change. In the event that [Utility] determines it necessary to change its

application of an existing Tariff provision under Chapter 5 of this Tariff, [Utility] must notify the designated contact of all Competitive Retailers certified to serve customers in its service territory, at least 45 Business Days in advance of any proposed change in application of an existing Tariff provision taking effect.

### **3.6 NON-DISCRIMINATION**

[Utility] will discharge its responsibilities under this Access Tariff in a non-discriminatory manner not favoring or burdening any particular Competitive Retailer. [Utility] will not discriminate against non-affiliated Competitive Retailers or their Retail Customers in the provision of Delivery Services that affect Competitive Retailer's Access to [Utility]'s Delivery System or Retail Customers. [Utility] must process requests for Delivery Services in a non-discriminatory manner without regard to the affiliation of a Competitive Retailer or its Retail Customers, and consistent with Applicable Legal Authorities.

### **3.7 FORM AND TIMING OF NOTICE**

A notice, demand or request required or authorized under this Access Tariff to be given by any party to any other party must be in writing or conveyed electronically, as specified in the section of this Access Tariff requiring such notice. Electronic notice must be given in accordance with the appropriate TX SET protocol, if a TX SET transaction exists. If a TX SET transaction does not exist, electronic notice must be provided to the authorized representative for the Competitive Retailer in accordance with Section 3.9. Written notice must either be personally delivered, transmitted by telecopy or facsimile equipment (with receipt confirmed), sent by overnight courier or mailed, by certified mail, return receipt requested, postage pre-paid, to the other party. Any such notice, demand or request so delivered or mailed will be deemed to be given when so delivered or three days after mailed, unless the party asserting that such notice was provided is unable to show evidence of its delivery.

### **3.8 DESIGNATION OF [UTILITY] CONTACT PERSONS FOR MATTERS RELATING TO ACCESS**

[Utility] will designate a person(s), either by name or title, who will serve as the [Utility]'s contact for all matters relating to Access provided to Competitive Retailers and post such information along with the names, telephone numbers, mailing addresses and electronic mail addresses for its Access contact person(s) on its Internet website. [Utility] may change its designation by providing notice to the Commission and those Competitive Retailers with Access and by updating such information on [Utility]'s Internet website.

### **3.9 INVOICING TO STATE AGENCIES**

Notwithstanding any provisions in this Access Tariff with respect to when invoices become past due and imposing an increased amount if invoices are not paid within a specified time, all invoices rendered directly to a "State Agency," as that term is defined in Government Code Chapter 2251, will be due and will bear interest if overdue as provided in Chapter 2251.

### **3.10 GOVERNING LAWS AND REGULATIONS**

This Access Tariff is to be interpreted to conform with Applicable Legal Authorities. Changes in an Applicable Legal Authority, will become effective with regard to this Access Tariff and any Access Agreement made pursuant to it, as of the effective date of such Applicable Legal Authority.



### **3.11 GOOD FAITH OBLIGATION**

[Utility] and Competitive Retailer will use reasonable efforts to cooperate in good faith to fulfill all duties, obligations, and rights set forth in this Access Tariff. [Utility] and Competitive Retailer will negotiate in good faith concerning the details of carrying out their duties, obligations, and rights set forth in this Access Tariff.

### **3.12 COOPERATION IN EMERGENCIES**

[Utility] and Competitive Retailer, must cooperate with each other, the Independent Organization and any other affected entities in the event of an emergency condition affecting the delivery of Electric Power and Energy or the safety and security of persons and property.

### **3.13 HEADINGS**

The descriptive headings of the various sections of this Access Tariff have been inserted for convenience of reference only and will in no way define, modify, or restrict any of the terms and provisions hereof.

### **3.14 TAX EXEMPT STATUS**

Nothing in this Tariff may impair [Utility]'s tax exempt status, nor will anything in this Tariff compel [Utility] to use its Delivery System in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to facilities financed by tax exempt debt. If [Utility] believes that its tax exempt status is threatened it must notify the Commission.

### **3.15 SUCCESSORS AND ASSIGNS**

This Tariff will inure to the benefit of, and be binding upon, [Utility], Competitive Retailer, and Retail Customer and their respective successors and permitted assigns.

### **3.16 EXERCISE OF RIGHT TO CONSENT**

[Utility], Competitive Retailer, or Retail Customer must not unreasonably withhold, condition, or delay giving any consent required for another party to exercise rights conferred under this Tariff that are made subject to that consent. [Utility], Competitive Retailer, or Retail Customer further must not unreasonably withhold, condition, or delay their performance of any obligation or duty imposed under this Tariff.

### **3.17 WAIVERS**

The failure of [Utility], Competitive Retailer, or Retail Customer to insist in any one or more instances upon strict performance of any of the provisions of this Tariff, or to take advantage of any of its rights under this Tariff, must not be construed as a general waiver of any such provision or the relinquishment of any such right, but the same must continue and remain in full force and effect, except with respect to the particular instance or instances.

### **3.18 HOURS OF OPERATION**

[Utility] hours of Operation and Holidays are contained in Chapter 5.

## **CHAPTER 4: SERVICE RULES AND REGULATIONS RELATING TO ACCESS TO DELIVERY SYSTEM OF [UTILITY] BY COMPETITIVE RETAILERS**

### **4.1 GENERAL RULES AND REGULATIONS**

#### **A. APPLICABILITY OF CHAPTER**

This Chapter governs the terms and conditions of Access by Competitive Retailers to the Delivery System of [Utility], whether the Competitive Retailer has entered into an Access Agreement or not. This Chapter also applies to Access by Competitive Retailers to the Delivery System of [Utility] unlawfully or pursuant to unauthorized use. The provisions of this Chapter will uniformly apply to all Competitive Retailers receiving Access from [Utility].

#### **B. REQUIRED NOTICE**

Notice to Competitive Retailer and [Utility] provided under Section 3.7, FORM AND TIMING OF NOTICE, must be provided to the addresses specified in the Access Agreement.

### **4.2 LIMITS ON LIABILITY**

#### **A. LIABILITY BETWEEN [UTILITY] AND COMPETITIVE RETAILERS**

This Access Tariff is not intended to limit the liability of [Utility] or Competitive Retailer for damages except as expressly provided in this Access Tariff.

**[UTILITY] WILL MAKE REASONABLE PROVISIONS TO SUPPLY STEADY AND CONTINUOUS ACCESS AND DELIVERY SERVICE TO COMPETITIVE RETAILER AND RETAIL CUSTOMERS, RESPECTIVELY, BUT DOES NOT GUARANTEE ACCESS OR DELIVERY SERVICE AGAINST FLUCTUATIONS OR INTERRUPTIONS (WHETHER AS A RESULT OF NEGLIGENCE OR OTHERWISE). [UTILITY] WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR CONSEQUENTIAL, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY FLUCTUATIONS OR INTERRUPTIONS UNLESS IT BE SHOWN THAT [UTILITY] HAS NOT MADE REASONABLE PROVISION TO SUPPLY STEADY AND CONTINUOUS ACCESS AND DELIVERY SERVICE, CONSISTENT WITH THE RETAIL CUSTOMER'S CLASS OF SERVICE, AND IN THE EVENT OF A FAILURE TO MAKE SUCH REASONABLE PROVISIONS, WHETHER AS A RESULT OF NEGLIGENCE OR OTHERWISE, [UTILITY]'S LIABILITY WILL BE LIMITED TO THE COST OF NECESSARY REPAIRS OF PHYSICAL DAMAGE PROXIMATELY CAUSED BY THE SERVICE FAILURE TO THOSE ELECTRICAL DELIVERY FACILITIES OF RETAIL CUSTOMER WHICH WERE THEN EQUIPPED WITH THE PROTECTIVE SAFEGUARDS RECOMMENDED OR REQUIRED BY THE THEN CURRENT EDITION OF THE NATIONAL ELECTRICAL CODE. [UTILITY] WILL MAKE REASONABLE PROVISIONS TO PROVIDE CONSTRUCTION SERVICE, BUT DOES NOT GUARANTEE THE TIMELINESS OF INITIATING OR COMPLETING SUCH CONSTRUCTION SERVICE NOR THE SUITABILITY OF SUCH FACILITIES FOR RETAIL CUSTOMER'S SPECIFIC USES. [UTILITY] WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR CONSEQUENTIAL, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY THE FAILURE TO PROVIDE TIMELY OR SUITABLE CONSTRUCTION SERVICE. THE TERM "CONSTRUCTION SERVICE" AS USED IN THIS PARAGRAPH INCLUDES ANY AND ALL SERVICES THAT (A) ARE PROVIDED, (B) FAIL TO BE PROVIDED, OR (C)**

**FAIL TO BE TIMELY PROVIDED BY [UTILITY], FROM THE TIME RETAIL CUSTOMER FIRST CONTACTS [UTILITY] WITH RESPECT TO THE PROVISION OF ANY TYPE OF CONSTRUCTION OR DELIVERY SERVICE.**

However, if damages result from failure to provide timely or suitable Construction Service or fluctuations or interruptions in Access or Delivery Service that are caused by [Utility]’s or Competitive Retailer’s gross negligence, or intentional misconduct, this Access Tariff will not preclude recovery of appropriate damages when legally due. Nothing herein will prevent [Utility] from being liable if found to be grossly negligent or to have committed intentional misconduct with respect to its exercise of its authority in this Tariff.

**B. LIMITATION OF DUTY AND LIABILITY OF COMPETITIVE RETAILER**

Competitive Retailer has no ownership, right of control, or duty to [Utility], Retail Customer or other third party, regarding the design, construction, or operation of [Utility]’s Delivery System. Competitive Retailer will not be liable to any person or entity for any damages, direct, indirect or consequential, including, but without limitation, loss of business, loss of profits or revenue, or loss of production capacity, occasioned by any fluctuations or interruptions of Delivery Service caused, in whole or in part, by the design, construction or operation of [Utility]’s Delivery System.

**C. DUTY TO AVOID OR MITIGATE DAMAGES**

[Utility] and Competitive Retailer will use reasonable efforts to avoid or mitigate its damages or losses suffered as a result of the other’s culpable behavior, under Section 4.2.A, LIABILITY BETWEEN [UTILITY] AND COMPETITIVE RETAILERS.

**D. FORCE MAJEURE**

**NEITHER [UTILITY] NOR COMPETITIVE RETAILER WILL BE LIABLE IN DAMAGES FOR ANY ACT OR EVENT THAT IS BEYOND SUCH PARTY’S CONTROL AND WHICH COULD NOT BE REASONABLY ANTICIPATED AND PREVENTED THROUGH THE USE OF REASONABLE MEASURES, INCLUDING, BUT NOT LIMITED TO, AN ACT OF GOD, EXTREME WEATHER, ERCOT GRID INTERRUPTIONS, ACT OF THE PUBLIC ENEMY, WAR, INSURRECTION, RIOT, FIRE, EXPLOSION, LABOR DISTURBANCE OR STRIKE, WILDLIFE, UNAVOIDABLE ACCIDENT, EQUIPMENT OR MATERIAL SHORTAGE, PANDEMIC OR EPIDEMIC, BREAKDOWN OR ACCIDENT TO MACHINERY OR EQUIPMENT, OR GOOD FAITH COMPLIANCE WITH A THEN VALID CURTAILMENT, ORDER, REGULATION OR RESTRICTION IMPOSED BY GOVERNMENTAL, MILITARY, OR LAWFULLY ESTABLISHED CIVILIAN AUTHORITIES, INCLUDING ANY ORDER OR DIRECTIVE OF THE INDEPENDENT ORGANIZATION.**

**E. EMERGENCIES AND NECESSARY INTERRUPTIONS**

[Utility]’s tariff for Delivery Service governs [Utility]’s authority to interrupt Delivery Service in the event of any emergency that poses a threat to [Utility]’s Delivery System or for other reasons that it deems to be necessary, including, inspection, test, repair, or changes in [Utility]’s Delivery System, or when such interruption will reduce or remove possible danger to life or property or will aid in the restoration of service.

