PROJECT NO. 25360

RULEMAKING PROCEEDING TO AMEND REQUIREMENTS FOR PROVIDER OF LAST RESORT SERVICE	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER
ADOPTING NEW §25.43, REPEAL OF EXISTING §25.43, AND AMENDMENTS TO §§25.478, 25.480, 25.482, AND 25.483 AS APPROVED AT THE AUGUST 22, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.43, relating to Provider of Last Resort (POLR) and amendments to §25.478, relating to Credit Requirements and Deposits; 25.480, relating to Bill Payment and Adjustments; §25.482, relating to Termination of Contract; and §25.483, relating to Disconnection of Service, with changes to the text as proposed in the *Texas Register* on June 7, 2002 (27 TexReg 4887). The commission adopts the repeal of existing §25.43, relating to Provider of Last Resort (POLR) with no changes as proposed in the *Texas Register* on June 7, 2002 (27 TexReg 4887). This order is entered into Project Number 25360, *Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service*.

New §25.43 alters the current structure for POLR service by phasing in the ability of retail electric providers (REPs) to disconnect non-paying customers. The affiliated REP will function as the POLR for non-paying customers by providing electric service at the price-to-beat (PTB), until such time as REPs may disconnect customers for nonpayment. In addition, the new section streamlines the process for selecting POLRs by prescribing bid requirements and POLR selection methods and ensuring transparency in the POLR selection process.

New §25.43 incorporates by reference three standard terms of service agreements, one for each POLR customer class. These documents have been adopted as figures appended to the rule.

Amendments to §25.478 exempt medically indigent customers, as defined in the rule, from electric service deposit requirements and allow low-income customers to pay deposits in two installments rather than one. Amendments to §25.478 also conform the provisions of the rule to the provisions of new §25.43. The amendments also eliminate more stringent deposit requirements for customers over the age of 65 and clarify that a guarantee agreement terminates when the customer whose service is guaranteed is no longer subject to the deposit requirements of the rule.

The amendments to §25.480 consist of non-substantive corrections to other rule sections as a result of amendments to §25.482 and §25.483. The amendments to §25.482 and §25.483 conform the provisions of those rules to the provisions of new §25.43. More specifically, these amendments implement the introduction of the right to disconnect for all REPs.

The commission initiated this rulemaking process on January 29, 2002. The commission hosted workshops in Austin on February 26, 2002 and April 17, 2002 to solicit input from the stakeholders. In addition, the commission conducted workshops in Dallas on March 7, 2002 and Houston on March 27, 2002 to specifically solicit comments from the low-income community. The commission voted to publish the proposed rule in the *Texas Register* at the May 23, 2002 open meeting.

A public hearing on this rulemaking was held at commission offices on July 2, 2002. Representatives from Reliant Resources, Inc. (Reliant), American Electric Power Company (AEP), Texas Legal Services Center (referred to herein along with other representatives of consumer groups as "Consumer Groups"), the Office of Public Utility Counsel (OPC), and TXU Energy Services (TXU) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on its rulemaking proposal from the Alliance for Retail Markets (ARM); Texas Legal Services Center, Texas Ratepayers' Organized to Save Energy, and Consumers Union (collectively, Consumer Groups); Barbara Alexander on behalf of Consumer Groups; Reliant Energy, Incorporated doing business as CenterPoint Energy Houston Electric (Centerpoint); Entergy Solutions Ltd., Entergy Solutions Select Ltd., and Entergy Solutions Essentials Ltd. (Entergy); Entergy Gulf States, Inc. (EGSI); Electric Reliability Council of Texas, Inc. (ERCOT); First Choice Power, Inc. (First Choice); Houston Energy Advocacy Team, a coalition of the following organizations and entities: the Better Business Bureau, Chinese Community Center, Christian Community Service Center, Harris County Social Services, Humble Area Assistance Ministries, National Hispanic Council on Aging Houston Chapter, Sheltering Arms Senior Services, St. Mary Magdalene, and United Way of the Texas Gulf Coast (HEAT); Mutual Energy CPL, LP, Mutual Energy WTU, LP, AEP Texas Commercial and Industrial Retail Limited Partnership, and POLR Power, LP, AEP-Central Power and Light Company, and AEP-West Texas Utilities Company (collectively AEP); OPC; Reliant; Republic Power, LP

(Republic); Texas Industrial Energy Consumers (TIEC); and TXU Energy Retail Company, LP (TXU Energy Retail Company, LP and TXU Energy Services are referred to herein collectively as TXU).

At its May 23, 2002 open meeting, the commission requested that REPs indicate in their comments on the rule whether they would bid on POLR service under the rule as proposed or under the rule as proposed with changes made to reflect comments of individual REPs. In response to this question, Reliant commented that if the rule were to be adopted with Reliant's proposed modifications, or if the issues raised by Reliant were otherwise satisfactorily resolved, Reliant would participate in the bid process. Reliant also commented that, if the rule is adopted as proposed, Reliant would have to assess market conditions at the time of the bid process to determine whether to participate in the bid process. Subsequent to the close of the comment period in this project, TXU indicated that it would decide whether it was going to bid once the rule is finally adopted. TXU stated that there was currently too much uncertainty to definitively respond to this question. Green Mountain also indicated after the close of the comment period that it might bid on POLR service under the proposed rule but would prefer to have the option to bid on large groups of customers at the time of their transfer to POLR. For example, Green Mountain would prefer to bid for customers in the instance of a REP defaulting, rather than bidding on POLR for a term that would result in an uncertain number of customers being transferred to the service.

Comments and responses to preamble questions:

In the preamble, the commission requested that interested parties address eight issues related to the implementation and final development of the proposed rule. The parties' responses to these issues are summarized below.

1. Are there methods for ensuring POLR service to customers as contemplated under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2002) (PURA) §39.101(b)(4) and §39.106, including customers who request POLR service, other than those set forth in the proposed amendments? If so, please explain those alternatives. Please identify the pros and cons of those methods and explain how they compare to the methods proposed in terms of ease of administration.

AEP proposed to require that all affiliated REPs be assigned responsibility for providing electric service in the service territory of their affiliated transmission and distribution utilities (TDUs) at the PTB, both for non-paying customers and customers whose chosen REP can no longer serve them. In support of its proposal, AEP noted (1) there is no basis in PURA for differentiating between non-paying POLR customers and customers transferred to POLR because their chosen REP can no longer serve them; (2) splitting up POLR responsibilities to serve non-paying customers and customers whose REP can no longer serve them will be inefficient; (3) establishing an entire POLR bidding and appointment process solely for those customers whose chosen REP can no longer serve them is expensive and time-consuming for REPs and commission staff; (4) limiting the POLR rate to 125% of the PTB will not adequately compensate a POLR, hence, no eligible REP is likely to bid to be POLR; (5) the affiliated

REPs have the size and experience to absorb a sudden influx of customers in the event a REP is unable to serve its customers; (6) assigning POLR responsibilities to the affiliated REP will result in lower rates for customers whose chosen REP can no longer serve them; and (7) any market concerns regarding assignment of POLR responsibilities to the affiliated REP for customers whose REP can no longer serve them are minimal.

Consumer Groups agreed with AEP that there will be so little POLR business under the proposed rule that the affiliated REP would be better off if all POLR business went to the affiliated REP. Consumer Groups also claimed that the proposed rule fails to provide reasonable POLR rates for customers for whom the market fails. Consumer Groups asserted that the commission should have a full accounting of potential costs and impacts of various strategies for providing POLR service and the impacts of disconnection policies on customers, the industry, and the commission.

Consumer Groups claimed that the proposed POLR rule almost guarantees rates that are higher than those previously approved by the commission, with no guarantee that the REPs appointed will be capable of fulfilling the duties of POLR.

Consumer Groups noted that, if the bidding process fails, the lottery process guarantees a POLR rate that is 125% of the PTB. This will result in POLR rates that are higher than the current rates. According to Consumer Groups, commission staff has been overly concerned with the affect that the POLR may have on the market if rates are too low, as reflected in the fact that the current rule provides

for a "perverse" scheme whereby the POLR rate can only be set at the PTB if no other REP bids to serve as POLR at a price higher than the PTB.

Entergy disagreed with commenters who suggested that customers whose REP goes out of business should automatically move to the affiliated REP. Entergy suggested that such an approach is inconsistent with PURA, which clearly distinguishes between POLR and PTB service. Entergy emphasized that POLR service should not create an alternative competitive offering. Entergy commented that it provided alternatives for POLR service through informal comments in this project as well as in Project Number 21408, *Provider of Last Resort*. In those comments, Entergy proposed four primary changes to the POLR rule: (1) allow the POLR the right to reset POLR prices on a daily, monthly, or semi-annual basis and allow for seasonality for all customer classes; (2) allow for some type of adjustment to the POLR rate to reflect a substantial market change; (3) allow for a minimum stay for a POLR customer; and (4) allow all REPs the right to disconnect. As one alternative, Entergy suggested allowing bidders to bid an adjustment factor over the PTB, with this factor reset periodically to reflect changed market conditions. For large non-residential customers, Entergy suggested that a rate structure indexed to the market is needed to prevent gaming by large non-residential customers.

ARM commented that because POLR service is transitory, the fairest price for the energy component is the actual price of electricity at the time the customer receives POLR service. According to ARM, a different method for procuring and pricing POLR service would be to allow REPs to bid for the non-energy components of POLR service and index energy component of the POLR rate to *Platt's*

Megawatt Daily or another index. ARM stated that selecting the best bid from this solicitation would give the customer a fair price, ensure cost recovery by the POLR, and be easy to administer.

First Choice recommended that the rule recognize the market value of customers of defaulting REPs and attempt to eliminate excess regulation with respect to these customers. First Choice noted that non-paying customers should constitute the vast majority of all POLR customers and that customers of defaulting REPs will represent only a small fraction of the potential POLR customer base. First Choice agreed that an affiliated REP should be permitted to serve as POLR in its affiliated TDU's service area. According to First Choice, an affiliated REP serving non-paying customers in its service area is better able to address the needs of non-paying customers in an efficient manner. First Choice commented that it has the infrastructure in place in its service area to serve the needs of its customers.

OPC commented that the "dominant REP," or the REP with the greatest market share, should serve as POLR for customers whose REP has gone out of business and for non-paying customers. OPC explained that the dominant REP would serve as POLR at the price it charges most of its customers in the applicable rate class. Any other REP wishing to serve as POLR would be able to do so provided it submitted a bid at less than the rate charged by the dominant REP. Under OPC's dominant REP proposal, the dominant REP would serve as POLR at the PTB unless another REP submitted a bid to serve as POLR at a price less than the PTB. After the PTB period, the dominant REP would serve as POLR at its most popular price plan unless another REP bid to serve as POLR at a price lower than the dominant REP's.

Consumer Groups supported OPC's proposal. While the Consumer Groups were in favor of the commission designating the affiliated REP at the PTB as POLR in each TDU service area, they stated that there may be competitive benefits to customers under OPC's proposal and believe that it is an acceptable alternative for selecting POLR providers. In reply comments, Consumer Groups reiterated their support for OPC's dominant REP proposal, noting that it is senseless to set up a process that will result in an unnecessarily higher POLR rate when the affiliated or dominant REP can perform the service profitably at a lower cost. Further they argued that setting the rate at the PTB, which is an above market rate, should not have an adverse impact on competition.

Entergy claimed that OPC's dominant REP proposal appears to violate the legislative intent of PURA and recommended rejection of the proposal for the reasons set forth in preamble question 7.

Reliant claimed that AEP, OPC, and Consumer Groups did not address the risk associated with providing POLR service. According to Reliant, each of their proposals assumes that the risk that the POLR will face is equal to the risk faced by competitive providers or the affiliated REP. Reliant argued, however, that when a REP exits the market and transfers all of its customers to the POLR with little or no notice, the POLR will have to procure power for an unknown load at the prevailing market price for power. In addition, Reliant stated that the POLR will not know how long the customer will stay; therefore, there is no way to hedge POLR risk or attempt to purchase power at favorable prices in the forward market.

With respect to OPC's claim that the dominant REP, because of its size, is better able to cope with the risk of REP default than other providers, Reliant stated that by making this claim OPC had effectively agreed that there may be a higher risk of providing service to POLR customers. Reliant emphasized that the POLR price should be sufficient to cover the cost of POLR service without having to rely on cross subsidies from other services or from shareholders.

In response to OPC's claim that the PTB is an above-market rate, Reliant stated that the affiliated REP has a more predictable load and a rule allowing price adjustments; therefore, the affiliated REP can partially hedge the risk of providing service by buying in the forward market. Reliant noted, however, that the POLR does not have a predictable load and may not have any load at all during a given month. Reliant explained that the POLR must rely on the spot market for power to serve its customers and it is impossible to determine whether the PTB would be adequate to serve customers.

Also, Reliant commented that the release of power under contracts held by a REP when it goes out of business would not increase the supply of power in the market because overall demand would not change.

In its reply comments, TXU stated that comments of certain parties indicate a desire to move POLR service back toward an environment of fully regulated prices and mechanisms. However, TXU argued that PURA §39.001(d) and §39.106 require that POLR service be implemented in a competitive

manner. TXU stated that OPC's dominant REP proposal seeks to impose a regulated rate structure on POLR service in violation of PURA.

A second alternative proposed by OPC would be to assign customers of a defaulting REP to all the other REPs eligible to serve that customer class. This proposal would only apply to the customers of a defaulting REP. Payment troubled customers would be handled as envisioned in the proposed rule by being served by the affiliated REP at the PTB. Customers assigned to a REP would be served at the REP's most popular rate plan. OPC claimed that the advantages of this proposal are that REPs can easily and inexpensively acquire new customers while reducing the risk that any one POLR could be forced to take on a large number of customers.

Consumer Groups did not support OPC's random assignment proposal. Consumer Groups expressed concern about customer confusion and the inability of the market to handle automatic random assignment. Consumer Groups recommended that, if the commission opts for random assignment, it must ensure that there is adequate notice to consumers, including a statement of their rights to switch service, and customers should be placed on a rate plan that is at or below the price of the customer's current service. They claimed that proposals by Reliant and Entergy to couple random assignment with premium pricing place the consumer at a greater disadvantage.

In support of its arguments that the PTB should be a cap on POLR rates, OPC discussed the acquisition of NewPower's customers by TXU and Reliant. OPC claimed that NewPower's default

demonstrates that abandoned customers may be served at rates at or below the PTB, and that the affiliated REP can fulfill the role of POLR in its own territory at the PTB in a profitable manner. Therefore, OPC recommended that any other REP wishing to act as POLR should provide the service below the PTB.

In its reply comments, OPC stated that the purpose of POLR service is to protect consumers from interruptions in electric service due to circumstances beyond their control. OPC claimed that by virtue of the PTB provisions of PURA §39.202, the POLR rate cannot be higher than the PTB because PURA §39.202 establishes a right for every residential and commercial customer to receive PTB service, regardless of whether the customer chooses a competitive REP that fails to serve the customer.

In response to OPC's comments regarding the NewPower default, Reliant stated that its agreement with NewPower is not the same as serving as POLR because the POLR provider has no opportunity to understand the customer base to be transferred or choose whether or not to accept the customers.

TXU also stated that OPC has erroneously concluded, based on the transfer of NewPower customers, that POLR service can be provided at a price lower than the PTB. TXU emphasized that the transfer agreements with NewPower were market-driven agreements entered into voluntarily, and that the negotiation process provided an opportunity to assess the power and other resources necessary to serve NewPower's customers. TXU also stated that the NewPower transactions demonstrate that the POLR process works as a safety net given that POLRs stood ready to serve these customers if needed.

According to TXU, the fact that POLR rates would have been higher than the rates ultimately charged these customers does not prove that POLR rates are too high. TXU suggested that POLR rates must be higher than competitive rates due to the unpredictable nature of POLR service and that the commission should reject proposals that POLR service be at or below the PTB.

TXU also commented that OPC's proposal for POLR service in 2007 and beyond is problematic because a REP's most popular rate plan may be entirely inappropriate for the unanticipated customer or group of customers a POLR receives.

Reliant supported the use of a market-based monthly adjustment to the POLR price, noting that it is a significant enhancement over the current rule. However, Reliant proposed changes relating specifically to the POLR pricing methodology as discussed under preamble question 2 and subsections (k) and (l) of proposed §25.43.

TIEC commented that the competitive solicitation process in the proposed rule is the best means of ensuring POLR service to customers. TIEC noted that competitive processes are preferable to assignment of POLR responsibilities to individual REPs. TIEC explained that a POLR designated by the commission will have no incentive to control the cost or maximize the quality of such service. In addition, TIEC asserted that by tying POLR rates for large non-residential customers to prevailing generation market prices, the commission would reduce risks associated with providing POLR service

to involuntary customers with little or no advanced notice. According to TIEC, this reduction in risk should be accompanied by a reduction in the risk premiums included in bids for POLR service.

TXU supported the commission's efforts to amend the POLR rule but had concerns about changing the statutory role of the POLR as it was envisioned in the current POLR rule so early in the process for fear that such an action would be construed as a market failure and create problems that do not exist in the current environment. TXU advocated selection of POLRs through a competitive bid process and recognition of the fact that POLR service is not the same as PTB service.

TXU also summarized the proposals it previously made in this project. The first required bids based on a commission-determined base price to which the POLR would add a percentage. Customers would receive price reductions from the POLR price for consistent timely payment and the base price could be adjusted using the methodology in the PTB rule. Under TXU's second proposal, a REP would submit bids offering two prices, one based on a six-month term and the other for month-to-month service. Under the fixed term proposal, customers would be required to stay through the end of the term, no matter when they were first transferred to POLR. The base price could be adjusted for changes in the market price of natural gas and purchased power in accordance with the methodology in §25.41 of this title (relating to the Price to Beat). The month-to-month offering would be based on a percentage over the term price offer. TXU indicated that while it still believes its two proposals were reasonable and consistent with the POLR statutory mechanism, it could support the proposed rule if its other proposed modifications to the rule were adopted.

OPC recommended rejecting TXU's proposed POLR structures. OPC argued that TXU's first proposal, to base POLR rates on rates reported in electricity facts labels is problematic because the facts labels will be hard to compare. Further, OPC questioned whether premium services should be included in the calculation. Third, OPC noted that a peak month is used under TXU's proposal to set the price for the entire month and, therefore, there is no need for an adder. OPC also stated that it is unlikely that the System Benefit Fund (SBF) would be able to provide the added coverage envisioned by TXU and, even if it could, there are policy implications that to be examined. OPC noted that the more money used to fund the POLR means less money for other programs, including the low-income discount.

OPC also objected to TXU's second proposal, noting that it aims to segment the POLR market by allowing POLR customers to choose between month-to-month service and minimum stay service. OPC voiced its opposition to minimum stay provisions. OPC opposed the minimum stay provisions.

ERCOT commented that implementation of the new structure contemplated in the POLR rule will involve systems issues that will need to be addressed. According to ERCOT, developing and implementing the systems required to effectuate the new structure could take six months or more.

The commission appreciates the efforts that commenters have taken to thoughtfully and thoroughly evaluate alternatives to the POLR structure envisioned in the proposed rule. After having considered

the comments received, the commission finds that the structure for POLR service envisioned in the proposed rule should be adopted.

The commission disagrees with commenters who seek to have the affiliated REP or the dominant REP serve as POLR. This approach is inconsistent with PURA §39.106, which contemplates that POLR providers will be selected on a competitive basis.

Second, the commission agrees with commenters who argued that POLR service carries greater volume and price uncertainty than the PTB. The structure for POLR service established under PURA does not support the view that the costs of POLR service should be subsidized through rates paid by either PTB customers or customers of any dominant player in the market or that those rates must of necessity be at or below the PTB. Rather, POLR rates should reasonably reflect the costs and risks of POLR service in the marketplace. Nevertheless, the commission recognizes that, at this point in time, POLR service may not be fully competitive and, for that reason, has proposed caps on POLR rates. However, the commission finds that the general structure for POLR service in the proposed rule lessens the risks of POLR service under the current rule and, as a result, POLR rates should moderate over time in the competitive environment.

While the commission concludes that POLR service should be bid competitively in the marketplace, it does not find that POLR rates stand as an alternative to the PTB against which competitive REPs should compete. Rather, POLR service should be a transitory service that serves as a bridge to

alternative offerings in the marketplace. Therefore, the commission rejects proposals to cap POLR rates for residential customers at the PTB. Instead, the commission has included a floor on POLR rates equal to the PTB as discussed more fully in response to preamble question 2 and subsection (l).

A number of commenters questioned the need for the development of a structure for POLR selection and rate setting in light of the proposal to allow all REPs to disconnect after 2004 and, in the interim, require all nonpaying customers to be terminated to the affiliated REP rather than the POLR. The commission recognizes that there will be few, if any, circumstances where customers of a defaulting REP will be transferred to the POLR. Experience in the market with NewPower demonstrates that a REP's customers can have value in the marketplace and the commission expects that, more often than not, a REP exiting the market will find other REPs who will willingly begin serving the exiting REP's customers. The POLR has no inherent right to acquire customers whose REPs leave the market, and cannot expect to receive customers who are transferred by their REP to an acquiring REP. However, the commission can foresee a circumstance where other players in the market would not be willing to take on an existing REP's customers. For example, the customers of an exiting REP may have long-term, below-market contracts. Other REPs in the market may not be willing or able to serve the exiting REP's customers at their below-market rates and those customers would therefore be transferred to the POLR upon their provider's exit from the market.

Commenters who raised this issue also generally failed to recognize that under PURA §39.101(b)(4), any customer is entitled to request POLR service. Thus, POLR service must be available for customers

whose REP defaults, customers who request POLR service, and customers whose current provider fails to continue to provide service for reasons other than non-payment (as, for example, a customer who fails to renew its contract with its REP at the expiration of the contract term or fails to find an alternative provider). Thus, some type of POLR structure would need to be in place even if the commission did not anticipate that customers of any defaulting REP would be transferred to POLR. The commission finds that the structure for POLR selection under the proposed rules will streamline bidding for POLR service to such a degree that it will not impose any undue burden on market participants.

The commission also concurs with commenters that expressed skepticism about the practical implications of randomly assigning customers to the POLR. The commission recognizes that there are advantages to this approach. In particular, it would result in equitable allocation of POLR responsibilities among market participants and altogether eliminate any need for a specific POLR selection process. Nevertheless, the commission concludes that this alternative is unworkable for a number of reasons. First, it does not appear to comport with the legislature's intention that POLR service be awarded on a competitive basis where possible. Second, the commission has concerns that customer confusion would arise in the event that customers were randomly allocated among REPs in the market. It could be difficult for customers to determine who their provider was and what their rate would be for a number of days or even weeks after random assignment. In addition, there could be delays in billing customers who were randomly assigned. And the commission foresees problems in establishing or enforcing any pricing policies established under a random assignment process. For these

reasons, the commission declines to adopt the random assignment processes recommended by various commenters.

The commission also disagrees with AEP's comments that PURA provides no basis for distinguishing between non-paying customers and customers of defaulting REPs. The commission interprets PURA §39.106 as providing a safety net to protect customers from loss of service due to aberrant market behavior. In the short-term, it is appropriate to include the more vulnerable residential customers within the scope of the safety net until the commission has had the opportunity to evaluate whether the market as a whole can fairly and equitably deal with non-paying customers. If so, there is no need to continue to afford these customers the protections of the POLR safety net because the commission would not expect aberrant behavior with respect to disconnects of non-paying customers. Further, the risk of serving non-paying customers is inherently different from the risks associated with providing safety net service to other customers and the commission has therefore treated non-paying customers as a separate class as permitted under PURA §39.106(b).

On balance, the commission finds that the POLR structure in the proposed rule is the best alternative for providing POLR service at the current time. As discussed more fully in response to preamble question 5, the commission finds that it should move to a system where non-paying customers are disconnected rather than being transferred to the POLR. The POLR rate floors and caps adopted in the rule will ensure that POLR service does not become a competitive offering in the marketplace while also

ensuring that there is some rate protection for customers in the absence of a fully competitive market for POLR service.

In response to comments from affiliated REPs expressing interest in serving as POLR in the service area of their affiliated transmission and distribution utility (TDU), the commission has revised the POLR eligibility requirements to permit the affiliated REP to bid for POLR service in the service area of its affiliated TDU at the PTB. The commission has also revised the provisions of the rule concerning the format of bids to include the option for any bidder to bid the PTB.

The issues raised by ERCOT have been the subject of discussion between market participants and ERCOT. The commission understands that a proposal has been developed for implementing the provisions of the rule in the timelines specified herein. The commission directs market participants and ERCOT to take the steps necessary to implement the rule as specified herein.

2. Instead of requiring the POLR rate to automatically fluctuate if prices move either up or down by more than 5.0%, would it be more appropriate to structure POLR service in a manner similar to price-to-beat service, where the provider would have the discretion of when (or whether) to adjust the rate, in accordance with the gas price formula outlined in the rule? Would the additional rate stability provided by such a structure be an added benefit to consumers and/or POLRs? Are there other methods for adjusting the price of POLR service

that should be considered by the commission? If so, what are those methods and the benefits to customers and/or POLR providers?

AEP stated that it makes little sense to establish a complex POLR pricing scheme if it is uncertain whether one is even needed. AEP suggested that it is more reasonable and logical to require the affiliated REP, who is statutorily required to charge the PTB, to provide electric service to non-paying customers as well as customers whose REP is no longer providing service.

ARM commented that the more flexibility allowed the POLR to adjust energy rates, the lower the risk premium the POLR has to build into its rate. ARM supported a variable POLR rate that would provide automatic adjustments for all energy price fluctuations and urged the commission to adopt such a proposal. In the alternative, ARM proposed reducing the 5.0% threshold to 2.5%.

Consumer Groups commented that the pricing proposal will not likely result in rates that are substantially different from the current POLR rates. They stated that the downward adjustment to the energy charge is the only portion of the proposed methodology that provides any benefit to consumers. Consumer Groups also argued that the floating nature of the price adjustment does not comply with the statutory requirement of a fixed rate. They supported OPC's proposal to peg the POLR rates for each TDU service area territory to the corresponding PTB rate.

In reply comments, Reliant cited case law that supports the view that a fixed formula rate, such as the one in the proposed rule, is equivalent to a fixed rate. Reliant supported the notion of monthly price adjustments but proposed modifications, such as revisions to the energy price adjustment methodology and the inclusion of a price floor and seasonality in the rate structure. These modifications are addressed in more detail under §25.43(k) and (l) below.

In reply comments Entergy disagreed with Consumer Groups that POLR rates should be capped at the PTB. Entergy stated that such a pricing mechanism clearly ignores the risks and uncertainties inherent in serving a potentially large number of customers whose REP fails to perform, because the POLR must be ready to obtain services in the spot market or maintain reserve standby capacity.

Entergy stated that a monthly market-based adjustment is more appropriate than the current PTB fuel-factor adjustment methodology. Entergy stated that POLRs need to be able to adjust the energy component of the price as quickly as possible to maintain financial integrity and market stability. Entergy commented that although a PTB fuel factor adjustment mechanism may provide some rate stability for a short period of time, such stability does not outweigh the benefits of a more frequent adjustment. Entergy also voiced a concern that delays in implementing an adjustment may place undue pricing pressures on POLR providers.

Reliant agreed with Entergy's concerns about whether the energy charge adjustment mechanism contained in the POLR rule will function as expected and will provide the price adjustments needed to allow POLRs to respond to changes in market energy prices.

First Choice stated that although it believes there are problems with the PTB fuel factor adjustments, this type of methodology is preferable to the use of the monthly adjustments contemplated under the proposed rule. First Choice suggested that a monthly rate adjustment similar to the old purchased cost recovery factor (PCRF) might be an acceptable adjustment methodology. First Choice stated that monthly adjustments should be treated as a monthly update and not as a traditional filing.

OPC strongly opposed changing the methodology for allowing changes in POLR prices. It stated that allowing POLR rates to adjust in the same manner as the PTB would result in a negative outcome for consumers. Since there is no obligation to reduce the fuel component of the rate, OPC stated that using the same methodology for POLR rate adjustments as PTB rate adjustments would result in higher POLR rates.

In reply comments, OPC disagreed with parties that recommended that POLR rates should be indexed above the applicable PTB. OPC stated that there is no justification for POLR rates to be calculated in such a manner; the PTB cases resulted in profitable rates and there is no reason for ratepayers to pay more.

TXU recommended two changes to the proposed rule. First, it recommended that the POLR be given the option to exercise the price adjustment mechanism proposed in the rule at its discretion. Second, TXU commented that the rule should not force the adjusted POLR price to go below 110% of the PTB. TXU stated that frequent price changes are likely to be a source of continued confusion and expensive to administer. TXU also stated that if the POLR rate falls below the PTB, POLR service will become a competitive offering in the market which is not what the legislature intended.

The commission disagrees with commenters who suggest that price adjustments should be solely at the discretion of the POLR provider. The commission proposed mechanisms to allow the POLR rate to adjust to market price changes in response to concerns that POLR rates under the existing POLR rule must of necessity be set high because there is no mechanism for rates to adjust during the term of the POLR contract. Therefore, the commission finds that the adjustment mechanisms it has proposed and adopts herein will help moderate POLR rates.

In response to TXU, the commission finds that leaving the decision about whether to adjust rates downward to the discretion of the POLR conflicts with the commission's goal of moderating POLR rates. This energy charge adjustment mechanism is intended to provide timely adjustments to the POLR rate. Upward adjustments will ensure that the POLR is able to recover its costs during periods when electricity prices are likely to be high. Conversely, downward adjustments will benefit customers by reducing the rate when electricity prices are bwer. If the decision of whether to change the energy

charge is left solely to the POLR's discretion, it is possible that customers will not see benefits from this mechanism in terms of lower rates when natural gas prices fall.

The commission also disagrees with Consumer Groups' arguments that the proposed rate structure is impermissible because it is not a fixed rate. As noted by Reliant, courts have previously determined that a fixed formula rate is in fact a fixed rate. For example, the court in *City of Norfolk v. Virginia Electric & Power Co.*, 197 Va. 505, 90 S.E.2d 140, 148-149 (1955) stated: "The proposed escalator clause is nothing more or less than a fixed rule under which future rates to be charged the public are determined. It is simply an addition of a mathematical formula to the filed schedules of the Company under which the rates and charges fluctuate as the wholesale cost of gas to the Company fluctuates. Hence, the resulting rates under the escalator clause are as firmly fixed as if they were stated in terms of money." In adopting Senate Bill 7 (SB7) 76th Legislature (1999 Texas General Laws 2543), the legislature clearly recognized the need to allow rates to adjust based on fuel costs. For example, PURA §39.202(l) contemplates adjustment of the PTB periodically as needed to reflect changes in fuel and purchased energy charges. The commission does not believe that in specifying that the POLR rate should be a fixed rate the legislature intended to preclude adjustment of the rate to reflect changes in the price of fuel or purchased energy. Allowing the energy charge to adjust based on the price of gas will also help moderate the risks of POLR service therefore moderating POLR rates to the ultimate advantage of customers.

With respect to ARM's recommendation that the triggering percentage change in gas price be reduced to 2.5% from 5.0%, the commission notes that ARM has not provided any rationale for this change. The 5.0% adjustment trigger is closer to the PTB adjustment trigger approved by the commission in §25.41 (relating to Price to Beat). In addition, a 5.0% trigger will result in more rate stability than the 2.5% trigger recommended by ARM. Therefore, the commission retains the 5.0% trigger for adjustments to the energy charge component of rates for residential and small non-residential customers.

As discussed more fully in response to preamble question 1 and subsections (k) and (l), the commission finds that the floor for the POLR rate for residential and small non-residential customers should be 100% of the PTB.

3. Is the use of the average market clearing price for energy (MCPE) as the base for the POLR rate for large non-residential customers appropriate, or should some other market index, such as *Platt's MegaWatt Daily* be used? Is an index such as *Platt's MegaWatt Daily* that is developed as a survey of trades susceptible to manipulation?

AEP explained that any pricing mechanism used to calculate the base for the POLR rate for large non-residential customers should include the following elements: (1) a rate based upon a natural gas-based index multiplied by an agreed upon heat rate; (2) a rate that can be adjusted to reflect changing market conditions; and (3) the MCPE (settling every 15 minutes) must be aggregated into some type of weighted average because not all customers subject to this rate have telemetry.

ARM commented that it supports the use of *Platt's Megawatt Daily*. ARM reasoned that the balancing energy market is intended to represent the costs of balancing the system due to scheduling error; it is not the spot market. ARM stated that unless ERCOT's balanced schedule requirement is relaxed or eliminated, REPs will not be able to guarantee purchases at the MCPE.

AEP, in its reply comments, agreed with ARM that an index such as *Platt's Megawatt Daily* should be used as the base for the POLR rate for large non-residential customers because it is more representative of what POLR is—a month-ahead or day-ahead obligation to serve. MCPE, according to AEP, is more appropriate for hourly activities. AEP stated that an index based on *Platt's Megawatt Daily* will be easier to implement because it is a standard, unshaped product that can be tracked and is administratively less burdensome.

Entergy commented that at this time, the MCPE is probably an appropriate base for the POLR rate for large non-residential customers relative to *Platt's MegaWatt Daily*. According to Entergy, *Platt's MegaWatt Daily* may be subject to inaccuracies due to the very nature of its construction. Entergy stated that the MCPE, on the other hand, reflects actual trading volumes and prices in the ERCOT market and is a better indication of market-based energy costs for the large non-residential customers.

First Choice commented that using the MCPE as the cost basis for energy presents two problems. First, smaller REPs may not have the ability to capture the same pricing as larger players. Second, the

wholesale block price does not truly reflect the costs of shaping the energy to the customers' actual usage patterns. First Choice noted that trades would not be susceptible to manipulation using indices such as *Platt's MegaWatt Daily*, but any index would not necessarily reflect the true costs for serving these customers.

Reliant supported the use of a market-based price indicator but stated that either the MCPE or *Platt's Megawatt Daily* could be used for this purpose.

TIEC also supported the commission's proposal to use the ERCOT MCPE as the base for the POLR rate for large non-residential customers. TIEC stated that POLR providers cannot arrange forward power purchases due to their inability to forecast their future loads because customers will likely take POLR service involuntarily and for a short period of time. Therefore, TIEC asserted, POLRs in ERCOT will rely on the ERCOT balancing energy market to procure the bulk of their supplies. Since the MCPE reflects the cost of balancing energy in ERCOT, TIEC claimed that it is reasonable to use the MCPE as the basis for the large non-residential rate because it constitutes the actual cost of providing the service. TIEC also commented that use of the ERCOT MCPE is preferable to market indices, such as those developed by *Platt's Megawatt Daily*, which suffer from a lack of underlying liquidity in many reporting periods, particularly during off-peak hours. TIEC also commented that there is no need for a demand charge and no need for a floor for the MCPE.

TXU commented that the energy pricing structure for the large non-residential customers should include an energy charge that may be seasonally differentiated similar to the large non-residential POLR price structure in 2002. This structure would produce a simple comparison for bid purposes of three elements: a monthly customer charge, a demand charge billed using the customer's highest kW recorded in the previous 12 months, and an energy charge for two seasons. The seasonal pricing would be based on the period from November through May for off-peak energy consumption and the period from June through October for on-peak consumption. Bills for these customers would also include charges passed through by the REP serving as POLR such as non-bypassable charges from the transmission and distribution utilities. TXU commented that adjustments should be allowed to the energy portion of the large non-residential POLR price under the same mechanism described in TXU's response to preamble question 2. TXU also commented that if the commission elects to utilize the MCPE bid methodology on pricing for large non-residential POLR customers, no explicit dollar values should be placed on a price floor. Instead, each REP bidding for that service should be allowed to reflect in its bid any price floor it advocates. Also, in the event the commission decides to choose the MCPE bid methodology, TXU recommended adding language to subsection (k)(2)(C)(iv), which defines the bid elements for the large non-residential customer class.

The commission agrees with Entergy, Reliant, and TIEC. *Platt's Megawatt Daily* is more likely to be susceptible to errors than the MCPE because it is comprised of a survey of trades in which traders could report mistaken or inflated or deflated prices, or not report trades at all. Use of the MCPE as an index for pricing for large non-residential customers is therefore more appropriate than use of *Platt's*

Megawatt Daily. In submitting bids for the large non-residential customer class, REPs can bid a percentage above the MCPE as necessary to reflect the risk they believe lies in use of the MCPE as an energy index. The commission declines to adopt the pricing methodology recommended by TXU. The commission expects to moderate POLR rates by ensuring that rates can be adjusted to reflect changes in the cost of power in the market, and TXU's proposal does not include such a rate moderation mechanism.

4. Are the provisions of the Terms of Service [Agreements], in particular the provisions concerning limitation of liability, appropriate for POLR service? If not, what additional or alternative provisions are appropriate and why?

First Choice commented that the provisions of the Terms of Service Agreements (TOSA) are appropriate. TXU, Reliant, TIEC, Entergy, and AEP proposed various changes to the TOSA, as discussed below.

Limitation of liability

Entergy commented that language in the TOSA concerning limitation of liability and indemnity should exempt the POLR from liability associated with any fluctuations, interruptions, or irregularities in basic firm service. Entergy explained that the POLR has no control over these issues, which are associated with the generation, transmission, and distribution of electricity. Reliant also noted that some provisions

in the limitation of liability section address issues related to the failure of electric delivery facilities that are not appropriate for POLR service because the POLR will not own, operate, or exert any direct control over these types of facilities. As a result, Reliant asserted, the POLR should have no liability with respect to the cost of damages related to these facilities. Reliant proposed language that would clarify that certain events and circumstances out of the control of the POLR may result in service fluctuations, interruptions, or irregularities. Reliant's proposed language also addressed the POLR's liability for damages resulting from its own negligence (i.e., to limit liability to direct, actual damages only and to specify that such damages shall be the sole and exclusive remedy and that all other damages or remedies at law or in equity are waived).

Entergy also recommended language to limit the POLR's liabilities not excused by reason of force majeure or otherwise to direct, actual damages. Moreover, Entergy suggested language to limit the POLR's liability for any damages or injury caused by the electricity on the customer's side of the meter after delivery to the customer. This limitation would include claims arising from the POLR's negligence.

In its response to preamble question 6, AEP also proposed a new limitation of liability provision to the TOSA for accidental or inadvertent disconnection of service. Under AEP's proposal, the POLR would not be liable for consequential, incidental, punitive, exemplary, or indirect damages, penalties of any nature, or loss of profits, revenue, or production capacity.

TIEC emphasized, however, that no limitation of liability for the POLR's own acts should apply. According to TIEC, if a POLR disconnects a customer wrongfully, whether by negligence, gross negligence, or intentionally, it should be liable for full damages. TIEC noted that the current limitation in the pro-forma tariff for retail delivery service only exempts REPs from liability occasioned by the TDU or ERCOT, which the REPs do not control. TIEC suggested that a similar limitation of liability should apply in the case of POLR service. In addition, TIEC recommended rejecting Reliant's, Entergy's, and AEP's suggestion to extend the POLR's limitation to only direct damages, even in the case of gross negligence or intentional misconduct. Consumer Groups agreed with TIEC.

Reliant disagreed with TIEC that the POLR should have no limitation of liability. Reliant pointed out that there is no basis to subject the POLR to less protection than was afforded the integrated utility prior to competition.

TXU indicated that the limitation of liability language in the TOSA is reasonable for POLR service.