[Utility] may curtail, reduce voltage, or interrupt Delivery Service in the event of an emergency arising anywhere on the Delivery System on the interconnected systems of which it is a part, when the emergency poses a threat to the integrity of its system or the systems to which it is directly or indirectly connected, if in its sole judgment, such action may prevent or alleviate the emergency condition. [Utility] may interrupt service, when necessary, for inspection, test, repair, or when such interruption will lessen or remove possible danger to life or property, or will aid in the restoration of Delivery Service.

[Utility] must provide advance notice to Competitive Retailer of such actions, if reasonably possible. Such notice may be provided by electronic notice to all certificated Competitive Retailers operating within the [Utility]’s

service territory with specific identification of location, time, and expected duration of the outage. If reasonably possible, [Utility] must provide notice to Competitive Retailer no later than one hour after the initiation of the curtailment, interruption, or voltage reduction that occurs due to the emergency if the emergency occurs during the [Utility]’s normal hours of operation as defined in Section 3.18. If the emergency occurs outside [Utility]’s normal hours of operation, [Utility] must provide notice as soon as reasonably possible under the circumstances to Competitive Retailer after the initiation of the curtailment, interruption, or voltage reduction that occurs due to the emergency. Advance notice must also be provided, if reasonably possible, to those Retail Customers for whom suspension of service could create a dangerous or life-threatening condition.

#### **F. LIMITATION OF WARRANTIES BY [UTILITY]**

**[UTILITY] MAKES NO WARRANTIES WITH REGARD TO THE PROVISION OF ACCESS, CONSTRUCTION SERVICE OR DELIVERY SERVICE AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **G. DUTY TO REVIEW**

[Utility] has a right to rely on any notice from a Competitive Retailer requesting connection, disconnection, interruption, or suspension of Delivery Service to Retail Customer, and is not responsible for monitoring or reviewing the factual basis or appropriateness of any such notice from a Competitive Retailer requesting connection, disconnection, or suspension of Delivery Service to Retail Customer.

### **4.3 ACCESS**

#### **A. ELIGIBILITY**

A Competitive Retailer is eligible for Access when:

- (1) The Competitive Retailer and [Utility] have received written notice from the Independent Organization certifying the Competitive Retailer’s successful completion of market testing, including receipt of the digital certificate pursuant to Applicable Legal Authorities. Market testing will be conducted in accordance with a test plan as specified by Applicable Legal Authorities. [Utility] and Competitive Retailer will use best efforts to timely complete market testing;
- (2) Competitive Retailer and [Utility] execute an Access Agreement, or if, [Utility] has failed to execute the Access Agreement upon presentment by Competitive Retailer who has signed such Access Agreement, Competitive Retailer will be deemed eligible for Access during an interim period by filing the unexecuted Access Agreement with the Commission so that it may investigate into the reasons for such non-execution by [Utility]; and
- (3) The Competitive Retailer, is registered with the municipality in whose area the REP intends to provide service, if applicable, and is not in material default with the registration requirements.

#### **B. INITIATION OF ACCESS (DELIVERY SYSTEM SERVICE CONNECTION)**

For the purposes of this section, “initiation of Access” refers to the actions taken by [Utility] to allow the Competitive Retailer to deliver Electric Power to [Utility]’s Delivery System at the Point of Supply or serve the Retail Customer. [Utility] may choose whether, for purposes of Discretionary Services and Construction Services, it will communicate through the applicable Competitive Retailer, through the Retail Customer, or both. [Utility] must publish on its website the process for Competitive Retailer or Retail Customer to initiate Construction Services or Discretionary Services.

## **1. INITIATION OF ACCESS WHERE CONSTRUCTION SERVICES ARE NOT REQUIRED**

Where existing [Utility] facilities will be used for Delivery System Service and no Construction Service is needed, [Utility] must initiate Delivery System Service for Retail Customer if requested by Competitive Retailer through the Registration Agent unless:

- (1) the Retail Customer's electrical installation is known to be hazardous or is of such character that Delivery Service cannot be provided consistent with Good Utility Practice, or interferes with the service of other Retail Customers, or unless a known or dangerous condition exists for as long as it exists;
- (2) the Competitive Retailer is in default under this tariff; or
- (3) the Retail Customer is in default under [Utility]'s Delivery Service Tariff.

## **2. INITIATION OF ACCESS WHERE CONSTRUCTION SERVICES ARE REQUIRED**

When Construction Services are required, [Utility] may determine whether it will coordinate and communicate regarding such Construction Services through the Competitive Retailer, or directly with a Retail Customer. When a Competitive Retailer requests initiation of Access that requires Construction Service prior to initiation, Competitive Retailer must contact [Utility] to make arrangements for Construction Services and for establishment of an ESI ID if one is not in existence for that Delivery Point. [Utility] must establish a new ESI ID and will notify the Registration Agent. The processing of Construction Service, including the establishment of an ESI ID, if one is not in existence for the Point of Delivery, and notifying the Registration Agent of the new ESI ID will be governed by the provisions of [Utility]'s applicable Tariffs. [Utility] may contact the Retail Customer for verification of the request. [Utility] must initiate Access upon completion of the Construction Service and satisfaction of each of the conditions specified in Section 4.3.B.1, INITIATION OF ACCESS WHERE CONSTRUCTION SERVICES ARE NOT REQUIRED.

## **C. REQUESTS FOR DISCRETIONARY SERVICES INCLUDING CONSTRUCTION SERVICES**

By mutual agreement of [Utility] and Competitive Retailer (and noted in Appendix A), a Competitive Retailer may request Discretionary Services from [Utility] on behalf of the Retail Customer, or the Retail Customer may contact [Utility] directly to obtain the service. If a Competitive Retailer requests Discretionary Services on behalf of the Retail Customer, such requests for Discretionary Services must include the following information:

- (1) Retail Customer contact name or Retail Customer's authorized representative contact name;
- (2) Retail Customer or authorized representative contact phone number and email;
- (3) ESI ID, if in existence;
- (4) Service address (including City and zip code) and directions to location, as needed;
- (5) Project name, if in existence;
- (6) Discretionary Services and/or Construction Services requested; and
- (7) Date requested for [Utility] to perform Discretionary Services and/or Construction Services.

[Utility] may contact the Retail Customer for verification of the request. Provision of the Discretionary Services requested will be in accordance with [Utility]'s Delivery Service Tariff.

To the extent [Utility] chooses to communicate with the Competitive Retailer for Construction Services or Discretionary Services, [Utility] will acknowledge receipt of Competitive Retailer's electronic service request and will notify the Competitive Retailer upon completion of the Discretionary Service Request. Such notification must include the date when the service was completed in the field. [Utility] may also notify the Competitive Retailer and the Retail Customer of the estimated completion date of the discretionary services request.

## **D. CHANGING OF DESIGNATED COMPETITIVE RETAILER**

[Utility] must change a Retail Customer's designated Competitive Retailer upon receiving proper notification from the Registration Agent, in accordance with [Utility]'s customer protection rules and the protocols developed by the Independent Organization, unless the new Competitive Retailer is in default under this Access Tariff. Competitive Retailer may request a Meter Reading for the purpose of a self-selected switch subject to charges and timeframes specified in Chapter 5. [Utility] will honor the requested switch date contained in the TX SET transaction in accordance with Applicable Legal Authorities to the extent that [Utility] has received the request within the timeframes established in Applicable Legal Authorities. [Utility] will release proprietary customer information to the designated Competitive Retailer in a manner prescribed by the Applicable Legal Authorities.

## **E. SWITCHING FEE**

[Utility] will not charge Competitive Retailer for a change of designation of a Retail Customer's Competitive Retailer.

## **F. IDENTIFICATION OF THE PREMISES AND SELECTION OF RATE SCHEDULES**

The establishment, assignment, and maintenance of ESI IDs will be as determined by Applicable Legal Authorities. In addition, [Utility] will:

- (1) Assign a unique ESI ID for each Point of Delivery, or in the case of non-Metered load, a unique ESI ID to each Premises, in accordance with Applicable Legal Authorities;
- (2) Establish separate and distinct ESI IDs for temporary and permanent service. The temporary ESI ID will be retired after all market transactions associated with the temporary ESI ID have been completed. If the temporary Meter has been used for the same Premises for which the permanent Meter will be used, the same ESI ID may be used for temporary and permanent service;
- (3) Identify, assign, and maintain ESI IDs with the appropriate load profile, Meter Reading cycle, and other information necessary for accurate settlement of the wholesale market, unless such functions are undertaken by the Independent Organization;
- (4) Notify the Competitive Retailer and Independent Organization, using the appropriate TX SET transaction, of revisions in the assignment of a Rate Schedule; and
- (5) Maintain accurate United States Postal Service compliant services addresses, when available, to comply with Applicable Legal Authorities. When there are two or more ESI IDs for the same service address, the service address will include information to distinguish between the Points of Delivery at the service address.

The Rate Schedules included in this Tariff state the conditions under which [Utility]'s Delivery Services are available and the applicable rates for each Delivery Service. For service to a new Retail Customer at an existing Premises, the [Utility] will bill actual Demand of the existing Retail Customer, subject to provisions in [Utility]'s Delivery Service Tariff, Chapter 5 herein, and Applicable Legal Authorities.

## **G. PROVISION OF DATA BY COMPETITIVE RETAILER TO [UTILITY]**

Competitive Retailer will timely supply to [Utility] all data, materials, or other information specified in this Access Tariff, including current customer names, telephone number, and mailing address in connection with [Utility]'s provision of Access to Competitive Retailer for that Retail Customer, if required. Such information will be used only for [Utility] operations and will be subject to the provisions P.U.C. SUBST. R. 25.275, *Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities*, if applicable.

## **H. SUSPENSION OF ACCESS**

### **1. SUSPENSIONS WITHOUT PRIOR NOTICE FOR EMERGENCIES OR NECESSARY INTERRUPTIONS**

[Utility] may without prior notice intentionally suspend Access to a Competitive Retailer in connection

with suspending Delivery Service to the Competitive Retailer's Retail Customer where a known or dangerous condition exists, for the duration of the dangerous condition, or for an emergency arising anywhere on [Utility]'s Delivery System, which poses a threat to the Delivery System. Any suspension of Delivery must be done in accordance with [Utility]'s Delivery Service Tariff. [Utility] must notify, as soon as practically possible, the affected Retail Customer's Competitive Retailer of suspensions for the above reason.

Such notice may be made by electronic notice to all Competitive Retailers operating in [Utility]'s service area with specific identification of location, time, and expected duration of outage.

Competitive Retailer must convey any notice received by Retail Customer to [Utility] that suspension or interruption of service of Retail Customer will create a dangerous or life-threatening condition on Retail Customer's Premises.

[Utility] may also suspend Access without prior notice when such suspension is authorized by Applicable Legal Authorities.

Nothing in this section is intended to take precedence over timely restoration of service.

## **2. NOTICED SUSPENSION NOT RELATED TO EMERGENCIES OR NECESSARY INTERRUPTIONS**

If [Utility] suspends Access in connection with suspending Delivery Service other than as provided for an emergency under Section 4.3.H.1, SUSPENSIONS WITHOUT PRIOR NOTICE FOR EMERGENCIES OR NECESSARY INTERRUPTIONS, [Utility] must provide electronic notice of the suspension of Access, specifically identifying the location, time, cause, and expected duration of the suspension.

[Utility] must perform all suspensions or disconnects in accordance with its Delivery Service Tariff.

[Utility] may suspend Access in connection with suspending Delivery Service in accordance with [Utility]'s Delivery Service Tariff:

- (1) In the event of unauthorized use, unauthorized connection or reconnection, or diversion of service or Tampering with [Utility]'s Meter or equipment or bypassing same;
- (2) In the event of Retail Customer's violation of the provisions of [Utility]'s Delivery Service Tariff in a manner which interferes with the Delivery Service of others or the operation of nonstandard equipment, or as otherwise specified by written agreement, and a reasonable opportunity has been provided to remedy the situation;
- (3) Upon Retail Customer's failure to comply with the terms of any written agreement made between [Utility] and Retail Customer, upon default of Retail Customer under such an agreement, or upon failure to pay any charges billed by [Utility] directly to Retail Customer after a reasonable opportunity has been provided to remedy the failure;
- (4) For Retail Customer's failure to provide [Utility] with reasonable access to [Utility]'s facilities located on Retail Customer's Premises after a reasonable notice has been provided of the need for access to the facilities; or
- (5) Upon [Utility]'s receipt of a notice requiring such action, in the form and from the party specified by Applicable Legal Authorities. [Utility] will not be responsible for monitoring or reviewing the appropriateness of any such notice.

[Utility] must provide electronic notice of the suspension of Access, specifically identifying the time, cause, and expected duration of the suspension.

### **I. RESTORATION OF ACCESS**

[Utility] will restore Access to the Competitive Retailer as soon as possible following the alleviation or correction of the conditions that cause a suspension or disconnection, consistent with [Utility]'s Delivery Service Tariffs, and provide notice of restoration of Access as soon as practically possible.

### **J. DISCONNECTION OF SERVICE REQUESTED BY COMPETITIVE RETAILER TO RETAIL CUSTOMER'S FACILITIES**

At the request of Competitive Retailer, for Retail Customer related construction, alteration, or other temporary clearance requirement, and in accordance with [Utility]’s Delivery Service Tariff, [Utility] must disconnect Retail Customer’s facilities on the date requested by Competitive Retailer, provided such request is made at least three Business Days prior to the requested date for disconnection.

In the event Competitive Retailer no longer desires to provide Electric Power and Energy Access to a Retail Customer at the Retail Customer’s Premises, Competitive Retailer must notify the Registration agent of the date the Competitive Retailer desires [Utility] to discontinue Access to a particular Point of Delivery. Competitive Retailer may request disconnection for non-payment by Retail Customer as authorized by the commission’s Customer Protection Rules except when the Competitive Retailer is the affiliate of the [Utility], in which case the [Utility]’s customer protection rules apply. [Utility] must disconnect and reconnect Retail Customer’s Premises upon receipt of request for disconnection or reconnection by a Competitive Retailer authorized to do so.

Only personnel authorized by [Utility] are permitted to make, energize, or de-energize connections between [Utility]’s facilities and Retail Customer’s Electrical Installation.

[Utility] will not be responsible for monitoring or reviewing the appropriateness of any notice from a Competitive Retailer requesting suspension, connection, or disconnection of Delivery Service to Retail Customer.

#### **K. EXTREME WEATHER**

When [Utility] discontinues performing disconnections for non-payment due to an extreme weather emergency, [Utility] must provide notice to Competitive Retailers as soon as reasonably possible in accordance with Section 3.7, FORM AND TIMING OF NOTICE.

#### **L. CRITICAL CARE AND CRITICAL LOAD CUSTOMERS**

[Utility] and Competitive Retailer will, by mutual consent, establish procedures to enable [Utility] and Competitive Retailer to comply with all requirements established in Applicable Legal Authorities related to critical care and critical load customer designations.

### **4.4 BILLING AND REMITTANCE**

In accordance with Applicable Legal Authorities, Retail Customer or [Utility] may have the option for the Retail Customer to (1) receive a single bill that contains both the Delivery Service charges and the Electric Power and Energy charges; or (2) receive two bills, one for Delivery Service charges and one for Electric Power and Energy charges. In the event that the entity provided with this option fails to select to either separate billing or consolidated billing, a consolidated bill will be provided.

If a consolidated bill is to be provided, [Utility] at its option may allow each Competitive Retailer to provide a consolidated bill to its Retail Customers. If [Utility] has chosen this option, it must do so in a non-discriminatory manner in accordance with 4.4.C. CONSOLIDATED BILLING BY COMPETITIVE RETAILER.

[Utility] may bill Retail Customers directly for all services it provides to its Retail Customers. Nothing in this Tariff is intended to prohibit a [Utility] from contracting with a third party, including a Competitive Retailer, to perform billing services and functions on its behalf, including in the instance of separate bills, as provided above. Any third-party performing billing on behalf of the [Utility] is subject to the billing provisions in this Tariff and billing responsibilities set out in the [Utility]’s Tariff for Delivery Services, to the same extent as the [Utility].

#### **A. CONSOLIDATED BILLING BY [UTILITY]**

When a Retail Customer receives a consolidated bill from [Utility], [Utility] may assess a fee to Competitive Retailer for billing services, which will cover the preparation and delivery of reports specified in this chapter.



[Utility] must at the Competitive Retailer's request provide the Competitive Retailer with an electronic copy of the entirety of each bill containing the Competitive Retailer's Electric Power and Energy charges within one Business Day of receipt of request. The [Utility], in lieu of an electronic copy of the bill may provide access to a database containing all billing information presented on the bill in an electronically accessible format.

[Utility] must provide to the Competitive Retailer its schedule for Meter Reading and bill due dates for the Competitive Retailer's Retail Customers. This schedule will be provided yearly for the coming year. At such time a Competitive Retailer gains a new Retail Customer, [Utility] must inform the Competitive Retailer of the Retail Customer's Meter Reading dates and bill due dates for the remainder of the year. If the schedule is altered, [Utility] must notify Competitive Retailer at least 20 days prior to the altered date.

### **1. BILLING BY [UTILITY] TO RETAILCUSTOMERS FOR DELIVERY SERVICES**

Calculation of charges, transmittal of the invoices, error corrections, dispute resolution and all other aspects of the billing for Delivery Services by [Utility] to Retail Customer will be performed in accordance with [Utility]'s Delivery Service Tariff.

### **2. CALCULATION AND TRANSMITTAL OF ELECTRIC POWER AND ENERGY CHARGES BY COMPETITIVE RETAILER**

In order for [Utility] to prepare a consolidated bill for Retail Customers who receive a consolidated bill from [Utility] for all services, Competitive Retailer will calculate charges for Electric Power and Energy and must transmit the charges to [Utility] by means of an electronic pre-bill statement for each Retail Customer's total charges within three Business Days from receipt of Meter Reading data. Electronic pre-bill statements must be transmitted using the appropriate SET transaction and will be consistent with the terms and conditions of this Access Tariff. [Utility] must validate or reject the pre-bill statement using the appropriate rejection code within 48 hours of the first Business Day following receipt. Competitive Retailer must correct any Competitive Retailer errors that lead to a rejection. Transactions that are neither validated nor rejected within 48 hours will be deemed valid. Electronic pre-bill statements transmitted after 5:00 P.M. Central Prevailing Time will be considered transmitted on the next Business Day.

### **3. PRE-BILL STATEMENT CORRECTIONS**

Pre-bill statements will be subject to adjustment for errors including, but not limited to, arithmetic errors, computational errors, and Meter Reading errors.

### **4. BILLING CYCLE**

Unless otherwise stated in [Utility]'s Delivery Service Tariff or as provided in Section 4.8.A.3, METER READINGS FOR THE PURPOSE OF A SELF-SELECTED SWITCH OR TO VERIFY ACCURACY OF METER READING, invoiced charges will be based on a cycle of approximately one month. If [Utility] decides to alter the billing cycle for any Retail Customer, [Utility] agrees that it must notify the Retail Customer's Competitive Retailer at least 30 days prior to such billing cycle change. If [Utility] has not received the pre-bill statement from the Competitive Retailer within the time period specified in Section 4.4.A.2, CALCULATION AND TRANSMITTAL OF ELECTRIC POWER AND ENERGY CHARGES BY COMPETITIVE RETAILER, [Utility] may send out its bills to Retail Customer without the Electric Power and Energy charges.

### **5. REMITTANCE FOR UTILITY CONSOLIDATED BILLING**

- (1) Upon receipt of payment from Retail Customer for Electric Power and Energy service billed by [Utility] on behalf of Competitive Retailer, [Utility] will remit payment to Competitive Retailer within five Business Days of the due date of the Retail Customer's bill, or if customer has paid after the due date, five days after [Utility] has received payment. [Utility] may remit payment by electronic funds transfer (EFT), utilizing the Electronic Data Interchange (EDI) Standard to a bank designated by the Competitive Retailer. [Utility] may also pay by wire transfer (WT) or check. Payment will be

considered received on the date Competitive Retailer's bank receives the EFT or WT or three days from the date the check is properly addressed and placed in the US mail. No extension of time will be given if [Utility] has contracted its billing or collections functions to a third party.

- (2) On the same day [Utility] remits payment, [Utility] must provide a collection report to Competitive Retailer that includes information about amounts billed and received for Electric Power and Energy for each Retail Customer for which payment is remitted, listed by ESI ID.

## **6. NON-PAYMENT OR PARTIAL PAYMENT BY RETAIL CUSTOMER**

[Utility] will not be responsible for non-payment for Electric Power and Energy billed by [Utility] to Retail Customers on behalf of Competitive Retailer. If [Utility] receives partial payment from Retail Customers, [Utility] will apply proceeds first to outstanding balances due to [Utility], next to the billing service fee specified in Section 4.4.AA, CONSOLIDATED BILLING BY [UTILITY], and then to outstanding balances for Electric Power and Energy billed to Retail Customer on behalf of Competitive Retailer.