The commission agrees with commenters who expressed support for a relatively broad limitation of liability for the POLR. The POLR provides a regulated service at a regulated rate. Because of the nature of POLR service, the commission finds it is appropriate to generally limit the POLR's liability in much the same fashion as liability of bundled utilities was limited prior to the onset of retail competition. Without this limitation, higher POLR rates would likely result. Further, the commission has reviewed the terms of service filed by REPs with the commission as required by §25.475(c) of this title (relating to

Information Disclosures to Residential and Small Commercial Customers). These terms of service statements generally limit a REP's liability in the same fashion as the commission has done in the TOSA. The commission finds that the liability of the POLR should not exceed general industry standards for liability. The commission has therefore revised the TOSA to include a broad limitation of POLR liability consistent with limitations in the regulated environment and with current industry standards.

Centerpoint indicated that non-performance or performance of the TDU should not be listed as an event of force majeure and, therefore, recommended deleting the reference to TDUs in this section of the TOSA. Centerpoint explained that the TDU should not be held liable if the REP's request is incorrect or unauthorized. Entergy recommended adding terrorism to the list of force majeure events.

The commission agrees with Entergy that terrorism should be added to the list of force majeure events, and amends the TOSA accordingly. The commission disagrees with Centerpoint, however, that non-performance or performance of the TDU should be removed from the list of force majeure events. The action or inaction of the TDU is not in the POLR's control; therefore, it is appropriate to leave this language in the TOSA. This language does not in and of itself impose any liability on the TDU.

Entergy recommended deleting the first paragraph in Section 11 of the TOSA, related to the description of basic firm service, because it is redundant.

The commission disagrees that this paragraph is redundant and, therefore, declines to delete it.

EGSI commented that the proposed rule should not result in any changes to the rights and obligations to TDUs.

The commission agrees. The commission finds that the TOSA as adopted do not impact the rights and obligations of the TDUs. No change was made in response to this comment.

POLR charges and fees

Entergy challenged the commission's ability to establish non-recurring fees, such as the fee for processing a collection letter, for the POLR as set out in the proposed TOSA. Entergy argued that PURA does not explicitly authorize the commission to pre-determine the level of such fees.

The commission disagrees with Entergy that it lacks authority to approve non-recurring fees for POLR service. PURA §39.106 provides that the POLR shall offer a standard retail service for each class of customers designated by the commission at a fixed, non-discountable rate approved by the commission. The non-recurring fees are a key element of the standard retail service package and rates charged by the POLR, which must be approved by the commission. Therefore, the commission declines to remove these fees from the TOSA.

OPC opposed the disparities in the proposed service charges for residential and small non-residential customers. OPC noted that it could see no reason for the collection letter charge to be $30 for small non-residential customers and $15 for residential customers. OPC suggested that both charges should be $15 or less because such letters cost no more to issue to either customer. OPC also argued that there is no justification for a disconnection reminder notification charge to a small non-residential customer that is twice what a residential customer is charged. According to OPC, the charges to both classes of customers should be $5 or less.

The commission agrees with OPC that the collection letter charge and disconnection reminder charge should be the same for all customers because the service provided is not differentiated by electricity usage. The commission also finds that it is reasonable for all customers to pay the charge applicable to residential customers, to the extent any such customer is assessed these non-recurring fees. The commission has revised the TOSA accordingly.

TXU proposed language to make the monthly energy charge adjustment in the TOSA optional for the POLR, as discussed previously under preamble question 2.

As discussed previously, the commission declines to make the energy charge adjustment optional.

TXU also recommended new POLR processing fees, which would apply in addition to TDU charges, for the disconnection ($25), equipment testing and monitoring ($25), guardlight/security lighting ($10),

meter re-read ($10), and tampering of electric service ($50). In addition, TXU proposed two new fees in the amount of $5.00 each for using a credit/debit card and for the POLR mailing a certified letter to the customer. TXU also proposed assessing late fees on late payments or delinquent balances of residential customers (i.e., not only for delinquent deferred payment arrangements but for all accounts).

TXU did not explain the rationale for these additional fees and the commission finds no reason to include them in the TOSA. Moreover, §25.480(c) and (j) of this title do not permit the POLR to charge late fees to residential customers, except those on deferred payment arrangements. Therefore, the commission declines to make TXU's proposed change to the residential TOSA. In addition, the commission has eliminated the late fee provision for small non-residential customers with usage below 50 kW consistent with §25.480(c).

In addition, TXU suggested that the energy charge component of the guardlight/security lighting charge include the customer charge, estimated non-bypassable charges, applicable taxes, service charges, and other fees and costs as permitted by governmental or regulatory authorities.

The commission finds that the rate for guard/security lighting will be 125% of the applicable PTB. The commission does not find that a customer charge is appropriate given that guard/security lighting will likely be only one component of a customer's bill and allowing recovery of a customer charge for guard/security lighting may result in double recovery of customer charges.

In the large non-residential TOSA, TXU recommended adding a $100 per hour charge to set up the special bill form, in addition to the $25 per Electric Service Identifier (ESI ID) charge in the proposed TOSA. TXU also suggested that the $25 per ESI ID charge apply on a monthly basis rather than a one-time charge. In addition, TXU proposed language that states that the form setup and manual data entry cannot be guaranteed complete within the 16-day due date period and that the customer is still required to pay on or before the due date. Reliant proposed omitting the provisions for special bill forms from all of the TOSA. Reliant noted that this service is for manually prepared bills requested by the customer. According to Reliant, such special provisions are inappropriate given the objective to standardize the terms and conditions for POLR service.

The commission agrees with Reliant and amends the TOSA to delete the provisions for special bill forms.

Entergy commented that the TOSA for non-residential customers with a demand of 50 kW or more and large non-residential customers should contain a provision that allows the POLR to pass through gross-receipts tax as a separate non-bypassable charge.

The commission concludes that no change to TOSA is needed because the TOSA for large non-residential customers already allows the POLR to pass through the gross-receipts tax as a non-bypassable charge. For small non-residential customers, this pass-through is also addressed in the TOSA where the POLR rate is established by bid. Where the POLR rate for small non-residential

customers is established by lottery, no pass-through is appropriate because non-bypassable charges are already reflected in the PTB rate used as the basis for setting the rate for small non-residential customers.

Entergy also commented that, for all customer classes other than the residential class, a minimum contract demand should be defined as: "the greater of the highest quantity of demand (in kW) as measured by the TDU during any 15 or 30 minute interval or other interval as provided by the TDU during a billing cycle or the highest such quantity of demand during the previous 12 months." Entergy noted that this definition would require the customer to maintain a certain level of usage and allow the POLR to plan for supply and calculate a minimum payment for the number of days the customer is with the POLR. For customers without a demand meter, Entergy proposed calculating billing demands based on one kW for a certain kWh or fraction thereof, specific to each TDU service area.

Reliant and TXU recommended deleting the section in the TOSA for large non-residential customers that states that non-demand metered customers will be billed a demand charge based on an assumed ten kW monthly. Reliant explained that this provision is not applicable to customers over one MW, which are all demand metered. Reliant also suggested that the TOSA for the large non-residential customer class specify how demand will be determined for billing purposes. Reliant proposed that demand be based on a customer's highest peak demand for a 15-minute interval for the previous 12 months.

The commission disagrees that demand should be based on a customer's highest peak demand over a 15-minute period interval or other interval during the previous 12 months. Such a ratcheted structure is not appropriate for POLR service, which is intended to be short-term and transitional in nature. The commission finds that the demand charge should be based on the highest billing demand in any interval within the billing period. The TOSA for large and small non-residential customers have been revised to specify the period over which the customer's demand will be determined. The commission agrees with Reliant and TXU that it is not necessary to include in the large non-residential TOSA the language stating that non-demand metered customers will be billed a demand charge based on an assumed ten kilowatts monthly and has revised the large non-residential TOSA accordingly.

Other terms of service

AEP commented that the proposed TOSA provisions allowing a customer who has applied for or is currently enrolled in LITE UP Texas to pay the initial deposit in two installments is unworkable and unreasonable. AEP explained that the POLR has no way of knowing that any particular customer dropped to POLR is enrolled in the low-income discount program. AEP also pointed out that, depending on when a customer is dropped to POLR, it may take more than a month before the POLR receives notification from the Low-Income Discount Administrator (LIDA) that the customer qualifies for the discount. Moreover, AEP asserted that allowing such customers an additional 40 days to pay their deposits in full only increases the POLR's financial risk without adequately compensating the POLR.

The commission disagrees with AEP that this provision of the TOSA is unworkable and unreasonable. First, the customer, not the POLR, has the burden of demonstrating that the customer has applied for, or is enrolled in, the low-income discount program. The commission notes, however, that the allocation of this responsibility to the customer is not reflected in §25.478(f) of this title and has revised that provision to clearly allocate to the customer the responsibility for demonstrating the customer's eligibility for this benefit. Second, requiring the full deposit to be paid within 40 days is reasonable and adequately protects the POLR for credit risk posed by low-income customers because the amount of the deposit (i.e., two months of service) and the installment due dates correlate with the length of time that the POLR will have served the customer. It should also be noted that a relatively small percentage of customers are low-income customers.

In the security and billing section of the residential TOSA, TXU proposed adding a condition for demonstrating satisfactory credit (i.e., the customer did not have service disconnected for non-payment). In addition, TXU proposed language that specifies that a residential customer may be deemed as having established satisfactory credit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency. TXU also suggested adding language that specifies that the POLR may not require a deposit if the customer is able to provide a credit reference letter that outlines the conditions for demonstrating satisfactory credit.

In proposed §25.478(a)(3)(A)(iv), the commission deleted the credit requirement that a customer did not have service disconnected for non-payment. This provision was unnecessary because, before a customer could be disconnected for non-payment, it would have been delinquent in making a payment. Delinquency in payment is a circumstance that is already addressed in the rule. Therefore, it is not appropriate to include this condition in the TOSA. The language proposed by TXU related to a satisfactory credit rating is consistent with §25.478(a)(3)(B) and, therefore, the commission finds it appropriate to include this language in the residential TOSA. The commission also agrees with TXU that a credit reference letter would be an appropriate means for the customer to demonstrate that the customer has met the credit requirements, and revises the TOSA accordingly.

In section 2(a) of the residential TOSA, TXU proposed allowing the POLRs (or the POLR) to provide notification to the guarantor of the customer's account if the customer defaults. In section 2(a)(13), TXU also suggested a clarification that the customer must not have more than two delinquent payments within the last 12 months in order to terminate the guarantee agreement.

The commission finds that the proposed changes are reasonable and amends the TOSA accordingly.

In section 2(b) of the residential TOSA, TXU suggested that the initial pay-in-advance billing should include charges for the two *highest* months average consumption during the prior year. In addition, TXU proposed deleting two sentences in section 2(b)(2) of the residential and small non-residential TOSA, which state that the initial pay-in-advance statement will not include the average cost per kWh

or the monthly customer charge but that subsequent billing statements will include these charges based on actual consumption. In the large non-residential TOSA, TXU suggested that, once there is an established customer history of three months usage (instead of six months), the POLR may revise and adjust the pay-in-advance amount. Moreover, TXU's proposed language specifies that the POLR may adjust the pay-in-advance amount if at any time the sum of the customer's two highest monthly bills exceeds the pay-in-advance amount.

The commission disagrees with TXU that the initial pay-in-advance billing for residential customers should be based on the two highest months average consumption. Pursuant to §25.478(f)(3), the POLR may not collect a total deposit from a residential customer that exceeds an amount equivalent to one-sixth of the estimated annual billing or the two subsequent months. TXU's proposal could exceed this amount. Therefore, the commission declines to make the proposed change. The commission finds the remaining changes recommended by TXU are reasonable and amends the TOSA to include the proposed language.

TXU also recommended that deposits be based on the two highest months consumption within the most recent 12 months for the small non-residential below 50 kW class, the three highest months consumption for small non-residential 50 kW to 1 MW class, and the two or three highest months consumption for the large non-residential class. In addition, TXU suggested that the cash deposit for the non-residential classes be based on not only the customer's historical kWh energy and kW demand data but also the customer's monthly customer charge, estimated non-bypassable charges, taxes, service

charges and other fees. For the small non-residential TOSA, TXU also recommended that all bills under the pay-in-advance option, including the initial bill, include the monthly customer charge, demand and energy charges, and an estimate of two months' non-bypassable charges, applicable fees, taxes and other costs as permitted by governmental or regulatory authorities. This proposed change would be consistent with this provision in the large non-residential TOSA.

The commission agrees with TXU that security provided by small non-residential customers should include customer and non-bypassable charges as proposed by TXU. The commission also concurs with TXU's recommendations concerning the period for determining the deposit amount, except that the commission disagrees with TXU's proposal to use either a two or a three month period for establishing the deposit for large non-residential customers. The commission finds that the deposit requirements should be certain and TXU's proposal could lead to ambiguity. The commission has revised the TOSA consistent with its responses to TXU's comments.

Consumer Groups questioned whether pay-in-advance under the TOSA is optional at the discretion of the customer or the POLR provider.

The POLR has the ability to determine whether or not to offer a pay-in-advance option. If the POLR offers a pay-in-advance option, it is within the customer's discretion to utilize the pay-in-advance option or post a deposit. The residential TOSA has been revised to include the option language found in the small non-residential TOSA

TXU recommended replacing the term deposit with "cash deposit," as it is used throughout the TOSA for all classes.

The commission finds that TXU's proposed clarification to use the term cash deposit is appropriate and amends the TOSA accordingly.

In the large non-residential TOSA, TXU proposed adding a statement in section 2(a), pertaining to cash deposits, that a late payment fee of 5.0% will be assessed on the 17th day after the bill issuance for all unpaid balances. TXU also suggested modifying section 2(a)(4) to indicate that interest will accrue on cash deposits if there are no late payments or additional fees or penalties apply. TXU's proposed language also provided that interest will only be paid on the cash deposit. In addition, TXU recommended revising section 2(a)(5) to specify that the large non-residential customer can satisfy the security requirements by providing the POLR with an irrevocable letter of credit or surety bond in the amount of the required cash deposit. TXU also suggested that the POLR provider must approve the surety bond. Finally, TXU recommended revising section 2(a)(7) of the TOSA to state that, if service is terminated prior to the regularly scheduled meter read date, the energy usage for the final bill may be calculated using out-of-cycle meter readings and will include all charges defined in section 1, pertaining to price for basic service.

The commission agrees that TXU's proposed revision regarding late fees improves the clarity of the TOSA for large non-residential customers and amends the TOSA accordingly. With respect to the interest on the cash deposit, the commission disagrees with TXU that the proposed language is appropriate. The commission finds that TXU's proposed language regarding the irrevocable letter of credit or surety bond is reasonable and includes this language in the large non-residential TOSA. The commission also finds that TXU's proposed changes to section 2(a)(7) regarding calculation of the customer's final bill are reasonable and amends the TOSA accordingly.

Reliant proposed reducing the notice of disconnection for large non-residential customers from ten days to five days. In addition, Reliant recommended revising the TOSA for large non-residential customers to provide five days rather than ten days to pay any required deposit. Reliant explained that large non-residential customers have much larger loads than other customers and, therefore, the POLR's bad debt exposure from large non-residential customers is substantially greater than for small non-residential customers.

The commission disagrees with Reliant that the notice of disconnection for large non-residential customers should be reduced to five days. This is not adequate notice for any customer, given that a customer may not actually receive the notice in the mail for several days. The commission, therefore, declines to make the proposed change.

TIEC requested that the disconnection of service provisions of the TOSA should state that notice must be received by the customer, not merely sent by the POLR, before a disconnection can be authorized. Consumer Groups agreed. However, Reliant argued that such a requirement is neither reasonable nor customary. Reliant explained that the commercial billing standard counts the number of days required for notice from the date of distribution, not receipt.

The commission agrees with Reliant that it is not the POLR's responsibility to determine when the customer received the notice and, therefore, declines to make the change suggested by TIEC.

TIEC indicated that the requirements regarding possible disconnection due to a dangerous or hazardous condition are duplicative of TDU tariff requirements, which contain a more thorough development of issues relative to large non-residential customers. TIEC suggested that the TOSA should make all of these provisions subject to the TDU tariffs. In addition, TIEC recommended clarifying the TOSA to reflect that disconnections must be pursuant to the commission's customer protection rules. TIEC noted that the TOSA may inadvertently raise ambiguities if only part of the requirements of the commission's rules is referenced. AEP disagreed with TIEC's proposal that the TOSA provisions regarding possible disconnection due to a dangerous or hazardous condition should be subject to the TDU tariff to the extent that it ignores the commission's customer protection rules and the ERCOT protocols for exchange of information between customers, REPs, and the TDU. AEP stated that it was improper to disrupt the existing framework and suggested that any discussion on this issue should occur in a separate proceeding where all affected parties, most notably TDUs, will have notice and an opportunity to

participate. AEP also suggested modifying language in section 4(a) of the TOSA to clarify that a customer can be disconnected for non-payment ten days after a disconnect notice is issued, as provided in the customer protection rules. TXU proposed adding language to section 4(d) of the TOSA to indicate that service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for reasons prescribed in the commission's rules.

The commission disagrees with TIEC that it is necessary to reference the TDU tariffs in the TOSA. The relevance of the TDU tariffs is limited given that REPs, not consumers, are the TDU's customers. Further, the limitation of liability provisions of the TOSA incorporate appropriate language indicating that the POLR is not responsible for service delivery. Further, including this language would go beyond the requirements for terms of service statements in §25.475(c) of this title. The commission agrees with AEP that section 4(a) should be clarified and amends the TOSA to specify that a customer can be disconnected for non-payment ten days after a disconnection notice is issued.

In response to TXU, the commission finds that the proposed change is consistent with §25.483(c) (relating to Disconnection of Service without Prior Notice) which allows disconnection without notice in the event of a dangerous or hazardous condition or if the customer's service has been connected without proper authority. The commission, therefore, modifies the TOSA to reflect TXU's proposed change.

TXU proposed adding the following statements to the disconnection section of the large non-residential TOSA: 1) service may be disconnected for failure to pay cash deposit as well as pay-in-advance; and 2) upon receipt of all amounts and charges owed, service may not be reconnected immediately and is dependent on TDU scheduling.

The commission finds that TXU's proposed statements pertaining to disconnection are reasonable and amends the TOSA accordingly.

Reliant also requested that the TOSA be revised to include a covenant that the customer shall not enter into any agreement to explicitly or implicitly use POLR service to engage in arbitrage activities. The remedy for breach of this covenant should be the immediate termination of service. According to Reliant, the POLR should also have the right to seek damages for any such breach.

The commission finds that the covenant proposed by Reliant is neither necessary nor appropriate to include in the TOSA. The new POLR rate structure, which includes a monthly energy charge adjustment and price floor for residential and small-non-residential classes, should adequately protect against arbitrage activities in these classes. Moreover, the structure of the POLR rate for the large non-residential class should protect the POLR because it is related to the market price for energy.

TIEC commented that language in the TOSA goes beyond what is necessary to protect the POLR from commercial risks. In particular, TIEC recommended striking the provision on page 5 that allows the

POLR to bill customers for court costs, legal fees, and other costs associated with the collection of delinquent amounts and miscellaneous legal costs associated with maintaining the account. TIEC claimed that the cost of disputes should be borne by the individual parties.

The commission disagrees. First, the TOSA simply states that the POLR provider reserves the right to charge for the fees and costs listed; it does not definitively authorize the POLR to recover such fees and costs. Further, such provisions are generally consistent with the provisions of the Texas Civil Practice and Remedies Code, Chapter 38, which allow recovery of attorney's fees for non-payment of services or in a suit on a sworn account.

In addition, TIEC commented that it is unreasonable to require customers to pay disputed amounts to the POLR while a dispute is pending resolution. TIEC recommended revising this provision in the TOSA and the rules accordingly. Reliant agreed with TIEC that no customer should face disconnection over the non-payment of a disputed portion of a bill, provided the customer pays the undisputed portion. However, Reliant disagreed that the POLR could only disconnect for non-payment of the disputed portion after final independent adjudication of the dispute. According to Reliant, the rule reasonably requires a POLR to investigate and communicate the results when a bill is in dispute before terminating service, and no independent arbiter is necessary. In the TOSA for the small non-residential below 50 kW class, TXU proposed adding language stating that the entire invoiced amount is due on the 16th day after issuance of the bill and, if the customer gives timely notice of a dispute, both parties shall pursue diligent, good faith efforts to resolve the dispute. This language states that, following the

resolution of the dispute, any amount due to the customer shall be returned within ten business days, with no interest or fees paid by the POLR on the refund. TXU also suggested that no interest or fess be paid by the POLR on such a refund for the large non-residential class.

The commission concludes that it is inappropriate to revisit this issue in the context of this rulemaking. Commission rules allow a customer to withhold only the disputed portion of the bill pending informal resolution. However, the commission did revise the TOSA to clearly reflect this aspect of the commission's rules.

AEP suggested revising section 9 concerning bill payment methods to clarify that acceptance of cash in payment of a bill through an agent is an option only if that service is offered by the POLR. AEP and TXU proposed clarifying that if, within the last 12 months, the customer has had two or more personal checks returned for insufficient funds, the POLR will require all further payments to be by cash, cashier's check, money order, or debit/credit card. AEP and TXU also recommended that if the customer's payment by debit or credit card has been declined two or more times within the past 12 months, the POLR will require that future payments be made by cash, cashier's check, or money order.

The commission agrees with AEP and TXU and revises the TOSA accordingly.

The commission also notes that, in response to comments from First Choice concerning the provisions of subsection (f) that identify four TOSA even though there are three customer classes, the commission

has combined the two small non-residential TOSA into one document. Two TOSA for the small non-residential class were initially developed because small non-residential customers with demand of 50 kW or more can waive certain customer protections. However, in light of the effort to standardize the TOSA, the commission has determined that the TOSA should not include provisions for waiver and has revised the TOSA accordingly.

5. The proposed amendments to §25.483 extend the right to disconnect to any REP, including the POLR, for large non-residential customers. In addition, the proposed amendments provide that until January 1, 2005, both the POLR and the may disconnect residential and small non-residential customers for non-payment. The right of the affiliated REP to disconnect is part of the proposal for the affiliated REP to provide POLR service at the applicable price-to-beat rates and terms to residential and small non-residential customers whose service is terminated by a competitive REP for non-payment. After January 1, 2005, any REP or the POLR may disconnect residential and small non-residential customers, unless prior to that date the commission determines that authorizing all REPs to disconnect would be injurious to the market or would be likely result in unlawful disconnections. Is this an appropriate approach to transition to a system where all REPs have the right to disconnect customers and bear the responsibility associated with that right? What are the potential short- and long-term implications for customers, REPs, transmission and distribution utilities, and the Electric Reliability Council of Texas (ERCOT)? Does two years provide adequate time to transition to

this system or is another period of time more appropriate? Should the commission's goal be to transition to this type of system?

ARM, Entergy, First Choice, HEAT, Republic, Reliant, TIEC, and TXU supported the proposal to transition to a system where all REPs are able to disconnect residential and small commercial customers for nonpayment. Republic stated that new market entrants should be afforded the same protections against mounting uncollectibles as affiliated REPs and POLRs. According to Republic, this is particularly important for small REPs whose POLR responsibilities become disproportionately large compared to the REP's customer base. First Choice stated that uncollectibles have significantly increased since the opening of the competitive market. First Choice claimed that the right to disconnect is an effective tool to manage bad-debt expenses and will benefit the overall market by allowing REPs to offer lower rates. HEAT stated that low-income customers, due to the daily struggle to meet critical needs, do not make payments because the bill is due, but make payments to avoid disconnection of service. HEAT stated that a transfer to POLR only delays inevitable disconnection at a higher cost to the customer, the energy assistance provider, and the company. Therefore, HEAT supported transitioning to a system where all REPs may disconnect because it would force customers and electric providers to take responsibility for electric service and encourage REPs and customers to work together on payment arrangements. This solution is preferable to one that allows REPs to transfer the burden of non-paying customers to other providers. First Choice stated that the proposal to allow affiliated REPs to disconnect upon adoption of the rule and delay disconnection authority for competitive REPs until January 1, 2005 is an acceptable compromise.

ARM and TIEC generally agreed with the approach in the proposed rule. ARM did, however, caution that existing contracts should be grandfathered. ARM stated that without the specific right to disconnect written into a contract with a large non-residential customer, a REP may be left without a remedy in the event the customer defaults. TIEC stated that the commission must balance this policy objective with the need to place parameters on the customer's exposure to disconnection; otherwise it would unreasonably shift risks away from suppliers to customers. In order to achieve this balance, TIEC proposed that 1) REPs only be allowed to authorize disconnection in cases of undisputed bills; 2) any bilateral contracts that prohibit a REP from disconnecting be honored, as long as the contract precedes the effective date of the proposed rule amendments; and 3) customers must receive adequate notice from the TDU and/or ERCOT before disconnection is permitted. TIEC also proposed that such notice period should be ten days from the date of customer receipt in order to protect customers against an erroneous disconnection request submitted by the REP.

AEP commented that only the affiliated REP and the POLR should have the right to disconnect residential and small commercial customers. AEP argued that giving all REPs the authority to disconnect would confuse customers. Entergy, on the other hand, stated that giving only the affiliated REPs the right to disconnect for nonpayment would create customer confusion as to which REPs may only terminate and which REPs may disconnect.

Consumer Groups and OPC opposed the provision that would allow all REPs to disconnect residential and small commercial customers for nonpayment after January 1, 2005. OPC argued that this proposal contradicts the purpose of having a POLR and the legislative intent of PURA §39.106. OPC urged that the provision be eliminated and revisited once retail competition has taken hold in Texas. OPC and the Consumer Groups reiterated that this issue was fully debated in the development of §25.483 of this title.

Consumer Groups, through their expert Barbara Alexander, argued that every state has linked the obligation to provide POLR or default service with the right to disconnect for nonpayment, but no state allows competitive REPs the right to disconnect. Therefore, according to Consumer Groups, allowing the affiliated REP, who has an obligation to serve at a regulated rate, to disconnect customers for nonpayment is consistent with the practice in other states but allowing competitive REPs to disconnect is not. Consumer Groups claimed that a competitive market will naturally impose a stricter collection discipline because competitive REPs are unable to recoup bad debt expenses, whereas the affiliated REP's rates include collection costs and bad debt expenses. Consumer Groups cited the deregulation of the gas utility market in Georgia as the example of a situation where allowing competitive marketers to disconnect lead to massive billing errors, increased customer complaints, and vast increases in disconnections. In addition, Consumer Groups argued that the commission would not be able to investigate disconnection disputes or enforce customer protection for wrongful disconnection. Consumer Groups claimed the Georgia experience revealed that retailers often disconnected service even when customers disputed late or erroneous bills. Moreover, Consumer Groups stated that the original reasons why the commission did not extend disconnection rights to REPs remain applicable and

relevant today and that there is nothing in this record to suggest that these policy considerations should be changed. In addition, Consumer Groups argued the proposed changes to the POLR rule that would have nonpaying customers transferred to the affiliated REP at the PTB rate have no rational or logical connection with the proposal to allow all REPs to disconnect residential and small commercial customers for nonpayment in 2005. Finally, Consumer Groups stated that allowing REPs to disconnect is inconsistent with the commission's statutory obligation to protect the public health. Therefore, the commission should not focus on whether the "market" would be "injured," rather it should focus on the public interest.

Entergy and Reliant disagreed with Consumer Groups. Entergy stated that the commission did determine that the policy for allowing or disallowing REPs to disconnect is ripe for reconsideration when it published the proposed rule. Again, Entergy stressed that all REPs should be given the right to disconnect non-paying customers to create stability in the market and eliminate customer confusion as to which REPs may disconnect for non-payment. Both Entergy and Reliant also disagreed with Consumer Groups' assessment of the applicability of the experience in the Georgia market to the Texas market, stating that Consumer Groups simply provide no evidence and are unable to make a concrete connection between the Texas and Georgia customer protection rules to support the position that the proposed revisions will result in a "customer service disaster." Entergy argued that the Texas deregulated market, with its attendant rules and the commission's market oversight role do provide adequate protection. Reliant stated that Consumer Groups operate from a false premise that REPs will aggressively and recklessly disconnect customers and emphasized that it is in a REP's interest to build its

customer base, not disconnect service. However, as Reliant stated, customers who simply do not pay their bills should be disconnected, for no provider of any service, regulated or unregulated, can survive offering its services without compensation. Finally, Entergy and TXU emphasized that the commission should give considerable weight to comments supporting disconnection rights made by HEAT because it is a coalition of entities that works directly with low-income electric customers on a daily basis.

Consumer Groups, in their reply comments, reiterated their position that competitive REPs should not be given the right to disconnect. Consumer Groups claimed that their consultant, "a nationally known expert," demonstrated in her initial comments that the proposed disconnection rule is inconsistent with best practices in other states. Consumer Groups posited that the Texas deregulation scheme, especially with a "free-for-all" disconnection policy, would make payment troubled customers subject to predatory pricing and market practices. Consumer Groups argued that commission rules protecting customers under these circumstances are meaningless because the commission is ineffective in disciplining the market and ensuring REP compliance with any rules. In addition, Consumer Groups claimed the rule provides inadequate enforcement of disconnection provisions and recommended that at a minimum the rule should include strong mandatory penalties for any and all customer protection rule violations. In short, the commission's inability to control market abuse today portends further more serious market abuses in the future, and for this reason alone, according to Consumer Groups, any decision to grant disconnection rights to all REPs should be delayed indefinitely. Should the commission choose to address disconnection rights within the context of the rule then the rule should be amended to indicate that the commission will merely revisit the issue in 2005, without a specified outcome. Consumer

Groups further recommended that the commission publicize on a quarterly basis the top ten REPs with the highest number of complaints, and the concomitant commission action regarding these complaints. Finally, Consumer Groups argued that any changes in the disconnection process should be based on a full accounting of the costs, benefits and impacts of various strategies for providing POLR service, rather than the opinions of parties with varying financial interests in the outcome of the POLR rulemaking process.

In reference to the technical aspects of such a policy, First Choice stated that the right to disconnect for non-payment would limit market workarounds. As far as First Choice was concerned, the infrastructure to handle disconnections and reconnections already exists in the affiliated REP companies. AEP, however, asserted that allowing all REPs to disconnect would complicate the disconnection process and could result in improper disconnections. Consumer Groups, again drawing on the experience in Georgia, contended that the TDUs will be unable to timely disconnect and reconnect customers. According to Consumer Groups, only in a regulated environment can a utility structure its field visits and disconnection activities to effectively support reconnection activities.

Consumer Groups replied that changes in disconnection procedures will impact ERCOT, TDUs, and the REPs, and questioned whether the policy would be technically implementable in light of the current system repair and recovery efforts.

In reference to the time frame for the implementation of a disconnection policy for all REPs, First Choice and TXU stated that the proposed transition period before allowing competitive REPs the right to disconnect for non-payment is adequate. However, TXU recommended that the rule clearly specify that the right of all REPs to disconnect shall start on a specific date rather than deferring the final decision to a later commission determination. Entergy and Republic proposed moving the date for allowing all REPs to disconnect up one year to January 1, 2004, the same date that new market entrants will be eligible to serve as POLR. Entergy stated that the proposed transition period of two years is too long and that a policy allowing all REPs to disconnect for nonpayment should be implemented as soon as possible. OPC stated that there is no reason to make a decision today about such an important issue that would not even take effect for over two years.

Based on discussions with staff of the Georgia Public Service Commission (Georgia PSC) and the February 5, 2002 Blue Ribbon Natural Gas Task Force's *Final Report to Governor Roy E. Barnes and the General Assembly of the State of Georgia*, the commission agrees with Entergy and Reliant that the Georgia deregulation experience is not analogous to the Texas experience. The increase in disconnections and resulting customer complaints in Georgia was the result of a chain of events unrelated to a competitive marketer's right to disconnect. Under Georgia law, once five marketers had been certified to participate in the market, all customers of the former incumbent utility, Atlanta Gas and Light Company (AGLC), had to be randomly assigned to retail providers on a load ratio share basis and AGLC would exit the retail market. Originally, it was anticipated that AGLC's exit from the retail market would take several years; however, this event occurred in only about eleven months. The retail

marketers' billing systems were not equipped to handle such a large influx of customers in such a short period of time, and as a result, customer billing was delayed. Subsequently, Georgia experienced an exceptionally cold winter and a simultaneous spike in gas prices. In order to protect the health and safety of Georgia gas customers, the Georgia Public Service Commission (PSC) imposed a ten-week moratorium on disconnections. When the moratorium was lifted, gas customers had not only accrued winter gas consumption debt at exceptionally high prices, but also owed the marketers for gas consumption for the pre-winter period when the billing systems were being adjusted. Customers received extremely high bills and naturally questioned the accuracy of their bills and filed complaints with the Georgia PSC. A substantial number of customers were disconnected after failure to pay bills accrued prior to and during the disconnect moratorium and, due to a then-existing "hard" disconnect policy in Georgia, many of those customers were unable to be timely reconnected. An investigation by the Georgia PSC, however, revealed that the marketers generally did not bill incorrectly. Nor did marketers disconnect customers in violation of the Georgia PSC's customer protection rules. In fact, staff of the Georgia PSC reports that disconnections in Georgia have actually declined since the onset of retail competition.

The Georgia PSC and legislature were, however, concerned about the ability of customers, particularly low-income customers, to pay their accumulated debt and stay on the system. In response, the Georgia legislature devised a two-tiered regulated rate for disadvantaged customers. The first tier is a below-market rate for low-income and elderly customers established through a bid process. To help keep the rates for first tier customers low, uncollectible balances are guaranteed by a system benefit charge.

Customers placed on the tier-one regulated rate are given a fresh start in that as long as they pay the regulated provider they are guaranteed service, regardless whether they have a debt to another marketer. All customers who are disconnected by their marketer for nonpayment, including tier-one customers, may access the tier-two regulated rate. The tier-two rate is substantially above market and the tier-two marketer may disconnect a customer five days after payment is due (the disconnection notice is issued simultaneous with the bill).

In conclusion, available information indicates that Georgia did not face a "customer service disaster" caused by the competitive marketers' right to disconnect for nonpayment. Rather, the issue facing Georgia was that of customers burdened by large, accumulated bills due to delays in billing, a winter moratorium, and spikes in the price of natural gas. Competitive marketers in Georgia continue to be allowed to disconnect customers for nonpayment. The Georgia PSC reports that the disconnection rates today are lower than they were in the regulated market. The commission therefore finds that there is nothing in the Georgia experience that suggests that allowing all REPs to disconnect is *per se* injurious to the market or not in the public interest. However, experience in Georgia indicates that retail systems failures, such as inability to bill customers, may impact customers' abilities to pay their bills. Market participants in Texas have experienced their own difficulties in billing customers, but the commission finds that progress is being made in addressing this problem. The commission also concludes that delaying disconnect authority for competitive REPs serving residential customers will ensure adequate time to address systems issues that could have an impact on customer disconnections.

The original decision by the commission to disallow disconnection of service for nonpayment was in part based on what was occurring in Georgia during the time of the rulemaking in 1999. As discussed, the prevailing arguments made in 1999 are not substantiated by the information that is now available. Further, the commission finds that the current POLR structure fosters irresponsible bill payment behavior because it defers the consequences of non-payment, to the ultimate detriment of both the consumer and the REP. It is for this reason that the commission finds this issue to be ripe for reconsideration.

Limiting the REPs' response to non-payment to termination of contracts does foster irresponsible market behavior by customers, creates customer confusion as to who has the right to disconnect, places greater uncollectible debt on the REPs, and therefore raises rates in the long run. Conversely, allowing REPs to disconnect customers for nonpayment will create a greater incentive for customers to pay their bills on time and prevent REPs from passing the burden of bad credit customers on to other providers. The commission notes that HEAT, representing assistance providers serving low-income customers, stated that delaying disconnection of customers by having them transferred to the POLR only leads to inevitable disconnection at a higher cost to the customer and the company. The commission further notes §25.482(f) and §25.483(i) protect the health and safety of electric customers during periods of extreme weather, and §25.483(g) ensures continued electric service for individuals suffering from a serious illness. The commission therefore finds that it is in the best interest of a stable market to allow all REPs to disconnect residential and small commercial customers for nonpayment, assuming that retail systems are adequate and in the absence of a demonstrated pattern of behavior on the part of REPs to

ignore commission rules. The commission intends that the period prior to the commencement of full disconnect authority for all REPs will allow an opportunity to fully assess the status of retail systems and the behavior of REPs and to allow the market to mature. Staff will conduct an analysis of the market and reports required in §25.43(q) to determine whether extant conditions indicate that giving competitive REPs disconnection authority would be contrary to the public interest. The commission will make an affirmative decision whether to allow all REPs to disconnect customers for nonpayment by October 1, 2004 and may delay implementation of the policy until a later date. The fact that the commission will make this affirmative decision sometime prior to October 1, 2004, should in no way be construed as an indication that the policy itself is subject to discussion. The commission fully supports the policy of giving all REPs the right to disconnect customers for nonpayment and fully expects all REPs to initiate system changes to accommodate such a policy.

The commission agrees with commenters that recommended acceleration of the policy allowing all REPs to disconnect, in the absence of an adverse showing under §25.43(b). The commission finds that January 1, 2004 is too early to implement this policy. However, the commission concurs that the date should be moved up to avoid complications associated with overlaying this new policy on top of the switch in POLR providers that will occur at the end of 2004 and the beginning of 2005. Therefore, the commission has accelerated the date for implementation of this policy to October 1, 2004, or another date set by the commission.

With regard to the request by Consumer Groups that the commission publicize on a quarterly basis the top ten REPs with the highest number of complaints, and the concomitant commission action regarding these complaints, the commission finds this information is already accessible on the commission website under Customer Assistance. In reference to Consumer Groups' and TIEC's requests that the commission place parameters on customers' exposure to disconnection, the commission finds that such parameters are already in place §25.483 of this title. In addition, in reference to Consumer Groups' comment that the rule should include penalties for violation of disconnection rules, the commission finds that PURA Chapter 15 Subchapter B gives the commission sufficient authority to assess penalties for any infraction of commission rules, including the customer protection provisions.

With respect to comments by TIEC and ARM concerning grandfathering the disconnect provisions of existing contracts between REPs and large non-residential customers, proposed subsection (b)(4) included such grandfathering language for contracts executed prior to June 1, 2002. The commission agrees that the grandfathering period should be extended in order to ensure adequate notice to REPs and their customers of the new requirements. The commission finds that it would be most expedient to set the end-date of the grandfathering period to September 24, 2002, the date that transfers on non-paying customers to POLR will cease. The rule has been revised accordingly.

OPC stated that REPs have argued in the past that they need disconnect authority in order to manage uncollectible accounts, and will make use of this power for that purpose in the future. According to OPC, the use of the threat of disconnection as a collection tool was rejected by the commission. OPC

reminded the commission that, at the time the customer protection rules were adopted, the commission increased the amount of the deposit in order to alleviate the REPs' concerns. Therefore, if the commission is to allow all REPs to disconnect residential and small commercial customers, the maximum deposit allowed should be reduced to one month's usage. OPC also argued that if the commission determines that the affiliated REP should function as the POLR for non-paying customers with the authority to disconnect, the affiliated REP should first be required to place the non-paying customer in its POLR function prior to disconnecting that customer.