## **7. RETAIL CUSTOMER BILLING INQUIRIES**

When [Utility] receives an inquiry from a Retail Customer concerning the Electric Power and Energy portion of the Retail Customer's bill, [Utility] will direct the Retail Customer to contact the person(s) designated by the Competitive Retailer to handle billing inquiries.

### **B. SEPARATE BILLS**

If a Retail Customer specifically elects to receive two separate bills, separate invoices will be submitted to the Retail Customer by [Utility], or its third party contractor, and Competitive Retailer.

### **C. CONSOLIDATED BILLING BY COMPETITIVE RETAILER**

If [Utility] chooses to allow Competitive Retailer to prepare a consolidated bill, Competitive Retailer will act as a billing agent for [Utility] in the processing of such bill. The income derived from any services billed by Competitive Retailer on [Utility]'s behalf including, but not limited to Delivery Service, will be deemed to have come from the Retail Customer, not the Competitive Retailer.

## **1. CALCULATION AND TRANSMITTAL OF DELIVERY SERVICE INVOICES BY [UTILITY]**

Not later than three Business Days after the scheduled date of a Meter Read for a Point of Delivery, [Utility] must transmit an electronic invoice for [Utility]'s total Delivery System charges based on its Delivery Service Tariff associated with the Point of Delivery supplied with Electric Power and Energy by the Competitive Retailer. [Utility] will separately identify the Delivery System charges and billing determinants on the electronic invoice, to the extent that the transaction allows them to be reported, for each Point of Delivery served by a Competitive Retailer. [Utility] must provide information on any Billing Determinants not provided on the electronic transaction to Competitive Retailer upon request, within two Business Days from the receipt of the request, and applicable fees may apply. The start and end dates for the billing period contained on the invoice will match the start and end dates of the Meter Reading for the Premises.

Charges for all services other than Delivery Service provided to a particular Point of Delivery, will be separately identified on the invoice.

Electronic invoices must be transmitted using the appropriate SET transaction and be consistent with the terms and conditions of this Access Tariff. The Competitive Retailer must acknowledge the receipt of the invoice and indicate whether the transaction conformed with ANSI X12 using the appropriate TX SET transaction within 24 hours of the first Business Day following receipt of the invoice. If [Utility] receives a negative acknowledgement indicating the transaction failed ANSI X12 validation, [Utility] must correct any [Utility] errors that lead to a rejection and re-issue the transaction within two Business Days of receipt of the negative acknowledgement. Following a positive acknowledgement indicating the transaction passed ANSI X12

validation, the Competitive Retailer will have five Business Days to send a rejection response in accordance with the TX SET Implementation Guides and Commission Rules.

However, if the Competitive Retailer receives an invoice relating to an ESI ID for which the Competitive Retailer has sent an enrollment or move-in request but has not received a response transaction from ERCOT, then the Competitive Retailer must allow four Business Days to receive the response. If the Competitive Retailer has still not received the response transaction, the Competitive Retailer will not reject the invoice, but will utilize an approved market process to resolve the issue.

Additionally, a Competitive Retailer will not reject an invoice, claiming it is not a Valid Invoice, outside the timelines specified in this subsection, or without supplying appropriate rejection reasons in accordance with TX SET Implementation Guides and Commission Rules. A Competitive Retailer may dispute a Valid Invoice under Section 4.4.D.7, INVOICE DISPUTES, but not reject it.

## **2. CALCULATION AND TRANSMITTAL OF CONSTRUCTION SERVICE CHARGES**

Construction Service charges must be invoiced to the entity requesting such service. If Competitive Retailer has requested such a service, [Utility] must include the Construction Service Charge associated with that service as a separately identified item on the invoice provided under Section 4.4.C.1, CALCULATION AND TRANSMITTAL OF DELIVERY SERVICE INVOICES BY [UTILITY].

The income derived from Construction Service Charges will be deemed to have come from the Retail Customer whether the service is requested directly by the Retail Customer or indirectly through a Competitive Retailer.

## **3. INVOICE CORRECTIONS**

Invoices will be subject to adjustment for errors, including, but not limited to arithmetic errors, computational errors, Meter inaccuracies and Meter Reading errors. [Utility] will cancel and re-bill the original invoice that was incorrect and apply any payments made to the re-billed invoice. If it is determined that [Utility] over-billed for Delivery charges, [Utility] will make adjustment(s) associated with the Point of Delivery for the entire period of over-billing. If it is determined that [Utility] under-billed for Delivery charges, [Utility] may not issue an invoice for underbillings for adjustments more than 150 days after the date the original invoice was issued or should have been issued.

All invoices with estimations must be true-up within 150 days of the estimation. If [Utility] does not true-up an underbilling within 150 days, [Utility] may not bill for the difference it has underbilled.

[Utility] must render a corrected invoice within seven days of the date of resolution of the error unless otherwise prohibited by this section. [Utility] must provide notice to an affected Competitive Retailer under Section 3.7, FORM AND TIMING OF NOTICE, at least one Business Day before the rendition.

Disputes about invoice corrections will be governed by Section 4.9, DISPUTE RESOLUTION PROCEDURES.

## **4. BILLING CYCLE**

Unless otherwise stated in the applicable Rate Schedule or as provided in Section 4.8.AA.3, METER READINGS FOR THE PURPOSE OF A SELF-SELECTED SWITCH OR TO VERIFY ACCURACY OF METER READING, invoiced charges will be based on a cycle of approximately one month.

The Competitive Retailer will have the right to request a one-time adjustment to a Retail Customer's Meter Reading/Billing Cycle. The Competitive Retailer must select another [Utility] defined Meter Reading schedule, if available for that account, unless the Retail Customer has remote Meter Reading capability, in which case the Competitive Retailer has the right to arrange for any Meter Reading/Billing Cycle. [Utility] must notify Competitive Retailer of any permanent changes in billing cycle or Meter Reading Schedules. Notification must be provided in accordance with appropriate TX SET protocol. [Utility]'s Meter Reading Schedules will be made available on [Utility]'s website for the next year by December 15. [Utility] must provide 60 days' notice for any changes in the

Meter Reading Schedule.

#### **D. REMITTANCE OF INVOICED CHARGES**

Payments for all charges except Discretionary Service Charges invoiced to Competitive Retailer will be due 35 calendar days following [Utility] transmittal of a valid invoice. The preceding 35 calendar day payment provision will not apply to invoices that have been rejected using Applicable Legal Authorities.

Disputed invoiced amounts will be governed by Section 4.4.D.7, INVOICE DISPUTES. Payments are due without regard to whether or when the Competitive Retailer receives payment from its Retail Customer(s). However, the income derived from Delivery Service charges is deemed to have come from the Retail Customer, not the Competitive Retailer.

[Utility] must specify the due date on the invoice, and the due date must be the 35th calendar day after the transmittal date of the valid invoice, unless the 35th day falls on a weekend or Banking Holiday, in which case the due date will be the following Business Day. Electronic invoices transmitted after 3:00 P.M. will be considered transmitted on the following Business Day.

Competitive Retailer must pay the invoice by electronic funds transfer (EFT) utilizing the electronic data interchange (EDI) standard to a bank designated by [Utility]. Competitive Retailer may also pay by wire transfer (WT) accommodated with the appropriate TX SET transaction. Payment will be considered received on the date [Utility]'s bank receives the EFT or WT and the appropriate remittance advice is received by [Utility] in accordance with the requirements specified by Applicable Legal Authorities.

#### **1. DELINQUENT PAYMENTS**

Payments for Delivery charges invoiced to Competitive Retailer will be considered delinquent if not received by 5:00 P.M. Central Prevailing Time of the due date stated on the valid invoice. Delinquent payments will be subject to a one-time late fee of 5.0% of the delinquent balance existing on the day after the due date stated on the validated invoice. Competitive Retailer will be considered in default only after a ten calendar day grace period has passed without the Competitive Retailer fully paying the delinquent balance. Upon delinquency of Competitive Retailer, [Utility] must provide notice to Competitive Retailer stating that Competitive Retailer is delinquent and will be in default if payment is not received within ten calendar days. If the amount of the penalty is the sole remaining past-due amount after the ten calendar day grace period, the Competitive Retailer will not be considered to be in default unless the penalty remains unpaid for an additional 30 calendar days from receipt of the notice.

#### **2. PARTIAL PAYMENTS**

Unless the partial payment is made due to a dispute, partial payments will be applied pro-rata to all separately stated charges.

#### **3. INVOICE DISPUTES**

Competitive Retailer will pay all undisputed portions of an invoice within the remittance timeframes of Section 4.4.D, REMITTANCE OF INVOICED CHARGES, unless otherwise agreed to by [Utility] and Competitive Retailer. Competitive Retailer may refuse to pay the disputed amount. If a Competitive Retailer disputes all or a portion of an invoice, the Competitive Retailer must provide written notice to [Utility] of the dispute and must include in the notice, at a minimum, an explanation of the disputed portion of the invoice, the basis of the dispute, and a proposed resolution. Upon notice of a disputed invoice, [Utility] will investigate and report the results of the investigation within ten Business Days. Invoice disputes will be addressed promptly, and in the event the dispute is not resolved, the parties must resort to the dispute resolution procedures set forth in Section 4.9, DISPUTE RESOLUTION PROCEDURES. If [Utility] does not receive notification of a dispute within 11 months from the due date of the invoice in question, said invoice will be deemed conclusive and binding.

Upon resolution of the dispute, the appropriate adjustments will be reflected on the first subsequent invoice after resolution. If the Competitive Retailer has remitted amounts found to be improperly invoiced, [Utility] will pay interest on such amounts from the due date on the invoice at the interest rate set in accordance

with Tex. Gov't Code Chapter 2251, or other Applicable Legal Authority. If the dispute is resolved in favor of the [Utility], [Utility] will not hold Competitive Retailer in default for non-payment of the original invoice based on the original due date. The invoice will be due within one Business Day of resolution of the dispute.

[Utility] may dispute the reason for which a Competitive Retailer rejects an invoice. [Utility] must provide written notice of the dispute to the Competitive Retailer's designated contact and must include in the notice, at a minimum, an explanation of the disputed rejection, the basis of the dispute and a proposed resolution.

Upon notice of a dispute, the responding party will investigate and respond in writing to the disputing party within ten Business Days of transmittal of the notice. Such response must include a proposed resolution. Within 20 Business Days of the response, either party may initiate the dispute resolution procedures set forth in Section 4.9, DISPUTE RESOLUTION PROCEDURES. If [Utility] does not receive notification of a dispute within 11 months from the due date of the invoice in question, said invoice will be deemed conclusive and binding. Upon resolution of the dispute, the appropriate adjustments will be reflected on the first subsequent invoice after resolution. If the Competitive Retailer has remitted amounts found to be improperly invoiced, [Utility] will pay interest on such amounts from the date payment was received by [Utility] until the date of refund of such amounts at the interest rate set in accordance with Texas Gov't Code Chapter 2251, or other Applicable Legal Authority. If the Competitive Retailer has been found to have withheld amounts properly invoiced, Competitive Retailer will pay interest on the disputed amount from the due date on the invoice at the interest rate set in accordance with Texas Gov't Code Chapter 2251, or other Applicable Legal Authority. If the dispute is resolved in favor of the [Utility], [Utility] will not hold Competitive Retailer in default for non-payment of the original invoice based on the original due date. The invoice will be due within three Business Days of resolution of the dispute. A Competitive Retailer must not dispute a methodology used to estimate a Meter Reading if the estimation methodology has been approved by the governing body.