Reliant responded that OPC's efforts to reduce the deposit amount should be rejected. Reliant argued that the deposit guidelines are virtually the same as those that were in place prior to the development of the current customer protection rules; therefore, it is incorrect to argue that deposit requirements were increased as a response to REP requests for disconnect authority. Reliant also disagreed that an affiliated REP should be required to drop its customer to POLR prior to disconnection for nonpayment. Reliant argued that such a requirement would unreasonably delay eventual disconnection. Reliant further noted that customers who are faced with disconnection will generally make payment to avoid disconnection, as demonstrated by the fact that while 13.8% of total customers receive a disconnect notice, only 1.0% are in fact disconnected. Reliant agreed with HEAT that the current POLR structure fosters irresponsible payment behavior.

The commission agrees with Reliant that the maximum deposit criteria are virtually the same as they were in the regulated market. The commission further notes that the deletion of §25.478(a)(3)(A)(iv)

regarding credit requirements, the addition of new §25.478(a)(3)(E)(ii) that waives deposits for the medically indigent, and revisions to §25.478(f) that allow low-income customers to make deposits in installments has created greater flexibility for needy customers to meet credit and deposit requirements. The commission therefore finds OPC's proposed revision unnecessary. As discussed above, the commission also finds that delaying disconnection only leads to higher unpaid bills, making it more difficult for customers to pay their debts. Such an outcome adversely affects the credit of customers and unnecessarily increases uncollectibles for REPs.

Entergy proposed a "hard-disconnect" policy. Entergy not only supported the right to disconnect for all REPs, but also argued that the rule should be revised to preclude customers from initiating service with one REP to avoid paying amounts lawfully due to another REP. Entergy argued that such a policy would bring stability to the market, reduce uncollectibles, credit risk and risk mitigation, and thereby reduce not only rates in general, but the POLR rate as well. According to Entergy, customers would be shielded from abusive market practices through the commission's customer protection rules.

Consumer Groups replied that the REPs requested a "hard-disconnect" policy in the original 1999 customer protection rulemaking, and that this repeated request is indicative of their unwillingness to work with payment troubled customers and their desire to develop a sub-prime market.

PURA §39.001(a) states that electric services and their prices should be determined by customer choices and the normal forces of competition. Nonpayment for services is one of the normal risks of a

competitive environment. Holding a customer captive to a particular company as a result of nonpayment would inhibit the normal forces of competition and impair customer choice. In addition to disconnection, companies have other tools to mitigate the risk of nonpayment, such as alternative payment arrangements, deposits, and credit investigations. The commission therefore finds that the current tools are sufficient for dealing with this issue.

6. Under the commission's existing rules, the POLR is the only entity authorized to request that a transmission and distribution utility disconnect a customer, except when a customer with a peak demand of 50 kilowatts or above waives the applicable rule provisions through written agreement with its REP pursuant to §25.471(a)(4), relating to General Provisions of Customer Protection Rules. What are the potential market and rate implications associated with the POLR serving this function in the market? Is this consistent with the goals for a competitive market? Is it appropriate for the POLR to bear the financial risk associated with accidental, inadvertent, or wrongful disconnection of customers, rather than all REPs bearing this risk on behalf of their customers? Do proposed new §25.43 and the proposed amendments to §25.482 and §25.483 remedy this situation by phasing in the ability of all REPs to disconnect customers, as discussed in Preamble Question 5?

Centerpoint did not specifically address preamble question 6, but did comment that TDUs should be allowed to rely on the appropriateness of a REP's request to disconnect, and that a TDU should not be held liable for an incorrect or unauthorized request from a REP.

Consumer Groups opposed allowing all REPs the ability to disconnect for non-payment beginning in 2005. Consumer Groups commented that POLR policy should not focus on competitive concerns, but rather the POLR as a safety net providing continuing access to affordable electric service if the market fails.

Entergy supported moving toward a system whereby all REPs have the ability to disconnect for non-payment, and further suggested reducing the transition period to this system to one year. Entergy further commented that a REP that initiates a request to disconnect service for non-payment bears the risks associated with wrongful disconnection.

First Choice commented that allowing only the POLR to disconnect for non-payment contributes to the creation of market inefficiencies resulting in overall higher prices. First Choice commented that in a truly competitive environment, each REP would have the ability to disconnect customers for non-payment of service. First Choice stated that it is appropriate that the POLR bear the financial risk associated with accidental, inadvertent, or wrongful disconnection of customers.

HEAT commented in favor of extending the right of disconnection to affiliated REPs, as well as the proposal to allow all REPs the right to disconnect for non-payment in 2005.

OPC commented that it is opposed to giving all REPs the right to disconnect. OPC noted that granting only a POLR the ability to disconnect leaves that ability with an entity over which the commission has greater regulatory authority (as opposed to REPs). OPC further commented that the commission should not look at the ability to disconnect in terms of financial risk to the POLR versus all REPs, but rather whether customers are afforded equal protection.

Reliant commented that allowing all REPs to disconnect is consistent with the goals of a competitive market. Reliant also commented that commission action will not completely eliminate the financial risk of mistaken or inadvertent disconnection, even when addressed by an exculpatory clause approved by the commission. Reliant further commented that POLR prices must reflect this financial risk.

Republic did not comment on the appropriateness of the POLR bearing the financial risk associated with accidental, inadvertent, or wrongful disconnection of customers. Republic commented that authorizing the affiliated REP to disconnect POLR customers for non-payment provides some incentive for the affiliated REP to serve as the POLR. Republic did comment in support of all REPs being afforded the right to disconnect customers for non-payment of service, suggesting that this right be effective no later than January 1, 2004, one year earlier than proposed.

TIEC commented that REPs should be authorized to disconnect customers for non-payment of only undisputed bills. TIEC further argued that giving REPs the right to disconnect without changing the limitation of liability provisions in existing agreements creates unnecessary risks.

TXU stated that commission rules provide appropriate measures to deal with customer delinquency in the competitive market. TXU also asserted that pricing POLR service above other prevailing prices compensates the POLR for the additional credit risk of serving customers transferred to the POLR for non-payment of service, and provides an incentive for customers to pay their bills promptly. Further, TXU commented that forcing an explicit cap or ceiling on POLR prices is not a correct approach, whether for customers transferred to the POLR for non-payment of service or for a REP that has defaulted. TXU added that the financial risk inherent in the right of disconnection is a business risk that must be managed in pursuing the collection of debts. Finally, TXU commented that the proposed two-year transition period provides a reasonable period for REPs to develop systems and processes to manage disconnection of service.

TIEC, in response to comments from other parties, emphasized that allowing all REPs to disconnect adds inherent risk to the market, and if approved, the commission must ensure customers are protected. TIEC commented that REPs for large non-residential customers and the contracting parties, not the commission, should assign the risks of accidental or unauthorized disconnection. TIEC further stated that there must be incentives for the POLR to exercise due diligence in disconnecting any customer. TIEC proposed that the grandfather provision must apply to existing contracts entered into prior to adoption of the rule, not June 1. TIEC also emphasized the need for an effective notice period prior to disconnection, proposing a period of ten days. In addition, TIEC reiterated its request that REPs be allowed to request disconnection for non-payment of charges, not for wires-related reasons. TIEC also

suggested that the commission not add general exculpatory language for competitive REPs, adding that the market will assign the risks of negligent disconnections more appropriately.

Reliant responded to TIEC's comments in support of prohibiting disconnection for non-payment of a disputed portion of a bill. Reliant opposed disconnection for non-payment of a disputed portion only after independent adjudication of the dispute, stating an independent arbiter is unnecessary and would subject the POLR to timely and costly litigation.

The commission had anticipated comments in response to this question that addressed whether the current market structure, where only the POLR is authorized to disconnect, inappropriately shifts risk, and therefore costs, from REPs to the POLR. The commission had questioned whether such risk and cost shifting may occur because, as the POLR is currently structured, only the POLR can disconnect and therefore the REP is shielded from the risk of inadvertent disconnections. However, responses to this preamble question did not address the issue the commission had intended to present. Rather, they duplicated responses received in response to preamble questions 4 and 5. Therefore, readers are referred to the commission's responses to preamble questions 4 and 5.

7. The proposed POLR rule provides for selection of POLRs through competitive bid and lottery processes. In lieu of these processes, would it be a better practice to automatically assign customers of a defaulting REP to other REPs who serve the same customer class in the same

transmission and distribution utility (TDU) service territory? Under the automatic assignment process:

(a) If a REP defaults, individual customers of the defaulting REP would be automatically and randomly assigned to all other REPs who meet the proposed eligibility requirements and provide retail service to the same customer class in the same TDU service territory.

(b) Upon being assigned a customer, the new REP would automatically place the customer on the most popular (highest number of subscribers) rate plan offered by the REP to the customer class in the same TDU service territory.

(c) The REP may market its rate plan to the customer, but unless the customer affirmatively chooses to subscribe to a rate plan, the customer may choose to leave the REP as soon as the switching process allows.

AEP opposed this proposal. AEP commented that this process would be incredibly complicated and fraught with disaster. AEP claimed that given the problems being experienced now with switches and customer move-ins/move-outs, randomly assigning customers among REPs would lead to complications and confusion among REPs and customers, not to mention the varying POLR rates that would inevitably result.

ARM supported such a proposal but noted that the larger commercial and industrial customers generally have individual rates and these customers could be assigned to REPs that serve those classes on variable rates until they sign a contract.

Consumer Groups preferred assignment of customers of a defaulting REP to the dominant REP as proposed by OPC. Consumer Groups claimed that the market is not yet mature enough for random assignment of customers to multiple REPs. In the situation of a defaulting REP, Consumer Groups recommended that extra care should be taken to ensure that customers know their rights and are treated fairly. Consumer Groups commented that assignment to the most popular price plan is the best proxy for ensuring that consumers receive the most competitive rate available. Consumer Groups also opposed the ability of the REP to market to new customers because it would allow REPs to take advantage of vulnerable customers.

First Choice commented that recent market events show that customers of REPs exiting the market have value and therefore there is no need to establish a POLR selection process for those customers.

OPC stated that this proposal has merit because it would lead to a POLR rate below 125% of the PTB and would reduce the risk to a single POLR. Further, OPC stated that REPs could acquire customers without having to incur marketing expenses.

In its reply comments, AEP noted that First Choice and OPC had both recognized the inefficiency inherent in establishing an entire procedure for bidding and appointment of a POLR for customers whose REP can no longer serve them. Shell's exit from the Texas market and the Enron and NewPower bankruptcies demonstrated that competitive REPs will find value in customers of failed

REPs and the customers of such failed REPs will likely never be transferred to POLR service. As a result, there is no need to establish an assignment process or a POLR for customers of defaulting REPs.

Reliant stated that it could support the concept of a "pool" of REPs providing POLR service provided that the pricing structure appropriately compensated each REP for the risk of providing POLR service. In comments filed earlier in this project, Reliant proposed a similar approach to POLR structure but the pricing differed from that set forth in this comment in that it advocated a price equal to the highest PTB plus a commission determined adder and a cost recovery mechanism. According to Reliant, the use of each REP's most popular price plan would not necessarily compensate a REP for its costs and risk associated with POLR service.

TIEC opposed a process of random assignment because it would damage the competitive market by increasing the risks associated with market participation for all REPs. Under this approach, TIEC argued, any REP would be exposed to the risk of serving a large amount of load with little or no notice. TIEC claimed that it could also harm the market by leading all REPs to increase their prices to compensate for the added risks associated with these POLR responsibilities. Moreover, TIEC stated this approach would drive smaller REPs out of the Texas market if they were unable to absorb the added risks and create additional barriers to market entry for new REPs.

TXU commented that the proposal would add confusion to the market, increase the complexity of ERCOT systems, and limit the ability of REPs to predict customer gains. TXU commented that a

proposal such as this should not be adopted without further evaluation of the system changes needed for its implementation.

Comments received in response to this question duplicate issues concerning random assignment of customers addressed in responses to preamble question 1. The commission declines to adopt this approach to POLR selection for the reasons discussed in response to comments on preamble question 1.

8. Under the automatic assignment process, should an equivalent number of customers be assigned to all eligible REPs, or should the number of customers a REP is assigned be dependent upon the REP's current market share of customers in that class and TDU territory? Is there a better basis for determining the apportionment of customers to the REPs? Should they be eligible to be assigned customers under this process? What are specific advantages and disadvantages of the automatic assignment process in comparison to the proposed competitive bid and lottery processes?

AEP commented that the only advantage of random assignment is that it would more fairly apportion the POLR obligation among the various players active in the market. However, AEP argued that this advantage would be greatly outweighed by the confusion and complexity of an automatic assignment process.

Consumer Groups reiterated their preference that customers be assigned to the affiliated REP at the PTB.

OPC commented that the commission might want to provide REPs the alternative of taking on more than their market share of customers whose REP has defaulted.

Comments received in response to this question duplicate issues concerning random assignment of customers addressed in responses to preamble question 1. The commission declines to adopt this approach to POLR selection for the reasons discussed in response to comments on preamble question 1.

General Comments

HEAT stressed the importance of educating customers about the POLR, particularly in terms of the timeline of POLR transfer, the POLR rate structure, the abandoned bad debt at the REP, how a customer may be reconnected with the previous REP, and the associated costs. Entergy also recommended that the commission augment its customer education campaign to provide market participants the opportunity to understand and adjust to the new disconnection policy. Consumer Groups responded that the scant customer education provided by the commission has left the customers confused regarding the new market structure, particularly the POLR, and the proposed revised POLR structure will only increase future customer confusion.

The commission agrees that the new POLR and disconnection provisions should be an integral part of the customer education campaign under PURA §39.903.

§25.43. General Comments

ARM stated that the commission should adopt policies that provide incentives for customers to leave POLR service by contracting with other REPs. ARM commented that two policies should govern POLR service: (1) POLR service should be provided at a fair price to customers; and (2) the POLR provider should recover its costs and earn a return for providing POLR service. ARM also commented that POLR service should be set at market rates and that no REP should be required to provide below-cost service. Further, ARM asserted that if POLR service is required to be provided at a static price, management of POLR risk becomes difficult because of uncertainty concerning the volume of customers transferred to the POLR. According to ARM, this risk is the impetus behind the comparatively high rates for POLR service. ARM stated that the proposed rule creates greater flexibility in changing the POLR rate based on market conditions and this added flexibility improves the ability of the POLR to manage the risk of selling at a static price.

The issues raised by ARM were generally addressed in the commission's response to comments on preamble question 1. No change was made in response to ARM's comments.

TXU recommended adding the word "default" before POLR service throughout the rule to clarify the difference between a non-paying customer terminated to the affiliated REP versus customers that lose their REP for other reasons and thus receive service from the "default" POLR.

The commission appreciates TXU's desire to ensure that there is a clear distinction in commission rules between the affiliated REP serving non-paying customers at the PTB and the POLR selected under this section providing service to customers who are no longer receiving service from their provider for reasons other than non-payment. However, the commission finds that this distinction is apparent in the provisions of subsection (b) and has not made the change suggested by TXU.

§25.43 (b), Application

Entergy suggested that the word "terminated" in paragraph (2) be changed to "disconnected" in order to clearly state the ability of the affiliated REP's to disconnect customers for non-payment.

The commission disagrees with Entergy's suggestion. The word "terminated" is appropriate in paragraph (2) because competitive REPs will be required to terminate non-paying residential and small non-residential customers to the affiliated REP until October 1, 2004.

Entergy stated that customers disconnected for non-payment should not have the ability to choose an alternate provider as a means of escaping their financial obligation to the disconnecting REP. In order to

mitigate the risk associated with increased write-offs, Entergy proposed adding language to this provision that prohibits a customer from choosing POLR service in situations where the customer has been disconnected for non-payment by the affiliated REP.

As discussed more fully in response to comments concerning preamble question 5, the commission declines to adopt Entergy's proposal.

First Choice proposed additional language to distinguish between customers who transferred to the POLR due to a defaulting REP, and those who were dropped to the POLR for nonpayment.

The commission disagrees with First Choice's recommendations because similar language can be found in subsection (b)(2). This language makes it clear that the affiliated REP serving as POLR for non-paying customers is not subject to the provisions of the rule except where specifically stated.

The commission has added language to subsection (b) to clarify that First Choice is deemed to be the affiliated REP for customers in the Sharyland Utilities, LP service area because First Choice is functioning as the default provider for those customers in the absence of an affiliated REP.

§25.43(c), Definitions

TXU recommended adding definitions of "billing cycle" and "billing month." These definitions support other changes recommended by TXU concerning the period over which an energy price adjustment is applied.

The commission agrees with TXU's proposal to clarify that energy price adjustments will apply during a billing cycle, which may or may not correspond with a calendar month. Therefore, the commission adopts the additional definitions of "billing cycle" and "billing month" recommended by TXU.

TXU recommended that the definition of "provider of last resort (POLR)" revised to make a more clear distinction between service at the PTB for non-paying customers versus POLR service for other customers.

The commission agrees and has made the requested change.

§25.43(e), Standards of service

ARM suggested that subsection (e)(2)(C) be altered because the POLR should not offer term-based rates. ARM explained that consistent with the idea that POLR is a transitory service, customers should never be required to remain for any term; incentives for a customer to remain on POLR service should not exist.

The commission generally believes that incentives to remain on POLR service should not exist. However, the commission believes that level payment plans are needed by some customers to effectively manage their electric bills. Customers on POLR service should not be denied the use of this management tool. No change was made in response to ARM's comment.

§25.43 (f), Customer information

First Choice suggested deleting language in §25.43(f)(1) that provides for two different terms of service agreements for the small non-residential class, one for small non-residential customers with usage between below 50 kW and one for small non-residential customers with usage between 50kW to 1 MW. First Choice commented that a POLR will not know which profile a small residential customer fits, making a bifurcated term of service agreement unfeasible.

The POLR should have sufficient information to perform a calculation to determine whether a small non-residential customer has usage above or below 50 kW. However, the commission finds that requiring the POLR to make this determination could prove unduly burdensome to the POLR. Therefore, the commission has combined the TOSA for both sets of small non-residential customers into one TOSA. The commission notes that small non-residential customers with usage of 50 kW and above can waive certain customer protection requirements. However, the commission is standardizing provisions for TOSA for all customer classes and has chosen not to include any specific waivers as previously discussed. The commission has also clarified subsection (f)(2) by specifying that the TOSA must be

updated in accordance with the provisions of §25.475(d) of this title (relating to Information Disclosure to Residential and Small Commercial Customers).

Reliant commented that due to the proposed monthly adjustments to POLR prices, initial information provided to POLR customers should not specify a specific rate in monetary terms but should explain the methodology under which prices will be developed and a range of prices that could be charged. Reliant further suggested that actual pricing information be included via invoice messaging in the customer's monthly bill.

The commission generally agrees and notes that the proposed TOSA effectively include the language recommended by Reliant. No change was made in response to this comment.

HEAT suggested providing customers with information containing examples to educate them about what happens to customers who fail to pay their electric bills. Specific examples suggested by HEAT include the time frame for being transferred to POLR, explanation of the differences in rates, handling of balances remaining with the REP, the process to be reconnected to a REP, and the basic costs of reconnection.

The commission understands HEAT's recommendation to be directed toward the commission's customer education efforts. The commission appreciates HEAT's input and will endeavor to make

customers aware of the consequences of non-payment and the process for disconnection through its customer education efforts.

The commission also notes that, in lieu of adopting the TOSA by reference, they have been adopted as figures appended to this rule. This approach to adoption of the TOSA will benefit the public because the TOSA will be published in the Texas Administrative Code.

§25.43 (g), General description of POLR selection process

AEP, in responding to comments filed by OPC, noted that no affiliated REP affirmatively committed to bidding on POLR service. AEP, therefore, suggested changes to paragraph (2) to provide for commission appointment of the affiliated REP to serve as the POLR at the price to beat if no eligible bids are submitted.

This commission disagrees. The commission finds that it is appropriate to begin development of a structure for POLR selection that will survive beyond the expiration of the PTB. Requiring that the affiliated REP be the default POLR provider would not further the development of a comprehensive POLR selection process.

TXU commented that staggered two-year terms for POLR service are not necessary. TXU suggested deleting language outlining the staggered terms for the Oncor, TNMP and WTU POLR areas versus the Reliant and CPL POLR areas.