#### **4. RETAIL CUSTOMER BILLING INQUIRIES**

When Competitive Retailer receives an inquiry from a Retail Customer concerning the Retail Customer's consolidated bill in connection with an inquiry relating to charges for Delivery Service, the Competitive Retailer may respond to the inquiry, forward the call to [Utility], if that option is available, or direct the Retail Customer to contact the persons designated by the [Utility] to handle billing inquiries.

#### **5. SUCCESSOR COMPETITIVE RETAILER**

A Competitive Retailer will not be obligated to pay the delinquent balance of another Competitive Retailer as a condition of providing service to Retail Customers. The prior Competitive Retailer, however, will in no case be relieved of any previously invoiced unpaid charges including but not limited to late fees incurred in the use of [Utility]'s Delivery System.

### **4.5 SECURITY DEPOSITS AND CREDITWORTHINESS**

#### **A. DEPOSIT REQUIREMENTS FOR CONSOLIDATED BILLING BY [UTILITY]**

If consolidated billing is performed by [Utility], the Competitive Retailer will not require deposits to secure remittance of payments by Retail Customers for Electric Power and Energy from [Utility] unless [Utility] has defaulted under Section 4.6.B.1, DEFAULT OF [UTILITY] RELATED TO FAILURE TO REMIT PAYMENTS DUE UNDER THIS TARIFF OR MAINTAIN REQUIRED SECURITY, within the past 24 months. If [Utility] has defaulted under that section within the past 24 months, Competitive Retailer may require such deposit from [Utility] for payments [Utility] has received from Retail Customers for Electric Power and Energy billed under this Access Tariff.

#### **B. DEPOSIT REQUIREMENTS FOR CONSOLIDATED BILLING BY COMPETITIVE RETAILER**

[Utility] will not require deposits for a Competitive Retailer that has not defaulted under Section 4.6.C.2, DEFAULT AND REMEDIES RELATED TO COMPETITIVE RETAILER'S FAILURE TO REMIT PAYMENT OR MAINTAIN REQUIRED SECURITY within the last 24 months. If a Competitive Retailer has defaulted under Section 4.6, DELINQUENCY, DEFAULT AND REMEDIES ON DEFAULT within the past

24 months, [Utility] may require the Competitive Retailer to provide a deposit as security for payments of amounts billed under this Access Tariff.

### **C. SIZE OF DEPOSIT**

For [Utility], deposits must be equal to one-sixth of the estimated annual amount to be received from Retail Customers by [Utility] for Electric Power and Energy supplied by Competitive Retailer.

For Competitive Retailer, deposits must be equal to one-sixth of the estimated annual amount of Delivery Service charges to be billed under this Tariff by Competitive Retailer, on behalf of [Utility].

The computation of the size of a required deposit will be mutually agreed upon by [Utility] and the Competitive Retailer. The amount of deposit will be adjusted, if necessary, during the first month of each calendar quarter to ensure that the deposit accurately reflects the required amount.

### **D. FORM OF DEPOSIT**

Deposits under this section must be in the form of cash held by a third-party escrow, surety bond, letter of credit, affiliate guaranty, or any combination thereof, at the billing party's option. The non-billing party will be the beneficiary of any affiliate guaranty, surety bond or letter of credit. Providers of affiliate guaranty, surety bonds or letters of credit must have and maintain long-term unsecured credit ratings of not less than "BBB-" or "Baa3" (or equivalent) from Standard and Poor's or Moody's Investor Service, respectively. Other forms of security may be mutually agreed to by [Utility] and Competitive Retailer provided that terms are offered on a non-discriminatory basis. Within ten Business Days of the quarterly review in Section 4.5.C, SIZE OF DEPOSIT, the billing party will remit additional cash in escrow or replacement affiliate guaranty, surety bonds or letters of credit, as applicable, in the amount determined pursuant to the review.

### **E. INTEREST**

Cash deposits will accrue interest payable to the billing party. Interest accrued must be paid to the billing party in connection with the quarterly review under Section 4.5.C, SIZE OF DEPOSIT, if such interest causes the size of the deposit to exceed the required amount. The rates of interest to be paid will be in accordance with the Texas Utilities Code Chapter 183, or other Applicable Legal Authority.

### **F. HISTORICAL DEPOSIT INFORMATION**

Parties must maintain adequate records of deposits. Records of each unclaimed deposit must be maintained for at least four years, during which time [Utility] will make reasonable efforts to return the deposit and any accrued interest.

### **G. REFUND OF DEPOSIT**

Cash deposits in third-party escrow, plus any accrued interest, will be returned to the billing party after deduction of all charges and other debts that the billing party owes the non-billing party, including any applicable late fees, when:

- (1) Competitive Retailer ceases operations within [Utility's] service territory;
- (2) Other arrangements are made for satisfaction of deposit requirements; or
- (3) Twenty-four months have elapsed without the billing party defaulting on any payment obligations to the non-billing party.

All unclaimed deposits will be held by [Utility] for four years from the date the Competitive Retailer ceases operations in the [Utility]'s service territory.

## **4.6 DELINQUENCY, DEFAULT AND REMEDIES ON DEFAULT**

### **A. [UTILITY] DELINQUENCY AND DEFAULT**

[Utility] will be considered to be delinquent if [Utility]:

- (1) Fails to remit payment for Electric Power and Energy received from Retail Customers to the Competitive Retailer under Sections 4.4.A.5, REMITTANCE, and 4.4.A.6, NON-PAYMENT OR PARTIAL PAYMENT BY RETAIL CUSTOMER;
- (2) Fails to satisfy any material obligation under this tariff, including fulfilling the security requirements set forth in Section 4.5, SECURITY DEPOSITS AND CREDITWORTHINESS; or
- (3) Fails to provide Meter Reading data to Competitive Retailer in accordance with Section 4.8.1, DATA FROM METER READING.

### **B. DEFAULT AND REMEDIES ON DEFAULT OF [UTILITY]**

#### **1. DEFAULT OF [UTILITY] RELATED TO FAILURE TO REMIT PAYMENTS DUE UNDER THIS TARIFF OR MAINTAIN REQUIRED SECURITY**

Upon [Utility]'s delinquency related to failure to remit Electric Power and Energy payments, in accordance with Sections 4.4.A.5 REMITTANCE, and 4.4.A.6, NON-PAYMENT OR PARTIAL PAYMENT BY RETAIL CUSTOMER, Competitive Retailer must provide notice of delinquency to [Utility] of same. [Utility] will have ten Business Days to cure the delinquency. Upon [Utility]'s failure to cure the delinquency, [Utility] will be in default, and Competitive Retailer may pursue any or all of the following remedies:

- (1) Apply delinquent balances to [Utility]'s third-party escrow deposit, if any, and any accrued interest to delinquent balances, or seek recourse against any letter of credit or surety bond for the amount of delinquent charges due to Competitive Retailer, including any penalties or interest;
- (2) Avail itself of any legal remedies that may be appropriate to recover unpaid amounts and associated penalties or interest; or
- (3) Implement other mutually suitable and agreeable arrangements with [Utility], provided that such arrangements are available to all Competitive Retailers on a non-discriminatory basis.

#### **2. DEFAULT OF [UTILITY] RELATED TO FAILURE TO PROVIDE METER READING DATA**

Upon delinquency related to failure of [Utility] to provide Meter Reading data in accordance with Section 4.8.A, DATA FROM METER READING, Competitive Retailer may provide notice of delinquency to [Utility]. [Utility] will have ten Business Days to cure the delinquency by providing the data, starting from the date notice is received by [Utility]. Upon failure to cure the delinquency, [Utility] will be in default, and Competitive Retailer may pursue any or all of the following remedies:

- (1) Based on the Competitive Retailer's historic usage data for a Retail Customer, use estimated usage information for that billing cycle to calculate charges to a Retail Customer for Electric Power and Energy provided by the Competitive Retailer; or
- (2) Avail itself of any other legal remedies that may be appropriate.

### **C. DEFAULT AND REMEDIES ON DEFAULT OF COMPETITIVE RETAILER**

#### **1. COMPETITIVE RETAILER DELINQUENCY**

A Competitive Retailer will be considered to be delinquent if Competitive Retailer:

- (1) Fails to remit to [Utility] any payments due under this Access Tariff;
- (2) Provides consolidated billing and fails to remit payment to [Utility] within the ten-calendar day grace period allowed under Section 4.4.D.5, DELINQUENT PAYMENTS;

- (3) Fails to satisfy any material obligation under this Access Tariff including, but not limited to failure to, fulfill the security requirements set forth in Section 4.5, SECURITY DEPOSITS AND CREDITWORTHINESS;
- (4) Fails to comply with the requirements of the applicable municipal certification; or
- (5) Is no longer certified as a Retail Electric Provider.

## **2. DEFAULT AND REMEDIES RELATED TO COMPETITIVE RETAILER'S FAILURE TO REMIT PAYMENT OR MAINTAIN REQUIRED SECURITY**

Upon Competitive Retailer's delinquency related to its failure to remit payments due under this Access Tariff, maintain its certification, or maintain required security, [Utility] must provide notice of delinquency to Competitive Retailer of the same. Competitive Retailer will have ten Business Days to cure the delinquency. Upon failure to cure the delinquency the Competitive Retailer will be in default. [Utility] may pursue any or all of the following remedies:

- (1) Apply to delinquent balances to Competitive Retailer's deposit, if any, and any accrued interest, or seek recourse against any letter of credit or surety bond for the amount of delinquent charges due to [Utility], including any penalties or interest;
- (2) Avail itself of any legal remedies that may be appropriate to recover unpaid amounts and associated fees, including any penalties or interest;
- (3) Implement other mutually suitable and agreeable arrangements with Competitive Retailer, provided that such arrangements are available to all Competitive Retailers on a non-discriminatory basis;
- (4) Notify the Commission that the Competitive Retailer is in default and request suspension or revocation of the Competitive Retailer's certificate; or
- (5) Require the Competitive Retailer to do one of the following:
  - (A) Transfer the billing and collection responsibility for all Delivery charges to [Utility], if [Utility] consents;
  - (B) Immediately arrange for all future remittances from Retail Customers to be paid into a lock-box controlled by [Utility] or the financial mechanism/account designated by [Utility]. Amounts collected must first be applied to amounts due [Utility], including any late fees and penalties with remaining amounts released to Competitive Retailer. Competitive Retailer will bear all costs of such mechanism; or
  - (C) Immediately arrange for the Competitive Retailer's customers to be served by another qualified Competitive Retailer or the Provider of Last Resort.

If [Utility] chooses option (5), the Competitive Retailer must choose and notify [Utility] as to which option under (5) it will implement but, if the Competitive Retailer fails to immediately implement one of the options, [Utility] will immediately implement option (A) or (B). A Competitive Retailer choosing option (A) or (C) must provide all needed customer information to the entity assuming collection responsibilities within three Business Days so that it can bill Competitive Retailer's Retail Customers.

## **3. DEFAULT RELATED TO COMPETITIVE RETAILER'S FAILURE TO SATISFY MATERIAL OBLIGATIONS UNDER ACCESS TARIFF**

Upon failure of Competitive Retailer to satisfy material obligations under this Tariff, [Utility] must provide notice of delinquency to Competitive Retailer, explaining the reason(s) for delinquency. Competitive Retailer will have ten Business days to cure such reasons for delinquency. If the Competitive Retailer fails to cure the delinquency within ten business days, the Competitive Retailer will be considered to be in default and [Utility] may pursue any or all of the following:

- (1) Implement mutually suitable and agreeable arrangements with Competitive Retailer provided that such arrangements are available to all Competitive Retailers on a non-discriminatory basis; or
- (2) Notify the Commission that the Competitive Retailer is in default and that certification should be suspended or canceled.



#### **4. DEFAULT RELATED TO DE-CERTIFICATION OF A COMPETITIVE RETAILER AS A RETAIL ELECTRIC PROVIDER OR LOSS OF MUNICIPAL REGISTRATION**

Upon loss of Commission certification as a Retail Electric Provider, Competitive Retailer must abide by P.U.C. SUBST. R. 25.107, *Certification of Retail Electric Providers (REPs)*, with respect to notice and transfer of Retail Customers to another qualified Competitive Retailer(s) or the applicable Provider(s) of Last Resort (POLR). In the event that the Competitive Retailer fails to abide by this rule, the Commission will instruct the Registration Agent to immediately transfer the customers to the POLR(s).

Upon Competitive Retailer's failure to comply with the registration requirements of a municipality, the municipality must provide notice of the failure to comply with the registration requirements to Competitive Retailer. Unless otherwise provided in the registration requirements of the municipality, Competitive Retailer will have ten Business Days to cure the noncompliance unless the municipality at its option agrees to extend the amount of time. Upon failure to cure the noncompliance, Competitive Retailer will be in default, and Competitive Retailer must abide by the procedures provided in the registration requirements of the municipality with respect to notice and transfer of affected Retail Customers to other qualified Competitive Retailer(s) or the POLR(s). In the event that the Competitive Retailer fails to abide by these procedures, the municipality must instruct the Registration Agent to immediately transfer the affected customers to the POLR(s). If the municipality has not adopted such procedures, the Competitive Retailer will abide by the procedures in P.U.C. SUBST. R. 25.107.

#### **5. CURE OF DEFAULT**

Upon payment of all past due amounts and associated penalties and late fees, establishment of any security required under Section 4.5, SECURITY DEPOSITS AND CREDITWORTHINESS, and cure of any failure to abide by the provisions of this Tariff, Competitive Retailer will no longer be considered in default and will not be required to comply with the provisions in Section 4.6, DELINQUENCY, DEFAULT AND REMEDIES ON DEFAULT.

### **4.7 MEASUREMENT AND METERING OF SERVICE**

#### **A. MEASUREMENT**

Charges for Electric Power and Energy are calculated using measurements obtained from [Utility]-owned, [Utility]-installed and [Utility]-read Metering Equipment, estimation, or otherwise as defined in [Utility] Delivery Service Tariff.

Electric Meter services will be performed by [Utility]. [Utility] will provide metering services in accordance with its Delivery Service Tariff, Applicable Legal Authorities, and all standards and protocols adopted by the Independent Organization.

If Access is provided to Competitive Retailer whose Retail Customer takes Delivery Service at primary distribution or transmission voltage, [Utility] may meter on the low side of Retail Customer's transformers and adjust measurements to account for losses occurring between the Point of Delivery and point of measurement.

#### **B. METER READING**

[Utility] is responsible for reading [Utility]'s Meter on a monthly basis in accordance with the published Meter Reading Schedule. [Utility] must make a reasonable effort to complete an Actual Meter Reading. [Utility] must obtain an Actual Meter Reading within two Business Days of the date published in the Meter Reading Schedule, except as otherwise provided herein, and will submit the Data from the Meter Reading to the Registration Agent within three Business Days of the Scheduled Meter Reading Date. If an actual Meter Reading is not obtained, [Utility] will estimate the Meter Reading for invoicing purposes in accordance with the applicable protocols of an Independent Organization, this chapter, the Rates in Chapter 5 and Applicable Legal Authorities. Unless otherwise provided in this section or in the Rate Schedule, a Meter Reading must not be estimated more than three times consecutively. [Utility] will establish validation procedures that prohibit zero usage and extreme value Meter Readings unless good reason exists for the readings. [Utility] must ensure that invoices and Meter Reading transactions with zero usage or

usage with extreme and unlikely values are not issued to Competitive Retailer or Retail Customer unless [Utility] has good reason to believe that the value is correct.

In any month where the Meter Reading fails the validation process, [Utility] must perform a second Meter Reading, subject to applicable costs, if any, from Chapter 5.

### **1. DENIAL OF ACCESS BY RETAIL CUSTOMER**

If in any month Retail Customer prohibits [Utility] access to read the Meter (due to Premises being locked, presence of a threatening animal, physical threats to [Utility], or other similar reason), [Utility] must attempt communication with the customer, either through direct conversation, phone call, or by providing the Retail Customer a door hanger requesting access the following month, and informing the Retail Customer of the consequences for continuing to fail to provide access. If [Utility] does not choose the door hanger option or there is no door on which to leave a door hanger, [Utility] may leave the door hanger at a point of ingress. If no point of ingress is available, [Utility] may choose not to leave the door hanger and must notify Competitive Retailer of the inability to leave the door hanger.

[Utility] must inform Competitive Retailer that [Utility] was unable to gain access and the reason that [Utility] was unable to gain access, providing enough detail that Competitive Retailer can explain to the Retail Customer and inform Competitive Retailer of the number of consecutive months [Utility] has been denied access by the Retail Customer. If the Competitive Retailer is notified that a Retail Customer denied [Utility] access to read the Meter, Competitive Retailer must contact the Retail Customer to request access for [Utility] the following month and inform the Retail Customer of the consequences for continuing to fail to provide access. Competitive Retailer contact may be either by mail, telephone or door-to-door contact.

After three consecutive months of denial of access by the Retail Customer to [Utility] to read the Meter, the Retail Customer has the following options: a) Disconnection of service; b) Relocation of the Meter to make Meter accessible at the Retail Customer's expense or c) If available in [Utility]'s Service Area, installation of a remotely read Meter, at the Retail Customer's expense and billed directly by [Utility] to Competitive Retailer. If Retail Customer does not choose an option, the [Utility] will choose the option on behalf of the Retail Customer. [[Utility] may continue to perform Estimated Meter Reading for an additional 60 days in order to implement one of the options.

### **2. ESTIMATES FOR REASONS OTHER THAN FOR DENIAL OF ACCESS BY RETAIL CUSTOMER**

The [Utility] must not perform Estimated Meter Reading for more than three consecutive Scheduled Meter Reading Dates for Retail Customer's Premises when Retail Customer has not denied access. [Utility]'s failure to complete an Actual Meter Reading for reasons other than the Retail Customer's failure to provide access will not be considered a break in a series of consecutive months of denial of access under Section 4.7.B.1, DENIAL OF ACCESS BY RETAIL CUSTOMER, but will not be considered a month in which the Retail Customer has denied access. Estimated Meter Reading performed by [Utility] for the purpose of a mass transition of Retail Customers when Actual Meter Reading is infeasible or Applicable Legal Authorities dictate an Estimated Meter Reading will not be considered a break in a series of consecutive months of Estimated Meter Reading, and will not be considered a month in a series of consecutive Estimated Meter Reading performed by [Utility].

### **3. METER DATA**

[Utility] must provide Meter Data, other than Interval Data, consistent with its Meter Reading Schedule. In addition, when available, [Utility] must provide Competitive Retailer access to, and provide to Registration Agent, complete Interval Data for the prior calendar day for each Meter in accordance with Applicable Legal Authorities. The inclusion of missing Interval Data does not meet the requirement of complete Interval Data.

For Utilities with meters that collect interval data, [Utility] must use reasonable efforts to ensure that the sum of all Interval Data reported by [Utility] equals the monthly usage for the same billing period within the acceptable range established by the NAESB Uniform Business Practices (UBP), or any range established in a superseding Applicable Legal Authority. Despite [Utility]'s reasonable efforts, however, there will be instances when the Interval Data and the monthly usage for the same billing period are not equal within the acceptable range. Upon request, [Utility] must provide to Competitive Retailer a detailed explanation when the sum of the Interval Data does not equal the monthly usage within the acceptable range.

### **C. REPORTING MEASUREMENT DATA**

[Utility] must report measurement data for a Point of Delivery as required by this Chapter, Applicable Legal Authorities, and in accordance with the [Utility]'s Tariffs.

### **D. METER TESTING, METER REPLACEMENT AND ADJUSTMENTS FOR METER READING INACCURACIES**

[Utility] will test its Meters in accordance with the schedule and standards of the American National Standards Institute, Incorporated ("ANSI"). Upon notice of a request by a Competitive Retailer, [Utility] will perform additional tests of the accuracy of [Utility]'s Meter no later than ten Business Days after the request is received, provided the Meter is a self-contained single phase, kWh Meter and subject to obtaining access and completing any necessary coordination with the Retail Customer or a third party. In the event the Meter is other than a self-contained, single phase kWh Meter, Company will perform the additional tests no later than 30 calendar days after the request is received. The additional tests preferably will be performed on the Retail Customer's Premises, but may, at [Utility]'s discretion, be performed at [Utility] test laboratory. Charges for meter accuracy testing requested by Competitive Retailer will be invoiced to the Competitive Retailer in accordance with the rates contained in Chapter 5. Following the completion of any additional test, [Utility] will promptly advise the Competitive Retailer requesting the test of the date of removal of the Meter, the date of the test, the result of the test, and who performed the test.

### **E. INVOICE ADJUSTMENT DUE TO METER INACCURACY**

If any [Utility]-owned Meter is determined to be outside of the accuracy standards established by the ANSI, unless bypassed or tampered with, proper correction will be made of previous measurement data. Competitive Retailer and [Utility] must adjust their respective charges to Retail Customer based on the corrected Meter Data pursuant to Applicable Legal Authorities for underbilling and overbilling.

## **4.8 DATA EXCHANGE**

[Utility] will release to Competitive Retailer in a manner prescribed by Applicable Legal Authorities proprietary customer information necessary to enable the Competitive Retailer to serve the Retail Customer. [[Utility] will not assess separate charges to Competitive Retailer for the provision of the most recent 12 months of Meter Data used by [Utility] for billing the Premises; however, charges may apply for the provision of such data beyond the most recent 12 months in accordance with [Utility]'s rates contained in Chapter 5 for provision of such information including Meter Reading data.

### **A. DATA FROM METER READING**

[Utility] must make available to Retail Customer's Competitive Retailer all data recorded in Retail Customer's meter(s) that are owned by [Utility].

[Utility] must provide Meter Reading data or estimated usage data to Retail Customer's Competitive Retailer through the Registration Agent within three Business Days from [Utility]'s scheduled Meter Reading date for that Retail Customer in accordance with the protocols adopted by the Independent Organization.