The commission agrees and has eliminated provisions for staggered two year terms. All POLRs will be selected for two year terms beginning in odd-numbered years.

§25.43 (h), REP eligibility to serve as POLR

TXU suggested that subsection (h)(2)(F), which provides that a REP is ineligible to serve as POLR if its only customers are its own affiliates, be deleted. TXU commented that the language is confusing and provides no discernable benefit to customers or the market.

The commission disagrees. The purpose of this provision is to exempt a REP from the requirement to serve as POLR if its only customers are its own affiliates. The commission does not believe such REPs will be equipped to serve non-affiliated customers and therefore should be exempt from POLR service. The commission finds that only a limited number of large non-residential REPs will meet this requirement.

TXU proposed additional language under §25.43(h)(2)(D) that would clarify that a REP assuming the price to beat responsibilities of an affiliated REP would have the same POLR responsibilities as the affiliated REP.

The commission agrees that an entity assuming the PTB responsibilities of an affiliated REP should assume the POLR responsibilities of the affiliated REP. The commission has revised the rule to address this issue.

TXU, in responding to comments from Republic regarding the time period from when a REP enters the market until eligibility to serve as a POLR begins, sought to clarify that a REP currently serving customers in Texas is not precluded from serving as a POLR. TXU suggested modifying §25.43(h)(2) to state that a REP certified by the commission after the effective date of the rule is ineligible to provide POLR service until it meets the criteria spelled out in §25.43(h)(2).

The commission generally disagrees with TXU. The provisions of §25.43(h)(2) were intended to ensure that a REP that has been in the market for less than 18 months not serve as POLR. Generally, the commission finds that it is appropriate to allow a period of time to pass before any such REP is appointed POLR so as to allow that REP to develop a customer base without the added burden of managing POLR service and to ensure that the commission has some type of track record with that REP. However, the commission finds that this requirement should not apply in the case where a new

REP acquires an affiliated REP or any other REP that has been in the market for 18 months or more. The final rule incorporates language to address this issue.

First Choice suggested deleting language in §25.43(h)(2)(B) which defines a REP's eligibility to serve as POLR by reference to the peak load in Texas for a particular customer class. First Choice stated that peak load information by customer class is not available.

The commission agrees that determining peak load for particular customer classes in Texas could be problematic because data required to make the calculation may not be readily available. To address this issue, the commission has determined that eligibility to serve should be based on a comparison of the REP's annual megawatt hour sales for a customer class nationwide to the annual megawatt hour sales for the same class in areas of Texas where customer choice is in effect. The rule has been revised to include a definition of "load ratio" that expresses this relationship between megawatt hour sales nationwide and in Texas. The specific provisions of the rule that measure a REP's load nationwide compared to its load in Texas have been revised to reference the load ratio comparison rather than the total peak load comparison found in the proposed rule.

First Choice suggested deleting language in §25.43(h)(2)(C) referring to information available to the commission. First Choice suggested language stating that a REP would be ineligible to serve as POLR if it is not reasonably expected to be able to meet the criteria. First Choice commented on the proposed

change by citing the explanation for the proposed deletion in §25.43(h)(2)(B), that peak load information by customer class is not available.

The commission agrees and has made the change recommended by First Choice.

TIEC suggested modifying §25.43(h)(2) to remedy perceived ambiguities in subparts (E) and (F). TIEC suggested deleting subpart (E), and replacing it with language excluding any REP from POLR service for a particular customer class that is solely certified to serve individual customers under Option 2 of the REP certification rule.

The commission disagrees. REPs certified under Option 2 are REPs who are certified to serve only specific customers with load above one megawatt. Such REPs may have a substantial customer base and be able to serve as POLR for the large non-residential customer class even though they are certified only as Option 2 REPs. The commission does not believe that these REPs should be shielded from POLR service merely by virtue of the alternative under which they have chosen to provide POLR service if they can meet the other eligibility requirements of the rule. Such REPs would, however, be required to expand their certification if they are selected as POLR. The commission agrees, however, that REPs whose customers are limited to their own affiliates should not be required to provide POLR service and has exempted these REPs from the requirement to serve as POLR. No change was made in response to this comment.

OPC suggested deleting language in §25.43(h)(2) restricting an affiliated REP from serving as the POLR within the boundaries of its affiliated TDU. OPC commented that it recommends this change to maintain consistency with PURA and to allow the commission the greatest flexibility in designating POLR providers.

The commission generally agrees that an affiliated REP should be allowed to bid for POLR service at the PTB and has revised the rule accordingly. The commission does not agree that an affiliated REP should be subject to selection by lottery as the POLR for customers in the service area of its TDU because the affiliated REP would be unable to charge the rate specified in the rule for POLRs selected by lottery.

Reliant commented that the proposed lottery process for POLR providers should take into account the size of the service territory a POLR may be assigned. Reliant suggested that a REP not be required to serve more than 33% of a customer class within ERCOT.

The commission has been told by Reliant that its primary concern is to ensure that a REP not be required to serve as POLR for the same customer class in both the Centerpoint and Oncor service areas. The commission acknowledges that these two service areas are the largest in the state and together comprise the majority of the customers in the state. The commission agrees that a single REP should not be required to take on the burden of serving as POLR in both of these areas at the same time, though a REP could voluntarily seek to obtain service in both of these areas if it so chose. New

subsection (j)(2) has been added to provide that a REP that has been selected by either bid or lottery to serve as POLR in the Centerpoint POLR area shall not be eligible for lottery selection as POLR for the Oncor POLR area and vice versa.

Entergy suggested changes to §25.43(h) to provide a specific date by which the commission shall determine the eligibility of certified REPs to serve as a POLR. Entergy suggested language stating that the commission determines the eligibility of REPs no later than June 30 of each year beginning in 2003. Entergy commented that this change will provide REPs with sufficient time to evaluate their ability to serve as a POLR. Entergy suggested additional language to §25.43(h)(1), §25.43(h)(2)(B), §25.43(h)(2)(D), and §25.43(h)(2)(E) clarifying that only retail affiliates of the REP providing retail service in Texas be included in the commission's determination of eligibility. Entergy also suggested additional language to §25.43(h)(3) proposing that the commission publish the names of all eligible REPs for POLR service no later than June 30 of each year and that the commission notify each certified REP of its eligibility to serve as a POLR.

The commission notes that for the first two years of POLR service, the rule specifies that only affiliated REPs are eligible to serve as POLR. This requirement reflects the fact that affiliated REPs currently have the most experience in the Texas market and the greatest wherewithal to manage an additional influx of customers. In addition, the commission has determined that insufficient time exists to identify other REPs eligible for POLR service in the manner specified in the rule for the POLR term beginning in 2003. The commission does not believe it is necessary to set a deadline for itself in designating entities

eligible to serve as POLR in the future. All REPs should have a fairly firm notion of whether they are eligible for POLR service during a given upcoming term or not. Nevertheless, the commission commits to timely publication of the list of eligible REPs in order to facilitate the POLR selection process.

Entergy further suggested including language in §25.43(h)(3) specifying that if a REP is certified to serve only as a POLR REP, that POLR's other retail affiliates will be excluded from the list of REPs eligible to serve as POLR. AEP commented in favor of Entergy's proposed change to §25.43(h)(3).

The commission disagrees. The commission does not believe that it is necessary or appropriate to effectively limit to one the number of affiliated REPs who are eligible for POLR service. The commission agrees, however, that a REP certified to provide POLR service only for an affiliate should be ineligible for POLR service and has revised the rule accordingly.

Entergy also stated that only information related to those affiliates of the REP providing retail electric service in the Texas deregulated market should be involved in the determination of the REP's eligibility to serve as POLR. Entergy questioned whether the commission has authority to request REP information about activities in other states.

The commission disagrees. The purpose of this provision is to ensure that REPs have sufficient size to provide the safety net POLR service. A REP's activities in other states are directly relevant to this inquiry, and a REP with significant size outside of Texas should not be shielded from POLR service

merely because it has not recruited a significant number of customers in Texas. PURA §39.106 provides that the commission shall determine the criteria for selection of the POLR. The commission finds that the criteria concerning the level of load served nationwide by the REP is relevant to the REP's ability to serve as POLR in Texas and therefore it is within the commission's authority to request information concerning the level of load served by a REP outside of Texas in assessing whether this criteria is met.

§25.43(i), Bid process

ERCOT requested that the commission clarify how a "designated POLR area" is defined in subsection (i). ERCOT stated that the ERCOT systems were developed to recognize designated POLR areas by zip code; however, some POLRs share service in a single zip code. ERCOT suggested that the POLR areas should be divided by TDU areas rather than zip codes.

The commission finds that ERCOT's concern is addressed in proposed subsection (c)(4) (subsection (c)(7) on adoption) which defines POLR areas to be the service areas of TDUs.

Entergy suggested deleting the word "initially" from subsection (i) so that it is clear that the competitive process is the preferred method of selecting the POLR. Entergy also suggested that the commission provide notice of the bid process to each eligible REP.

The commission agrees that the competitive bid process is the preferred method of selecting the POLR. However, the commission finds that the word "initially" is necessary in this subsection to clarify that the competitive bid process will be utilized before a POLR is selected by lottery. The commission also finds that bid invitations published in the *Texas Register* will provide each eligible REP sufficient notice of the POLR bid process. The commission therefore declines to adopt Entergy's suggested revisions.

Entergy recommended a clarifying language change to subsection (i) to indicate that a "qualified" bidder may submit multiple bids.

The commission declines to add the word "qualified" to subsections (i)(3)(A) and (i)(6)(A) because bids received from unqualified bidders will not be considered pursuant to subsection (i)(6)(B)(i). However, the commission has revised subsection (i)(3)(A) of the rule in a manner that should address Entergy's concern that a REP is not precluded from submitting multiple bids for POLR service.

TXU suggested that subsection (i)(3)(C) be modified to permit all eligible bidders to indicate their preference of POLR areas, not just the small REPs.

The commission seeks to encourage small REP participation in the competitive bid process. However, the commission recognizes that the burdens of POLR service will be greater for the REPs having less than a 5.0% load ratio, as defined in the rule. To minimize the risk of a smaller REP defaulting on its POLR obligation, the commission has determined that REPs having less than a 5.0% load ratio are not

permitted to serve as POLR in more that one POLR area. The commission therefore concludes that it is appropriate for a small REP submitting multiple bids to provide a statement indicating a preference for the POLR area it wishes to serve. The commission does not believe a similar statement is necessary for other bidders. No change was made in response to this comment.

TXU proposed that subsection (i)(5)(C) should be revised to allow interested persons 25 calendar days after the submission deadline specified in the bid invitation to reply to comments received on the bids. In reply, OPC recommended that if the commission adopted TXU's suggestion to extend the time period for filing reply comments concerning bids, then the commission should also extend the time period for filing initial comments from 10 to 15 calendar days.

The commission finds that 15 calendar days provides an adequate time period for interested parties to submit reply comments.

First Choice proposed that subsections (i)(5)(B) and (i)(5)(C) should be eliminated because First Choice could not envision a scenario in which the commission could reasonably cancel a bid opening without actually opening the bids.

The commission disagrees with First Choice's pronouncement that the commission would never have occasion to cancel a bid opening. The commission notes that a bid opening might be cancelled if the bid invitation contains a material error or a procedural irregularity has occurred. For example, in the event

that the commission determines after bids have been received but before the bids are opened that the bid invitation was not properly published, the commission has the option under subsection (i)(5)(B) to return the unopened bids and republish the bid invitation for POLR service. The commission observes that subsection (i)(5)(C) sets forth the procedure for interested persons to file comments and reply comments to the bids received by the commission. The commission finds that the procedure outlined in subsection (i)(5)(C) is necessary to facilitate public comment on the bids received. No change was made in response to this comment.

First Choice and Entergy recommended deletion of the first sentence of subsection (i)(6)(A). Entergy also suggested that language should be added in subsection (i)(6)(A) to clarify that tie bids occur when bidders bid for the same customer class in the same POLR area. In addition, Entergy suggested the deletion of the last sentence of subsection (i)(6)(A).

The commission finds that the first sentence of subsection (i)(6)(A) is necessary to clarify that it will not evaluate any bid on the basis of price if the bid has been rejected pursuant to subsection (i)(6)(B). Furthermore, the commission finds that it is necessary to have a procedure in place if a small REP submits multiple bids but does not provide a statement indicating a preference for POLR service territories or the preferences submitted are irreconcilable. The commission finds that the additional language proposed by Entergy regarding tie bids is not necessary because the rule sets forth a procedure whereby only bids for the same customer class in the same POLR area are evaluated against each other. However, the commission has revised subsection (i)(6)(A) of the rule to clarify the bid

evaluation procedure.

Reliant and OPC sought clarification regarding the commission's discretion to reject all bids pursuant to subsection (i)(8) when it has received at least one bid that meets the parameters set forth in subsection (i)(6).

The commission finds that its authority in subsection (i)(8) to reject all bids is necessary to protect the integrity of competitive bid process. For instance, the commission might exercise this authority to prevent one bidder from gaining a competitive advantage, or a perceived competitive advantage, over another bidder in the event that it is discovered after the bids have been opened that the bid invitation contained a significant error or a procedural irregularity had occurred. No change to subsection (i)(8) has been made.

§25.43(j), Lottery

TXU suggested that the percentage stated in subsection (j)(1)(B) should be changed to make lottery eligibility the same as eligibility to be POLR. First Choice proposed that the criteria of peak load for a particular customer class in subsection (j)(1)(B) be revised because peak load information will not be available on the basis of customer class.

The commission observes that subsection (j)(1)(B) provides a criteria by which certified REPs will be excluded from the lottery process. As stated in response to §25.43(i), the commission recognizes that the responsibilities for POLR service will be greater for small REPs as compared to REPs with a load ratio equal to or greater than 5.0%. The commission is concerned that if a small REP serves as POLR in more than one service area, it may not be able to satisfactorily fulfill its POLR obligations in those areas. The commission therefore concludes that it is appropriate to exclude a small REP from lottery candidacy if it will be serving as POLR for that customer class in another area during the upcoming term and has revised subsection (j)(1)(B) accordingly. As stated in response to (h)(2)(B), the determination of the relative amount of load served by a REP has been revised to reference the REP's load ratio, which is determined based on the REP's megawatt-hour sales to a particular customer class.

§25.43 (k), POLR rate

Entergy supported the provisions of the proposed rule that provide that the POLR rate for each customer class consist of non-bypassable charges, a monthly customer charge, an energy charge, and a demand charge for small and large non-residential customers.

The commission appreciates Energy's comment. No change was made in response to this comment.

TXU recommended that the POLR be allowed to adjust its rate(s) to reflect changes in any commission-approved electric delivery company tariffs, changes in charges from the Independent

System Operator, legislatively mandated changes in non-bypassable charges and any other charges mandated by tax or regulatory authorities. TXU stated that such an addition would mitigate the risks associated with serving POLR customers at a price that does not allow adjustments and would reflect future changes in the regulated wires charges that may occur after the POLR begins its term.

The commission does not believe the change requested by TXU is necessary. The types of charges enumerated by TXU above are non-bypassable charges. The proposed rule specifically provides that the POLR rate shall include non-bypassable charges. The only elements of a POLR bid are a monthly customer charge, an energy charge, and for small and large non-residential customers, a demand charge. Non-bypassable charges are not intended to be covered by bids but are instead intended to flow through to the POLR customer. The rule structure therefore allows flow through of increases in non-bypassable charges such as those described by TXU. No change was made in response to this comment.

TIEC supported the commission's proposed method for establishing the energy charge for the large non-residential class and did not object to the imposition of a customer charge, provided that the bidder can justify the charge based on its underlying billing and other administrative costs. However, TIEC opposed the inclusion of a demand charge in the pricing structure for POLR service. TIEC stated that most large non-residential POLR customers default to the POLR provider involuntarily and stay with that provider for a short period of time. TIEC explained that, because of this short stay, providers have little or no ability or need to forecast their loads and contract for generation capacity to meet these

power requirements. TIEC stated that there is therefore no need to allocate costs between different customers with different load factors. Further, TIEC suggested that since a POLR's generation cost structure for large non-residential customers will contain no fixed, capacity-related costs, there is no justification for including a demand charge in the pricing structure. TIEC also stated that a demand charge would obligate a customer to pay a full monthly demand charge even if the customer were to stay on POLR service for less than a month, essentially creating a minimum term for POLR service.

In its reply comments, Reliant disagreed with TIEC's position concerning the need for a demand charge for large non-residential customers. Reliant commented that a demand charge is needed to prevent customers from switching to and from POLR service on the basis of price. Reliant emphasized that POLR service was not intended to function as an arbitrage tool. And, even with a demand charge, Reliant stated that there is nothing that prevents a large non-residential customer from leaving POLR service at any time. Reliant also proposed imposition of a monthly customer charge for the non-residential class equal to $2897, the monthly customer charge established for StarEn Power in PUC Docket Number 24190, *Petition to Appoint Provider of Last Resort Pursuant to PURA 39.106 for Residential and Small Non-Residential Customers in the Entergy, TXU East-DFW, and TXU West-DFW Service Areas and for Large Non-Residential Customers in the Reliant North, Reliant South, CPL Gulf Coast, CPL Valley, WTU, and SWEPCO Service Areas.*

The commission disagrees that a demand charge is unwarranted. As Reliant has noted, the absence of a demand charge for large non-residential customer may encourage use of the POLR to arbitrage prices.

Further, the commission disagrees with TIEC that a demand charge indirectly imposes a term on a POLR customer. Nothing in the proposal to include a demand charge requires that a customer stay with the POLR for any length of time. Further, the commission expects that the demand charge will be prorated based on the number of days within a month that a customer receives POLR service as was historically the case with regulated utilities. The TOSA for large non-residential customers has been revised to clarify that the demand charge will be prorated for customers taking POLR service for a period of less than one month.

The commission agrees that a customer charge should be applied when POLR service is awarded by lottery. The commission finds that the figure suggested by Reliant is reasonable and has revised subsection (k)(4) accordingly.

TXU recommended that the energy charge component of the rate for large non-residential customers be a specific price bid for on and off-peak seasonal periods in lieu of the proposal to set the energy charge at a percentage over the energy reference price. TXU proposed that changes to the energy component be at the option of the POLR.

While the commission agrees that there should be seasonality to the energy component of the POLR rate, the commission disagrees with TXU's proposal to completely do away with the energy reference price structure of the proposed rule. No change was made in response to this comment.

Reliant commented that there should be a price floor for the MCPE component of the energy charge adjustment for large non-residential customers because of the potential for the MCPE to fall very low or even become negative. Reliant recommended that an MCPE floor of $7.25/megawatt per interval be established. Reliant indicated that this floor was based on the lowest off-peak price reported by *Platt's Megawatt Daily* over the last five years.

TIEC responded that the MCPE does not go negative often, and when it does it reflects the cost of having generation back down. TIEC argued that negative balancing energy should flow to the benefit of the customer that has been transferred to the POLR and faces substantial energy risk, which could be very high. TIEC also indicated that, on an interval basis, Reliant's proposed MCPE floor would result in a per megawatt hour price of $43.50 per MWh. TIEC commented that in contrast, the weighted average balancing energy price has been as low as $18.00 per MWh and in the South Zone has been even lower. Reliant subsequently told the commission that, while the basis for its recommendation was prices in ERCOT during 15-minute intervals, it intended its $7.25 MCPE floor to be applied on a megawatt-hour basis.