Metering data, except as specified in Section 4.8.A.3, METER READINGS FOR THE PURPOSE OF A SELF-SELECTED SWITCH OR TO VERIFY ACCURACY OF METER READING, will be sent to the Competitive Retailer in complete billing periods.

All metering data values will contain an associated Date/Time field as a time stamp. All time stamps (both for data points and sets of data) will be reported in Central Prevailing Time.

Unless provided by the Independent Organization, [Utility] must provide to Competitive Retailer, if requested by Competitive Retailer in a switch request, the most recent 12 months of historical usage and interval data by the appropriate TX SET protocol upon the switching of a Retail Customer to a new Competitive Retailer.

Unless provided by the Independent Organization, [Utility] must provide access to Retail Customer's

historical usage and interval data (if available) to Retail Customer and with the Retail Customer's permission, current and/or prospective Competitive Retailers within three Business Days of the receipt of the request. [Utility] must maintain at least 12 months of usage and demand data for each customer with a volumetric or demand meter, , and 12 months interval data for any customer for whom [Utility] records interval data. If not provided by the Independent Organization, [Utility] may provide access to this data for customers served with a meter that records interval data through a web-portal, or other means such that the data is accessible in real time. [Utility] must ensure confidentiality of customer load data through the assignment of unique customer passwords or personal identification numbers (PINs) released only to the metered Retail Customer.

#### **1. DATA RELATED TO INTERVAL METERS**

Data from interval meters will be sent as kWh during each interval. The kWh will be reported for each interval. Each recording interval must be labeled according to Applicable Legal Authorities.

#### **2. DATA REPORTED BY VOLUMETRIC (KWH) METERS**

Data reported by volumetric (kWh) meters, will include: the start-of-period date and time, usage for period, demand readings (if available), end-of--period date and time, and end-of-period reading. Exceptions, which include initial meter reads and meter changes for start-of-period reading, must be appropriately labeled and providing in accordance with Applicable Legal Authorities.

Metered data upon termination of Access to a Competitive Retailer as a result of termination of a Retail Customers' Delivery Service at a particular Point of Delivery (final read) will be provided by [Utility] to Competitive Retailer within three Business Days from the date that Delivery Service has been terminated.

#### **3. METER READINGS FOR THE PURPOSE OF A SELF-SELECTED SWITCH OR TO VERIFY ACCURACY OF METER READING**

Meter reads associated with a Retail Customer's change in designated Competitive Retailer (Self-Selected Switch) will be provided with the timelines provided in Chapter 5. Meter reads for the purpose of a self-selected switch will be provided to both the new and previous Competitive Retailer the next Business Day following the meter read date. For the new Competitive Retailer, the billing period begins with the date of meter read for the purpose of a self-selected switch, and for the previous Competitive Retailer, the billing period ends with the date of the meter read for the purpose of a self-selected switch. No such Meter Read will be deemed to require any change in [Utility]'s regular continuing Meter Read cycle for that Retail Customer.

A Meter Reading to verify the accuracy of an original Meter Reading will be performed and the new reading must be transmitted to Competitive Retailer within five Business Days of [Utility]'s receipt of the request. If, based upon the Meter re-read, it is determined that the original monthly Meter Reading was in error, the Meter Reading and billing determinants for that billing period must be corrected in accordance with Section 4.4.C.3, INVOICE CORRECTIONS, and no Discretionary Service Charge will be applied by [Utility]. If the Meter re-read determines that the original monthly Meter Reading was correct, a charge may be assessed for the re-read in accordance with Chapter 5.

Any other Meter Reads not associated with a Retail Customer's change in Competitive Retailer must be provided to the Competitive Retailer requesting such meter read within three Business Days following the Meter Read date.

Competitive Retailer may be charged for a read that is requested by the Competitive Retailer in accordance with the rates in Chapter 5 of this Tariff.

#### **4. ESTIMATED USAGE**

[Utility] is responsible for reading Meter on a monthly basis in accordance with the published Meter Reading Schedule. [Utility] must make a reasonable effort to complete an Actual Meter Reading. If [Utility] does not complete an Actual Meter Reading, [Utility] will perform an Estimated Meter Reading for invoicing purposes in accordance with this Tariff. Estimated usage must be identified as "Estimated" in the SET transactions. [Utility] must provide the estimation method used if requested.

Unless an Applicable Legal Authority has prescribed an estimation methodology, [Utility] will perform an Estimated Meter Reading consistent with the following: Reasonable efforts must ensure that estimated usage does not equal zero for a known active Meter, or equal or exceed double the usage from the previous month's Actual Meter Reading unless [Utility] has good reason to believe that this value is a reasonable estimate and can provide its reason upon request to Competitive Retailer.

When an Actual Meter Reading is taken after two or more consecutive months of estimation, [Utility] will allocate any over or under-estimated usage over the entire estimation period. The allocation will be based on the average daily consumption for the Retail Customer for the period between Actual Meter Readings. [Utility] must consistently use reasonable methodologies to develop Estimated Billing Determinants. When [Utility] must estimate Interval Data, it will estimate the interval usage based on a methodology that reasonably accounts for the Retail Customer's consumption and consumption patterns. If requested, [Utility] must provide the estimation methodology used.

A meter Reading for a meter that collects interval data will not be considered an Estimated Meter Reading if an Actual Meter Reading was completed and [Utility] had to estimate a limited number of intervals of data to fill in gaps in the data collected.

## **5. METER/BILLING DETERMINANT CHANGES**

Upon a Meter change, the data for each Meter must be reported as a separate set of data within a single TX SET transaction corresponding to the Retail Customer's billing period.

If a Meter is replaced, an estimation of metering data may be made. The period of estimated metering data will be reported with the old Meter number.

If changes occur in Rate Schedule Billing Determinants, the new Billing Determinants will not become part of billing until the new Billing Determinants are available for a full Meter Reading cycle.

## **6. NOTICE OF PLANNED AND UNPLANNED INTERRUPTIONS TO MARKET COMMUNICATIONS AND DATA EXCHANGE**

[Utility] must provide at least seven days advance notice to Competitive Retailer of any planned interruption to [Utility]'s ability to engage in market transactions or provide Meter Data to Competitive Retailer. [Utility] must provide notice of any significant unplanned interruptions to [Utility]'s market transactions or provision of Meter Data to Competitive Retailer no later than one hour after discovery or knowledge of the interruption. Notice is not required for short-term disruptions where market transactions or the provision of Meter Data are not affected or where there is no impact on Competitive Retailer. [Utility] must provide updates to Competitive Retailer in the event of changes to the expected duration of the interruption and inform Competitive Retailer when the interruption has concluded.

### **B. DATA FOR UNMETERED LOADS**

For unmetered service, the following standards apply:

- (1) One usage value will be posted for an account, which may encompass multiple Points of Delivery;
- (2) If a change in an account's inventory of Points of Delivery is discovered for a past billing period, the entire amount of usage for the account should be reported as an adjustment; and
- (3) If an account goes from unmetered to metered service, metered usage starts with the first full billing cycle after the Meter is installed.

### **C. ADJUSTMENTS TO PREVIOUSLY TRANSMITTED DATA**

Re-sending or adjusting of previously transmitted data arises from data maintenance activities (e.g. response to inquiries, needs to restore data files, and responses to problems with posted data), and Meter maintenance activities (e.g., adjustments as improved information becomes available due to discovery of incorrect reads, crossed Meters, non-registering Meters, slow or fast Meters, and incorrect multipliers.)

The following standards apply to such previously transmitted data:

- (1) When corrections are made to previously sent TX SET data, the original TX SET must be first canceled. Replacement TX SET data (labeled as replacement data) must then be transmitted within one Business Day of the cancelled TX SET data;
- (2) When corrections are made to previously sent TX SET data, the complete set of TX SET data pertaining to a Meter and billing cycle will be provided in the replacement transaction. When sending or correcting TX SET data, each billing cycle for the affected Meter will be in a distinct TX SET dataset. Only the TX SET data for the affected billing cycle and Meter will be transmitted;
- (3) In the case of “crossed Meters,” in which Meter numbers have been incorrectly reported for sets of usage data, the original SET will be canceled, and a new TX SET will be transmitted that correctly reports the TX SET data, ESI ID, and other associated TX SET data;
- (4) [Utility] will make corrected TX SET data available to the original recipients in a timely manner no matter when the correction is made;
- (5) [Utility] must provide a reason for an adjustment to Competitive Retailer when the adjustment is made in the TX SET data;
- (6) All transactions containing corrections to a previously submitted TX SET transaction must be sent in accordance with TX SET standards as set forth in TX SET Implementation Guidelines and Commission rules; and
- (7) For any replacement interval data that become available to [Utility] due to corrected or revised actual or estimated intervals, [Utility] must timely replace the original Meter Data in the impacted intervals with such replacement data.

#### **D. DATA EXCHANGE PROTOCOLS**

The following standards and protocols are a baseline, or minimum set, necessary to facilitate data exchange between parties. Parties must also comply with data exchange protocols established by the Commission or Independent Organization.

- (1) A uniform Premises identifier number, ESI ID, will be utilized by [Utility];
- (2) The ESI ID number will be used in all data exchanges specific to related Premises data transactions;
- (3) ESI ID is a unique, permanent, and non-intelligent number, used to facilitate communications in an unbundled electric market. The format will be as determined by the protocols adopted by the Independent Organization; and
- (4) An ESI ID will be assigned by [Utility] for each Point of Delivery in accordance with protocols adopted by the Independent Organization.

### **4.9 DISPUTE RESOLUTION PROCEDURES**

#### **A. COMPLAINT PROCEDURES**

For complaints by Competitive Retailers or [Utility] regarding Access, the parties may contact each other during normal business hours.

Should one party bring a complaint against the other, [Utility] and Competitive Retailer will use good faith and commercially reasonable efforts to informally resolve such complaint. Unless otherwise provided for in this Tariff all complaints must be conducted pursuant to the following procedures:

- (1) [Utility] or Competitive Retailer may initiate the dispute process by presenting to the other party a notice of the dispute/complaint. Notice must include, at a minimum, a clear description of the dispute, the nature of the dispute, a contact name, and a proposed resolution;
- (2) All disputes must be referred to a designated senior representative of each of the parties for resolution on an informal basis as promptly as practicable;
- (3) The receiving party must investigate the complaint and provide a response as soon as possible but not later than ten Business Days following receipt of the complaint;
- (4) In the event that the designated representatives are unable to resolve the dispute within 30 calendar days, such dispute, by mutual agreement, may be referred to mediation or be submitted to binding arbitration and resolved in accordance with the current Commercial Arbitration Rules of the American Arbitration Association; and

- (5) In the event that binding arbitration is not chosen and resolution is not obtained within 30 calendar days after the initial complaint (or another mutually agreed upon timeline), the Competitive Retailer or [Utility] may file a complaint at any time thereafter with the Commission.

#### **B. COMPLAINT WITH REGULATORY AUTHORITY**

Nothing in this section will restrict the rights of [Utility] or Competitive Retailer to file a complaint with the Commission under the relevant portions of PURA, where that right is available, or to exercise other legal rights and remedies.