The commission understands Reliant's concern about the potential for the MCPE to go negative. In that circumstance, the adjusted price could be negative (or require refunds to the customer) even when the POLR has acquired energy on the spot market to serve the customer and has not relied on the balancing energy market. TIEC's reply to Reliant's comment suggests that TIEC believes that the POLR will rely on balancing energy to serve large non-residential customers, which is not currently

permissible under the ERCOT Protocols. This approach to serving POLR customers may become an option in the future if ERCOT moves to a relaxed balanced schedule requirement, but presently it is not an option. Nevertheless, the commission does not see a need to impose the floor requested by Reliant for POLR service bids. Rather, REPs bidding for POLR service can include a floor in their bids if they so choose. This approach allows the market to assess the risks of the MCPE going negative. The commission agrees, however, that a floor should apply in situations where the POLR is selected by lottery. The commission finds the MCPE floor suggested by Reliant, on a megawatt-hour basis, is reasonable given that it is based on the lowest off-peak price reported by *Platt's Megawatt Daily* in the last five years. The rule has been revised accordingly.

AEP stated, in its comments to preamble question 1, that providing service to residential and small non-residential customers whose chosen REPs can no longer serve them is extremely unpredictable and risky. AEP explained that it will be impossible for a POLR to know how much power it must purchase to serve its customers, if any. As a result, AEP argued, it will be highly expensive for a POLR to make arrangements to purchase power for POLR customers. AEP commented that capping the POLR rate at 125% of the PTB will not adequately compensate a POLR for the power it may have to purchase if a REP is unable to service its customers and those customers are transferred to POLR.

Consumer Groups stated that allowing POLR to be set at 125% of PTB could result in POLR rates for residential customers being higher than they are under the current rules. Consumer Groups disagreed with suggestions that POLR rates should be higher rather than lower to encourage customers to leave

the POLR and re-enter the competitive market. Consumer Groups commented that the residential POLR rate should be set at the PTB and that the affiliated REP or dominant REP should be appointed as the POLR. Consumer Groups stated that the PTB is an above-market rate and therefore would be a profitable POLR rate. Consumer Groups stated that the affiliated REP or dominant REP would be better able to serve as POLR because their large load enables them to better absorb load growth.

Entergy commented that the POLR rule should provide potential bidders the flexibility to structure their bids so that the price to provide POLR service is commensurate with the risks associated with providing such service. Entergy stated that price caps conflict with this objective, and should be removed from the proposed rule. Entergy pointed out that there are POLR providers currently in place that were designated by the commission in accordance with the procedures contained in the current rule. POLR rules, rates, and terms of service were negotiated in good faith and approved by the commission and Entergy stated that this approach should be maintained in the rule.

Republic commented that the incorporation of the 125% cap/premium will go a long way toward reducing the risk that a POLR selected by bid or lottery will have to provide POLR service at noncompensatory rates. Republic stated that reducing the risk should also encourage participation in the bid process, and strongly supported this provision.

In reply comments, TXU stated that the commission should reject comments by parties recommending that the POLR price be set at or below the PTB. TXU commented that, if implemented, this would

seriously and adversely affect the ability of competitive REPs to compete in the market. TXU stated that to the extent POLR service is not priced to allow the POLR to recover its costs, it becomes an artificially low, competitively priced option in the market and not simply a safety-net for customers.

Reliant, First Choice and TXU proposed adding an energy price floor to ensure the POLR rate does not fall below the PTB. They indicated that, without a price floor, the monthly energy price adjustment could result in the POLR rate dropping below the PTB due to decreases in natural gas prices. Noting that this is a critical addition to the proposed rule, Reliant recommended a price floor of 105% of the PTB. TXU proposed that the POLR rate not go below 110% of the PTB. First Choice suggested making the energy component of the PTB the price floor for the energy component of the POLR rate. Entergy supported Reliant's and TXU's proposals for a price floor. OPC disagreed that the POLR rate should be indexed above the PTB.

The commission agrees that POLR service as contemplated in the proposed rule carries with it volume and commodity price uncertainty that is peculiar to POLR service. The commission therefore disagrees with commenters who suggest that the PTB should be a ceiling on POLR service. Nevertheless, the commission finds that the fuel price adjustment methodologies included in the proposed rule avoid much of the risk associated with the initial POLR rule that required a static price for the term of the POLR contract. In the commission's view, this reduced risk should help moderate prices bid for POLR service both in the short term, in comparison to rates established where POLR prices were locked in for longer periods, and in the longer term as power markets become more liquid.

However, the commission finds that some upper limits on POLR rates are appropriate given that POLR service is likely to remain less than fully competitive in the near-term. Therefore, the commission declines to remove the rate cap as recommended by ARM and Entergy.

The commission shares the concern expressed by Consumer Groups that POLR providers could take advantage of provisions that allowed adjustments in the energy component of the PTB by not reducing the POLR rate when commodity costs fall. The commission therefore has retained the requirement that the energy component of the POLR rate be adjusted whenever the gas price index changes by 5.0% or more, either up or down.

The commission also agrees with commenters that POLR service is not intended to function as a competitive alternative. POLR service is intended to be transitional in nature until customers procure service from a competitive provider. Therefore, the commission finds that a floor on the POLR rate is appropriate and that floor should be equal to the PTB. A PTB price floor on the POLR rate has been added to the rule.

The commission rejects Entergy's proposal that a process for negotiating POLR rates, terms, and conditions should be maintained. The commission used that process to establish POLR service for 2002 and found it to be administratively unwieldy and problematic in terms of inclusion of interested persons in the negotiating process.

Finally, in situations where POLR service is awarded by lottery, the commission finds that the 25% premium is consistent with, and more moderate than, premiums for POLR service that the commission has seen in prior bids. Further, the 25% premium is within the range of increments above the PTB currently being charged for POLR service. The commission therefore believes the lottery price of 125% of the PTB is reasonable.

With respect to the provisions of the proposed rule concerning evaluation of bids at standard usage levels, Entergy pointed out that average usage levels for residential and small non-residential customers may vary among TDU service territories. Entergy proposed revised rule language that would require evaluation of bids based on usage levels specific to each POLR area.

The commission agrees that standard usage levels will likely vary from service area to service area. However, the commission does not believe, and Entergy provided no evidence to suggest, that differences in standard usage levels across TDU service territories are likely to have any significant impact on the bid evaluation. No change was made in response to this comment.

Reliant stated that for the small and large non-residential classes, the rule should specify a single measurement point for determining whether or not a bid is between the proposed bid cap and bid floor, if any. Reliant commented that the proposed usage levels for evaluating small and large non-residential bids could cause the bid to be above the bid cap at one usage level but below the cap at another.

Reliant proposed that the small non-residential class should be evaluated at 35kW of demand and a 55% load factor and the large non-residential class should be evaluated at two megawatts of demand and a 55% load factor.

The commission agrees that having two evaluation points will complicate the process of bid evaluation. The commission concludes that the bid evaluations should be based on single usage levels that are the approximate mid-point of the usage levels proposed. The rule has been revised accordingly.

Reliant also recommended that the POLR rate design follow the PTB rate design in each service territory to ensure that the POLR bid price does not fall above the bid cap proposed in the rule or the rate floor, if any, for any range of usage characteristics. Reliant provided an example: if the benchmark PTB price has two energy blocks, where usage for 0 to 500 kWh is one price per kWh and usage above 500 kWh is at another price, the POLR price should have the same block structure. Over the range of usage characteristics, the POLR price can fall between a 60% discount to the PTB at low load factors to greater than a 50% premium over the PTB at high load factors. Such an outcome is not in the public interest because it creates the potential for POLR service to be a competitive alternative for some customers.

The commission understands Reliant's concern is that, if the PTB is based on an inverted block structure (available only to residential customers), certain customers might find POLR rates more attractive than PTB rates and select POLR service in lieu of PTB service. The commission finds that this outcome is

possible but unlikely because few, if any, customers under an inverted block structure rate would be expected to select POLR pricing rather than PTB pricing or another competitive offering because residential customers, those to whom an inverted block structure is available, are typically slow to switch providers. The commission will examine this issue further if it appears that large numbers of customers on an inverted block structure rate are selecting POLR service to take advantage of more attractive pricing. At this time, however, the commission declines to make any changes to the rule to address this issue.

Reliant also commented that since the POLR energy price is calculated as a percentage of the PTB, any adjustments in the PTB should result in a corresponding adjustment to the POLR energy price.

The commission generally agrees with Reliant that the floor for POLR rates established by bid should change when the PTB changes and that the POLR rate for POLRs selected by lottery, set at 125% of the PTB, should also change when the underlying PTB changes. Subsection (k)(4) already reflects this idea for POLR rates applicable when the POLR is set by lottery because it specifies that the rate shall be 125% of the applicable standard PTB; the commission interprets this language to mean the PTB rate in effect from time to time. When the bid price is established through bidding, comparisons to the PTB after the initial bid evaluation are irrelevant except when the awarded bid is a PTB bid. In that event, the POLR rate would adjust if and when the PTB rate adjusts. No change was made in response to this comment.

ARM noted that subsection (k)(4) places certain caps on POLR rates. ARM stated that it disapproves of artificial influences on retail rates and that capped rates distort the market. ARM stated that POLR rates should be market-based.

The commission agrees with ARM's goal that POLR rates be market-based. However, for the reasons discussed in response to comments on preamble question 1 and this subsection, the commission has elected to retain a cap on POLR rates.

Entergy suggested the deletion of the 125% of PTB rate cap for providers chosen by lottery. It suggested that instead the rate should be a negotiated rate that includes an energy charge, non-bypassable charges and a fixed monthly customer charge for residential customers and a fixed monthly demand charge for small non-residential customers. Entergy also proposed that the POLR rate structure for large non-residential customers when the POLR is selected by lottery consist of an adjustable energy charge, non-bypassable charges, and a fixed monthly demand charge. Entergy suggested elimination of the energy charge cap of 150% of the energy reference price and commented that POLR rates for POLRs selected by lottery should be negotiated. TXU also supported establishing the POLR rate when the POLR is selected by lottery through negotiation.

The commission disagrees. As previously discussed, the commission intends to avoid negotiation of POLR rates in the future. A negotiation process for setting POLR rates is problematic both from the standpoint of resources required to negotiate the rate and because of issues about public participation in

the process. The commission finds that the lottery process incorporated in the proposed rule is necessary to ensure that the POLR process is streamlined and predictable for all affected interests. Moreover, the commission finds that POLR rates for situations where the POLR is selected by lottery must be specified in the rule.

The commission sees some merit in Entergy's suggestion that the lottery POLR rate for large non-residential customers should include a fixed monthly demand charge; however, the record is devoid of any discussion as to the appropriate demand charge. Therefore, the commission is not in a position to include a demand charge in the lottery POLR rate. As discussed above, the lottery POLR rate does include a customer charge and specifically provides for pass through of non-bypassable charges. No change was made in response to this comment.

TXU recommended including language in subsection (k)(4)(A) that specifically authorizes that the rate specified for residential and small non-residential customers when the POLR is selected by lottery (125% of the PTB) be subject to adjustment in the event of changes in non-bypassable charges or gas prices during the term of POLR service.

The commission disagrees. The PTB rate on which the rate for POLRs selected by lottery is based is an all-in rate that includes non-bypassable charges and a fuel factor based on forward NYMEX prices. The rule provides a substantial premium above the PTB rate to account for the additional risk faced by

the POLR provider as well as any lag in the PTB fuel factor. The commission does not believe that adjustments to the PTB over and above the percentage specified in the rule are warranted.

Entergy suggested deletion of the good cause adjustment to POLR rates and instead recommended a failed bid process that is consistent with the existing POLR rule, i.e., the commission should investigate why the bidding process was unsuccessful and re-bid the service with modifications, or appoint any eligible REP serving a customer class in a POLR area to become the POLR for that customer class in that area. It also suggested the addition of the option for the commission to negotiate the POLR rates if the bid process failed.

OPC suggested the deletion of the good cause exception and stated that the commission has the right to make adjustments for cases of financial difficulty. OPC commented that this proposed language seems to give the commission the right to raise POLR rates for reasons other than fuel costs without a contested case proceeding.

Reliant supported the inclusion of a financial integrity clause in the proposed rule as it is imperative that the POLR has the ability to seek relief should the POLR price fall below the cost of providing service. However, Reliant commented that additional clarification is needed with regard to the process by which a POLR requests and receives relief. Specifically, for the financial integrity provision to function as intended, Reliant stated that the POLR must be able to receive immediate relief through an interim pricing process. Reliant proposed that a POLR have the right to place emergency prices into effect if

the market implied heat rate for a period of five consecutive trading days exceeds the POLR energy price's implied heat rate for the same period of five consecutive trading days. For the purpose of calculating the implied heat rate, Reliant suggested using the *Platt's Megawatt Daily* 1 x 16 index for the applicable POLR service territory and the *Gas Daily* index for the Houston Ship Channel. Reliant explained that emergency prices would stay in effect until the market implied heat rate for a period of five consecutive trading days dropped below the POLR energy price's implied heat rate for the same period of five consecutive trading days.

Reliant also commented that if customers are voluntarily selecting POLR service, there is a strong indication that the POLR prices are more favorable than other competitive offerings and that the POLR price is below the true cost of providing service. Therefore, Reliant proposed that if the total number of large non-residential customers electing POLR service for reasons other than the default or exit from the market of their previous provider numbers more than five at any time or if the total POLR load from customers electing POLR service for this same reason exceeds ten megawatts at any time, the POLR should have the right to place interim prices into effect pending a financial integrity review.

Reliant claimed that the POLR will still be exposed to price risk from customers dropped to POLR due to REPs who have failed or otherwise left the market. Reliant contended that this would occur when the bilateral energy market used to serve load is behaving differently than the balancing energy market represented by the MCPE. Reliant argued that the financial impact on the POLR could be significant given the size of the large non-residential load. Reliant therefore proposed that the POLR should be

allowed to place emergency prices into effect when the ERCOT Forward Assessment as reported in *Platt's Megawatt Daily* is greater than the POLR energy price for the large non-residential customers for a period of five consecutive trading days. The ERCOT Forward Assessment is for Sellers Choice, which currently means it is for delivery into the South Zone. To account for the basis difference between the South Zone and other ERCOT zones, Reliant proposed using the preceding capacity auction from the time of the emergency price relief to adjust the zonal energy basis differences. For each zone with a baseload capacity auction price, Reliant proposed applying the percent difference between the zone that is included in the emergency price relief request and the South Zone to the ERCOT Forward Assessment.

As discussed previously in the context of comments by Entergy and TXU that POLR rates be negotiated if the bid process is unsuccessful, the commission finds that Entergy's suggested negotiation process is practically unworkable. One of the primary purposes of this rule is to streamline the process for POLR selection as well as ensure an opportunity for public participation in that process. No change was made in response to Entergy's comments.

The commission generally disagrees with Reliant that a complex process for interim rate relief should be incorporated into the rule. The commission has made an effort in this rule to better tie POLR rates to market rates for energy than was done in the original POLR rule. Particularly for large non-residential customers, the rule's mechanisms for following the market price of power should address to a substantial degree concerns about rates that are inadequate to recover the POLR's costs. The

commission is aware, however, of the potential for price spikes in the market to have a substantial effect on the POLR's net revenues and understands the need for timely action in certain circumstances. The commission has therefore revised the rule to include a provision allowing an interim POLR rate increase upon a showing of good cause and with at least three days notice and opportunity for hearing. To further expedite the process of obtaining interim rate relief, the commission will develop an interim rate relief filing package upon the conclusion of this docket that identifies the types of information that would have to be provided to the commission in support of a request for a change in POLR rates, whether on an interim or permanent basis.

In response to OPC's comments, notice and opportunity to request a hearing would be required before a good cause exception could be granted. No change was made in response to this comment.

TXU commented that the option of rebid should be an alternative if the commission and a POLR cannot reach a mutually agreeable POLR rate adjustment.

The commission does not believe the language recommended by TXU is necessary. First, it contemplates a private negotiation process between the commission and the POLR provider. Such a provision would be inconsistent with the commission's efforts in this rule to include an avenue for public participation in the POLR rate-setting process. Further, the commission may decide to rebid the service based on circumstances unrelated to its ability to negotiate an agreement as to a rate adjustment with the POLR. No change was made in response to this comment.

§25.43(l), Adjustments to energy charge component of residential and small non-residential POLR rates.

Entergy and Reliant recommended that the monthly adjustment to the energy charge in subsection (l) apply to not only POLRs selected by competitive bid but also POLRs selected by lottery. TXU also suggested changing the title of subsection (l) so that the monthly adjustment mechanism applies to all customer classes.

The commission disagrees insofar as the comments relate to residential and small non-residential customers. The PTB rate against which the POLR rate multiplier will be applied is an all-in rate with a fuel factor that can be adjusted based on changes in the price of gas and purchased power. Thus, there is no need for the POLR rate to fluctuate with gas prices. In the case of large non-residential customers, the energy charge adjusts with the market. No change was made in response to this comment.

TXU recommended changes to subsections (l)(1) and (l)(3) and the corresponding TOSA to allow the POLR to select the timing of rate adjustments resulting from the gas price index. These changes would implement TXU's proposal to make the price adjustment discretionary for the POLR, as discussed above under preamble question 4. TXU also suggested revising subsection (l)(1) to institute the rate adjustments based on a customer's billing cycle, rather than the calendar month.

As discussed previously under preamble questions 2 through 4, the commission disagrees with TXU that the monthly adjustment should be at the option of the POLR. This mechanism is intended to provide timely adjustments to the POLR rate. Upward adjustments will ensure that the POLR is able to recover its costs during periods when electricity prices are likely to be high. Conversely, downward adjustments will benefit customers by reducing the rate when electricity prices are lower. If the decision of whether to change to energy charge is left solely to the POLR's discretion, customers may not fully realize the benefits associated with this mechanism.

With respect to the timing of the rate adjustments, the commission agrees with TXU that the new rates should become effective based on a customer's billing cycle, rather than the calendar month and has accepted the changes recommended by TXU to accomplish this result.

In subsection (l)(2), Reliant proposed using the single-month NYMEX forward natural gas price, as opposed to 12-month NYMEX forward natural gas price, because it will more closely track a POLR's procurement practices. Reliant explained that POLRs are likely to buy on a month-to-month basis and would not buy twelve months forward for each month of the POLR contract term. Entergy generally agreed with Reliant, noting that the 12-month NYMEX forward natural gas prices will not accurately reflect the short-term price volatility that a POLR will encounter.

The commission agrees with Reliant and Entergy that single-month NYMEX forward natural gas prices should be used for calculating the monthly energy charge adjustment. Reference to single-month forward prices will avoid masking volatility in prices incurred by the POLR and will likely be much more reflective of prices that will be incurred during the following month than an index going out 11 months further. The commission has adopted the changes proposed by Reliant. The commission has also revised this section to clarify that the energy charge adjustment calculation should be made one month in advance of the applicable month, and notice of the charge should be filed with the commission at least 15 days prior to the beginning of the applicable month.

Reliant recommended adding a seasonal multiplier to the energy price to reflect seasonal differences in power prices. Reliant asserted that the energy cost for serving a temporary customer over a one or two-month period will generally not be reflected in an annual price, such as the POLR bid price. Based on *Platt's Megawatt Daily's* peak price in ERCOT and the Henry Hub *Natural Gas Daily* prices, Reliant calculated the seasonal multiplier to be 120% of the monthly energy price in the summer (i.e., June through September) and 90% of the monthly energy price in the off-peak periods (i.e., October through May).

The commission disagrees that a seasonal multiplier is required. The proposed rule allows a REP to bid seasonal energy prices and the commission has adopted the proposal to use one-month rather than 12-month forward gas prices in setting POLR rates. The commission does not believe that the additional

pricing mechanisms requested by Reliant are necessary. To the contrary, they may unreasonably inflate POLR prices. No change was made in response to this comment.

Entergy recommended changing the time period used to calculate the energy charge from a five-day average to a ten-day average of NYMEX natural gas prices in subsection (l)(2). Entergy noted that this change would be consistent with the PTB fuel factor adjustment methodology in §25.41(g) of this title.