#### **C. SERVICE INQUIRIES OR ACCESS STATUS**

Competitive Retailer may contact [Utility] regarding the status of Delivery Service and Access for the provision of Retail Customer's Delivery Service, including, but not limited to, the following situations:

- (1) Inquiries regarding site specific Delivery Services;
- (2) Construction of new lines, installation of a Meter, modification of existing equipment or change in Point of Delivery;
- (3) Special circumstances such as Delivery Service requirements that are of non-standard size or characteristics; or
- (4) Initiation of Delivery System Service to Retail Customer.

Competitive Retailer seeking information about the above items may contact [Utility] as appropriate during normal business hours.

### **4.10 OUTAGE AND SERVICE REQUEST REPORTING**

#### **A. NOTIFICATION OF INTERRUPTIONS, IRREGULARITIES, AND SERVICE REQUESTS**

Competitive Retailer will be responsible for informing its Retail Customers how to report interruptions, irregularities, outages, and how to report service requests. Competitive Retailer must meet this obligation by directing Retail Customers to call [Utility] directly to make such reports. Competitive Retailer must provide Retail Customers, in accordance with the applicable customer protection rules, with the [Utility] supplied toll free telephone number and indicate that Retail Customer should call this number.

Alternatively, and only with the agreement of both [Utility] and Competitive Retailer, Competitive Retailer may meet this obligation as follows:

- (1) Competitive Retailer may direct Retail Customers to call the Competitive Retailer for such reporting of requests and electronically forward outage information to [Utility]. Such arrangements must ensure that all necessary information is communicated in a manner such that [Utility] can respond to requests in a timely fashion and that Competitive Retailers are kept informed of the status of restoration efforts and service requests;
- (2) Competitive Retailer may direct Retail Customer to call Competitive Retailer for such reporting or requests and then forward the call to [Utility]; or
- (3) Competitive Retailer may direct Retail Customers to directly call [Utility] to make such reports or requests.

If alternative option (1) is mutually agreed to by Competitive Retailer and [Utility], Competitive Retailer must ensure that all necessary information is electronically communicated to [Utility] in a timely manner using the appropriate SET protocol so as not to unnecessarily delay [Utility]'s response. The data necessary includes the following information:

- (1) Customer name, and if different, contact name;
- (2) Contact phone number;
- (3) ESI ID;
- (4) Service address (including City and zip code) and directions to location when necessary; and
- (5) Description of problem.

If alternative option (2) or (3) is mutually agreed to by Competitive Retailer and [Utility], Competitive Retailer must ensure that calls are properly forwarded to a [Utility] supplied toll free telephone number. If alternative option (2) is used, Competitive Retailer will be required to provide [Utility] with the information needed to verify Retail Customers' identity (name, address, and home phone number) for a particular Point of Delivery served by Competitive Retailer and to continually provide [Utility] updates of such information.

If alternative option (2) or (3) is used, Competitive Retailer must make arrangements with the [Utility] to pre-authorize any service requests for which the [Utility] will invoice the Competitive Retailer before such requests are performed. A Competitive Retailer who does not make other arrangements will be deemed to have pre-authorized all service requests from retail customers. [Utility] must not act in a discriminatory manner in making such arrangements with Competitive Retailers.

In all events, [Utility] must, as soon as reasonably practicable, provide information to Competitive Retailer regarding reported customer interruptions, irregularities, outages and service repair requests.

If either of the three alternative options (1), (2), or (3) are mutually agreed to by Competitive Retailer and [Utility], Competitive Retailer and [Utility] will designate in the Access Agreement Form (Appendix A to the pro-forma access tariff) which one of the three alternative options was selected as the primary method for reporting interruptions, irregularities, outages, and which one of the two alternative options was selected as the primary method for making service repair requests. Nothing in this section is meant to restrict a Competitive Retailer who has mutually agreed with [Utility] to utilize alternative option (1), (2), or (3) for the majority of their Retail Customers to allow a Retail Customer with special needs to directly contact the [Utility] if agreed to by the Competitive Retailer and Retail Customer.

[Utility] must notify Competitive Retailers of any change in a [Utility] supplied telephone number 60 days in advance of such change.

#### **B. RESPONSE TO REPORTS OF INTERRUPTIONS AND REPAIR REQUESTS**

[Utility] will promptly investigate reported problems. If, upon making a service call, [Utility] determines that a reported problem is caused by a condition on Retail Customer's side of the Point of Delivery, [Utility] must notify Competitive Retailer. [Utility] may charge a fee for the Service Call as applicable in the Rate Schedule.



## **CHAPTER 5: [UTILITY] GENERAL TERMS AND CONDITIONS AND RATES**

### **5.1 GENERAL**

[Utility] retains jurisdiction to set all rates including rates relating to Access. The following Rate Schedules have been promulgated by [Utility] and are filed with the Public Utility Commission of Texas for informational purposes only.

### **5.2 RATE SCHEDULES**

**APPENDIX A**

**AGREEMENT BETWEEN [UTILITY] AND COMPETITIVE RETAILER REGARDING TERMS AND CONDITIONS OF ACCESS BY THE COMPETITIVE RETAILER TO THE DELIVERY SYSTEM OF [UTILITY] TO PROVIDE ELECTRIC POWER AND ENERGY TO COMPETITIVE RETAILER'S RETAIL CUSTOMERS (ACCESS AGREEMENT)**

[Utility] and Competitive Retailer hereby agree that their relationship regarding Access by Competitive Retailer to provide Electric Power and Energy to a Retail Customer will be governed by the terms and conditions that are set forth in [Utility] Access Tariff approved, except for Chapters 2 and 5, by the Public Utility Commission of Texas (Commission). A copy of this Access Tariff may be obtained by contacting the Central Records Department of the Commission.

1. Notices, bills, or payments required in [Utility]'s Access Tariff will be delivered to the following addresses:

FOR [UTILITY]

Legal Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Payment Address (both electronic and postal): \_\_\_\_\_

\_\_\_\_\_

[Utility] may change such contact information on written notice to Competitive Retailer.

FOR COMPETITIVE RETAILER

Legal Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Billing Address (both electronic and postal): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PUC Certificate Number: \_\_\_\_\_

Competitive Retailer may change contact information on written notice to [Utility].

Notices for late payments must be submitted to the following address for Competitive Retailer:

\_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

## II. DESIGNATION OF ENTITY PERFORMING BILLING

IF A SINGLE CONSOLIDATED BILL WILL BE PROVIDED, IT WILL BE PROVIDED BY:

\_\_\_\_\_ UTILITY or

\_\_\_\_\_ UTILITY REPRESENTATIVE or

\_\_\_\_\_ COMPETITIVE RETAILER AS UTILITY REPRESENTATIVE

IF A SINGLE CONSOLIDATED BILL WILL NOT BE PROVIDED, CHARGES FOR TRANSMISSION AND DISTRIBUTION CHARGES WILL BE BILLED BY:

\_\_\_\_\_ UTILITY or

\_\_\_\_\_ UTILITY REPRESENTATIVE or

\_\_\_\_\_ COMPETITIVE RETAILER AS UTILITY REPRESENTATIVE

## III. DESIGNATION OF CONTACT FOR REPORTING OF OUTAGES, INTERRUPTIONS, AND IRREGULARITIES

Unless otherwise agreed to by Competitive Retailer and [Utility], Competitive Retailer will direct Retail Customers to call or contact [Utility] to report outages, interruptions, and irregularities. Competitive Retailer will provide Retail Customer with the following toll-free number supplied by [Utility] for purposes of such reporting:

1-8XX-XXX-XXXX

Alternatively, and only with the mutual consent of Competitive Retailer and [Utility], one of the following options can be selected. \*If one of these options is selected, please place a check on the line beside the option selected. *These options and attendant duties are discussed in pro-forma access tariff section 4.10.1.*

\_\_\_\_\_ Competitive Retailer will direct Retail Customers to call Competitive Retailer to report outages, interruptions, and irregularities and will then electronically forward such information to [Utility].

\_\_\_\_\_ Competitive Retailer will direct Retail Customers to call Competitive Retailer to report outages, interruptions, and irregularities and will then forward such calls to [Utility] at the following toll-free number:

1-8XX-XXX-XXXX

\_\_\_\_\_ Competitive Retailer will direct Retail Customers to call [Utility] to report outages, interruptions, and irregularities at the following toll-free number:

1-8XX-XXX-XXXX

IV. DESIGNATION OF CONTACT FOR MAKING SERVICE REQUESTS

Unless otherwise agreed to by Competitive Retailer and [Utility], Competitive Retailer will direct Retail Customers to call or contact [Utility] directly to make service requests. Competitive Retailer will provide Retail Customer with the following toll-free number supplied by [Utility] for purposes of such reporting:

1-8XX-XXX-XXXX

Alternatively, and only with the mutual consent one of the following options can be selected. \*If one of these options is selected, please place a check on the line beside the option selected. *These options and attendant duties are discussed in pro-forma access tariff section 4.10.1.*

\_\_\_ Competitive Retailer will direct Retail Customers to call Competitive Retailer to make service requests and will then electronically forward such information to [Utility].

\_\_\_ Competitive Retailer will direct Retail Customers to call Competitive Retailer to make service requests and will then forward such calls to [Utility] at the following toll-free number:

1-8XX-XXX-XXXX

V. DESIGNATION OF CONTACT FOR BILLING INQUIRIES

Competitive Retailer may direct Retail Customers to contact [Utility] for billing inquiries related to charges for Delivery Service. Competitive Retailer will provide Retail Customer with the following toll-free number for purposes of Delivery Service billing inquiries.

1-8XX-XXX-XXXX

VI. REPRESENTATIONS

By signing this Agreement, Competitive Retailer represents and warrants all of the following:

1. Competitive Retailer is authorized to sell Electric Power and Energy to Retail Customers in the State of Texas.
2. Competitive Retailer has completed all flight testing, both with the applicable financial institutions and with the Electric Reliability Council of Texas (ERCOT).
3. Competitive Retailer agrees, when necessary, to submit EDI bank payments in the form and method prescribed by [Utility].

VII. TERM

The term of this Agreement will commence upon the date of execution by both Parties (the "Effective Date"). This Agreement will terminate upon mutual agreement of the Parties or upon the earlier of the date (a) the Competitive Retailer informs [Utility] that it is no longer operating as a Competitive Retailer in [Utility]'s service territory; (b) a new Access Agreement between the Parties hereto becomes effective; (c) Retail Electric Provider is no longer certified by the PUC as a retail electric provider in [Utility]'s certificated service area; (d) Competitive Retailer has lost its municipal registration within the municipality, if applicable.

Termination of this Agreement for any reason will not relieve [Utility] or the Competitive Retailer of any obligation accrued or accruing prior to such termination.

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

VIII. SIGNATURES

[Utility] (insert name) \_\_\_\_\_

(legal signature) \_\_\_\_\_

(date) \_\_\_\_\_

**Competitive Retailer** (insert name) \_\_\_\_\_

(legal signature) \_\_\_\_\_

(date) \_\_\_\_\_