The commission disagrees with Entergy that the monthly rate adjustment should be based on a ten-day average of NYMEX natural gas prices. The time period included in the PTB rule is intended to provide an indication of the stability of NYMEX prices for the PTB rate adjustments authorized for the affiliated REP. However, the affiliated REP is allowed to adjust its prices only twice a year; under the rule as adopted, the energy component of POLR rates will be adjusted at least monthly. The more frequent adjustments for POLR rates and the compressed time period over which those adjustments will be calculated does not warrant use of a ten-day average. No change was made in response to this comment.

Entergy proposed deleting subsection (l)(3), which requires POLRs to refund customers who are overcharged due to miscalculations of the monthly energy charge adjustment. Entergy explained that it may be administratively burdensome to identify all customers who may have been overcharged.

The commission disagrees with Entergy. The commission finds that this requirement gives the POLR strong incentives to accurately set POLR rates based on the rule's adjustment mechanism due to the heavy burden associated with making refunds directly to customers who were overcharged. If the POLR accurately prices its product as authorized under the rule, no additional burden will befall the POLR.

§25.43 (m), Marketing to POLR customers

Consumer Groups suggested eliminating the proposal to allow the POLR to market other services to its customers. They argued that such a system would provide an advantage to the company and a potential disadvantage to the consumer. Consumer Groups asserted that the POLR can take advantage of its access to customer information to market plans to the consumer, which may maximize REP revenue but not necessarily maximize consumer value. Consumer Groups stated that if the commission permits the POLR to market services, it should also lower the maximum rate for POLR service, to offset value derived by the REP through marketing to pre-screened customers delivered directly to them. In addition, they proposed that the POLR be required to follow a commission-approved script to ensure that the POLR does not engage in discriminatory or deceptive marketing practices.

Consumer Groups specifically objected to TXU's new business unit that targets Houston area customers with "a high-priced alternative to POLR service".

Reliant and TXU disagreed with Consumer Groups' position that the POLR should either not be allowed to market its competitive services or should be required to reduce the POLR price to offset the value derived by the POLR's REP marketing. Reliant stated that the rule allows marketing by the POLR but also requires the POLR to make available a list of customers taking POLR service. According to Reliant, these provisions benefit customers and are in the public interest.

TXU also argued that Consumer Groups' recommendation to eliminate the provision allowing the POLR to market its REP services would disadvantage the customer. TXU stated that to the extent a REP understands the kinds of customers that require POLR service and can offer products and services that are attractive to them, customers will benefit by having such competitive options available. According to TXU, a marketing opportunity also provides an incentive for a REP to assume POLR responsibilities and thus may encourage more POLR bids.

The commission generally disagrees with Consumer Groups that the POLR should not be permitted to market alternative plans of its REP to customers. The commission intends that POLR service be transitory in nature and allowing the POLR to market alternative plans to its customers will help move customers out of POLR service more quickly. In addition, the commission finds this option can have business benefits to the POLR that should help moderate POLR prices. By requiring that a list of POLR customers be made available to other REPs, the commission has allowed the opportunity for other REPs to also target their services to POLR customers. Further, the commission finds that

Consumer Groups' concerns should be mitigated by the provisions of the rule that provide that non-paying customers will not be transferred to the POLR selected under the provisions of this rule.

TXU Energy recommended deletion of the provisions of subsection (m) requiring ERCOT to release information concerning POLR customers because such release may violate the customer's rights. ERCOT indicated that it has the ability to release ESI ID information but does not have customer-specific information (such as customer name, billing address, and billing status).

The commission agrees with ERCOT and has revised the rule to require the POLR to provide the specified information to REPs serving that customer class on a quarterly basis.

With respect to TXU's comments, the commission notes that the provision as written ensures that only information that is already authorized for release under §25.472 of this title may be included in a published list of POLR customers. The purpose of distributing this list is to enable REPs to more easily target POLR customers and to facilitate the transition of those customers out of POLR service. The provisions of subsection (m) have been revised to clarify that the POLR need not comply with the provisions of §25.472(a)(2) of this title prior to release of a list of its customers. The commission notes, however, that any REP marketing to POLR customers is obligated, prior to contacting a specific customer, to ensure that the customer is not on the commission's "Do Not Call List" program.

§25.43 (n), Transition of customers to POLR service

AEP commented that customers should be transferred to the new provider of POLR service in January on a read-cycle basis similar to the January 2002 conversion of customers to PTB service and that the rule should explain whether the commission's rule on transfer of customers applies when POLR customers are being transitioned to a new POLR. In addition, AEP stated a defined schedule or estimated timeline for accomplishment of the transition from the current POLR to the new POLR provider must be included in the rule in order to give REPs sufficient time to prepare for customer transfers, including activities such as overall coordination among market participants, customer notification, and arrangements for power supply.

Centerpoint commented that in order for this section to comport with the current ERCOT protocols and the realities of the Texas market, subsection (n)(1) of this section should be revised to state that POLR service for a requesting customer must be initiated according to the ERCOT protocols for switches. ERCOT agreed with this comment.

Consumer Groups commented that a major oversight of the proposed rule is that it fails to provide a bridge for customers who are served by the POLR on December 31, 2002, when the POLR would change. Consumer Groups recommended that the commission not adopt the proposed rule until it establishes a mechanism to transfer existing POLR customers to another provider as of January 1, 2003. Consumer Groups stated that customers sent to POLR because of payment problems should be transferred to the affiliated REP, as the POLR will no longer be authorized to serve these customers.

Consumer Groups asserted that without this protection, affiliated REPs may terminate existing customers in November and December with the intent of the customer never being served by the affiliated REP at the PTB because of double deposit requirements and unpaid balances.

Reliant commented that existing POLR customers should have a choice of staying with the POLR, transferring to the new POLR (for customers who were placed on POLR service due to non-payment), or selecting a new competitive retailer. Reliant proposed that customers who transfer to the new POLR do so over the course of the billing cycle on each customer's meter read date, similar to the process employed at the start of competition.

TXU commented that the proposed rule fails to address how customers will transition to a new provider after the current POLR service provider contracts/terms end at midnight on December 31, 2002 and recommended a new provision allowing POLR customers to remain with their existing "2002" POLR provider. The "2002" POLR would offer customers the option of either receiving service at a new rate under a new Terms of Service or being transferred to the POLR. If service is offered under a new Terms of Service document with changes in material terms, in accordance with Substantive Rule §25.475(d)(1), customers would be entitled to 45-days notice before their Terms of Service could be changed and service under the 2002 POLR rate discontinued. TXU stated if the customer becomes delinquent in paying for electric service, the proposed POLR rule provisions would apply. Residential and small non-residential customers would be terminated to the affiliated REP for non-payment and

large non-residential customers would receive disconnection notices for non-payment by the 2002 POLR provider.

Regarding subsection (n)(3), TXU recommended that the POLR be allowed to pass on costs associated with switching non-residential customers by requesting out-of-cycle meter reads. Regarding subsection (n)(6), TXU commented that its recommended language to explicitly cover the transition period between 2002 and 2003 will also cover similar scenarios in later years as the POLRs change every two years.

The commission agrees with all commenters that a more structured POLR transition process is required. However, the commission disagrees with Consumer Groups that all existing POLR customers should be transferred to the affiliated REP. The overwhelming majority of customers on POLR service were terminated to the POLR by the affiliated REP for non-payment. If these customers are forced back to the affiliated REP, they would be placed in the untenable position of paying both a deposit and the past-due amounts owed the affiliated REP in a very short time. Customers who cannot meet these financial obligations face disconnection of service, even though they may not have had outstanding balances with the POLR. In addition, forcing customers from the POLR to the affiliated REP is inconsistent with the notion of customer choice. The commission has determined that customers should no longer be transferred to the POLR for nonpayment after September 23, 2002, the earliest time this provision can be implemented. Given this date, it is likely that customers on POLR service at the end of the year will have a deposit outstanding with the POLR and will have established at least a fairly good

payment history with the POLR. Otherwise, these customers would in all likelihood have already been disconnected by the POLR. Therefore, these customers may have some value in the marketplace. In lieu of forcing these customers back to the affiliated REP, the commission concludes that they should be given an opportunity to switch to another provider before the end of the POLR term and, if they fail to do so, they will be served by a competitive affiliate of the outgoing POLR at a rate determined by that provider. In the event that the outgoing POLR found no value in these customers, it could terminate them to the incoming POLR. The rate would not be a POLR rate subject to regulation by the commission. In lieu of the notice required for a transfer of customers between REPs in §25.474(m) of this title (relating to Selection of Change of Retail Electric Provider), notice of transfer to a competitive affiliate of the POLR at the end of the POLR term shall be provided in accordance with the provisions of this rule. To minimize the deposit burden on a customer transferred to the incoming POLR, either at the customer's initiative or the initiative of the outgoing POLR, the customer would be allowed to pay the deposit that would otherwise be required in within ten days of transfer to the new POLR in two installments over a period of 40 days.

In future years, the customers remaining on POLR service at the end of the POLR term are likely to have more value than the customers remaining on POLR at the end of this year because future POLR customers will not have the same credit issues that most POLR customers have today. As an inducement to REPs to bid for POLR service and to minimize the burden on customers of having to select a new provider at the end of the POLR term, the commission concludes that the transition plan discussed in the previous paragraph should apply at the end of each POLR term. Subsection (o) of the

rule regarding termination of POLR status has been revised to include a new paragraph that addresses the transition at the end of the POLR term consistent with this discussion. These provisions are also reflected in the terms of service agreements as a new section entitled, End of POLR Term.

The commission has revised subsection (n)(2) to clarify that a REP that intends to terminate a customer to the POLR for reasons other than non-payment is required to contact the POLR and direct the POLR to initiate a customer switch. The revision is necessary to reflect that fact that the REP serving a customer, and not ERCOT or the POLR, will know when that REP no longer intends to serve that customer.

The commission also notes that the provisions of §25.483(b) of this title have been revised to advance the effective date of provisions regarding the ability of REPs serving large non-residential customers to disconnect to September 24, 2002. This change is necessary to avoid the confusion that would result from having two different dates for affiliated REPs to begin disconnecting non-paying customers.

Entergy recommended including language to more clearly define the POLR's responsibilities during the transition of customers to POLR service. Specifically, in subsection (n)(1), Entergy proposed that POLR service for a requesting customer be initiated when the customer switchover to the POLR is complete, rather than when the customer makes arrangements for POLR service. In subsection (n)(4), Entergy proposed clarifying that the POLR is responsible for serving a customer once the POLR is notified by the applicable independent organization.

The commission agrees with Entergy that subsection (n)(1) should be clarified with regard to the initiation of POLR service for a requesting customer. However, rather than adopting Entergy's suggested language, the commission finds the rule should state that the initiation of POLR service for a requesting customer shall be conducted in accordance with §25.474. This should eliminate ambiguities with respect to timing of the switch process and should ensure consistency among the commission's rules. The commission amends subsection (n)(1) to reflect this decision.

With regard to Entergy's proposed change to subsection (n)(4), the commission does not believe this change is necessary and declines to change the rule.

§25.43(o), Termination of POLR status

TXU recommended deleting language precluding appointment of a REP serving only its own affiliates to replace a POLR who has defaulted on its obligations or whose POLR status has been revoked. TXU claimed that this language did not clarify language in the remainder of the paragraph.

The commission disagrees. The purpose of this language is to ensure that a REP ineligible to serve as POLR under subsection (h)(2)(F) is not designated to replace a POLR whose status has been terminated for reasons other than the expiration of the POLR term. No change was made in response to this comment.

§25.43 (p), Electric cooperative delegation of authority

TXU stated that in order to have a viable competitive market, REPs need to have as many of the rules standardized as possible and recommended language to ensure that REPs serving as POLR in electric cooperatives' service areas are required to follow only one set of rules.

The commission agrees with TXU that standardization is important, but may not be of overriding importance in certain circumstances. The proposed rule provides an opportunity for notice and comment concerning an electric cooperative's proposal to delegate its POLR selection process to the commission. In the context of this notice and comment process, interested persons will have an opportunity to address their concerns about a particular cooperative's delegation proposal. The commission does not believe that it is necessary at this time to adopt the language proposed by TXU. No change was made in response to this comment.

§25.43 (q), Reporting requirements

Entergy strongly opposed the language in this section (q) stating that the information reported to the commission pursuant to this section may not be filed under a claim of confidentiality and the information will be made publicly available. Entergy commented that the commission should not deny REP's their due process right to protect competitively sensitive information and that publication of REP-specific

information including the number of customers disconnected, the number of customers transferred to the affiliated REP for non-payment, number of customers from which a deposit was required, and number of customers disconnected and/or terminated that are eligible for the low-income rate reduction program serves no useful purpose to the market in general. Entergy stated that it did not object to providing such information to staff subject to confidentiality considerations but disagreed that REP-specific information should be made publicly available.

TXU commented that information reported should be treated confidentially with only aggregate level data provided publicly. TXU also commented that the reporting requirements should apply to all REPs with disconnect authority and noted that, with this change, certain reporting requirements are redundant. TXU also stated that it failed to understand the value of reporting the number of days a customer received POLR service and recommended deleting this requirement.

AEP strongly agreed with the comments of Entergy and TXU that the specific information required of affiliated REPs and POLRs be filed on a confidential basis. AEP also supported TXU's proposal that such information be made public only after the data had been aggregated in such a manner that no REP-specific information can be identified. Like Entergy, AEP questioned the relevance and purpose of publication of REP-specific information and stated that the case has not been made or valid reasons given for requiring this information. AEP commented that mere inquisitiveness is not a sufficient reason for requiring affiliated REPs and POLRs to undergo this burdensome process and AEP urged staff to reconsider the need for each of the categories of information requested.

First Choice commented that quarterly reporting is very burdensome for REPs and that annual reporting should be sufficient to accomplish the commission's goals. AEP agreed with First Choice.

The commission has been told by TXU and Entergy that their comments were directed to the proposed disclosure of data required of affiliated REPs under proposed subsection (q)(1). The commission finds that this data can be made public on an aggregated, rather than on an individual affiliated REP basis. The commission finds, however, that reporting data required of POLRs selected under the provisions of the new POLR rule is necessary to facilitate competitive pricing of POLR service. Further, the commission does not believe that such information is competitively sensitive because POLR service is effectively a regulated service. Therefore, disclosure of specific information associated with serving POLR customers in a specific area will not disclose competitively sensitive information. Rather, it will facilitate competitive bidding by POLR providers because certain information concerning the costs of POLR service will be made widely available. In addition, disclosure of the information required to be filed by POLRs under the rule will aid the public in better understanding the risks and rewards of POLR service.

However, the commission understands that language in the proposed rule specifically prohibiting a party from filing reports under claim of confidentiality may be problematic. The commission has therefore revised the rule to clarify that it intends that information provided under subsection (q)(2) and (3) will be made publicly available. In addition, a new paragraph (5) has been added that sets forth the steps that a

reporting entity must follow to substantiate a claim of confidentiality and identifies the manner in which the commission may respond to any such claim.

With respect to First Choice's comments, the commission disagrees that quarterly reporting is unduly burdensome. The commission finds that the public interest in understanding the state of POLR service and affiliated REP service to non-paying customers warrants relatively frequent reporting. No change was made in response to this comment.

§25.478. Credit Requirements and Deposits.

§25.478(a), Credit requirements for permanent residential customers

AEP and TXU advocated for the reinstatement of §25.478(a)(3)(A)(iv), which would allow the REP to charge a deposit if a customer has had service disconnected for nonpayment at any time in the past.

The commission finds that this provision is too onerous in that a customer potentially would be punished for payment behavior that occurred in excess of a year in the past. Customers should be rewarded for improved payment behavior, not punished for past indiscretions. The commission declines to reinstate the provision.

HEAT supported proposed new subsection (a)(3)(E)(ii) that will waive deposit requirements for low-income, medically indigent customers. HEAT stated that the waiver will ensure continued access to electric service for home-bound and bedridden customers, who are unable to travel to a cooling center. HEAT stressed that this waiver is not intended for all low-income customers, but limited to medically indigent customers only. HEAT offered an application form for deposit waiver for commission consideration. HEAT further suggested that the waiver be applied to TXU and Assurance Energy's pay-in-advance option.

The commission appreciates HEAT's comments. In response to HEAT's comments concerning the "pay-in-advance" option, the commission does not believe a change to the proposed rule is necessary. Pay-in-advance may be offered by the POLR at its discretion; however, if pay-in-advance is offered, the customer has a choice between making a deposit or enrolling in the pay-in-advance program and the POLR has the obligation to inform the customer of both options. In the case of medically indigent customers, the commission does not believe that an informed customer would be likely to chose the pay-in-advance option when he or she could avoid providing security altogether by selecting the deposit alternative. No change was made in response to this comment.

AEP questioned the need to create a new category of customers, i.e. medically indigent, who would be deemed to have satisfactory credit, and stated that this would place an additional administrative burden on the REP. AEP noted that if a customer cannot meet satisfactory credit requirements because of a medical condition, the customer would be protected from disconnection by §25.483(g). Both First

Choice and AEP stated that the definition of physician is too broad within this context and could be subject to manipulation and fraud. If the commission chooses to implement this proposed rule revision, AEP recommended that the term physician be limited to a medical doctor and that the phrase "activities of daily living" be clearly defined. TXU recommended that home care providers who certify a customer as not being able to perform three or more activities of daily living should be registered or state certified. In addition, AEP recommended that that a customer be certified as medically indigent on an annual basis. In the alternative, AEP proposed that the Low-Income Discount Administrator be the centralized administrator of the certification process, with the financial support of the System Benefit Fund. Entergy, in addition to having customers certify their medically indigent status annually, recommended that the customer provide the information in writing prior to initiating a switch request. Entergy supported AEP's comment to limit the term physician to a medical doctor.

Consumer Groups supported the HEAT proposal regarding deposit waivers for the medically indigent. However, Consumer Groups recommended that the proposed income level be raised from 150% to 200% of the federal poverty income guidelines, so as to include participants of the Children's Health Insurance Program (CHIP). In addition, Consumer Groups recommended that the income certification be performed by any government assistance provider, rather than energy assistance providers only. Further, Consumer Groups responded that the form developed by HEAT satisfactorily addresses the concerns regarding the burden of the certification process and the definition of medically indigent expressed by TXU, Entergy and AEP.

The commission finds that waiving deposits for the medically indigent is consistent with its obligation to protect the health and safety of electric consumers. The commission also finds that the income eligibility for deposit waiver included in the proposed rule is reasonable and declines to accept Consumer Groups' recommendation. The commission agrees that both the definition of "activities of daily living" and the identities of persons who may make an assessment of a customer's ability to perform those activities should be clarified. The commission adopts the definition of activities of daily living in 22 TAC §218.2. This rule defines activities of daily living to include activities such as bathing, dressing, grooming, routine hair and skin care, and meal preparation. The person who may certify a customer's ability to perform activities of daily living should be a licensed professional such as a medical doctor, nurse, social worker, or therapist or an employee of an agency certified to provide home health services pursuant to the Social Security Act, Title XVIII, 42 U.S.C. §1395 *et seq*. The commission emphasizes that certified home health services providers may not perform a certification as to whether a person is ill or disabled for the purposes of §25.483(h). The commission finds that §25.483(h) ensures full customer access to electricity regardless of the customer's ability to pay for consumed energy, and the certification of such a condition should therefore be held to a higher standard. Customers who meet the deposit waiver requirements should be certified annually. The commission has revised the rule accordingly. In reference to Consumer Groups' request that REPs should be required to ascertain whether a customer is eligible for the deposit waiver, the commission finds that this is overly burdensome. Instead, the commission finds that this information should be included in the "Your Rights as a Customer" brochure. In reference to AEP's comments suggesting that the Low-Income Discount Administrator be responsible for the certification process using monies from the System Benefit Fund,

the commission disagrees. PURA does not authorize expenditure of System Benefit monies for purposes of certifying individuals as medically indigent.

In response to Entergy's suggestion that a customer's status as medically indigent be disclosed prior to the initiation of a switch request, the commission disagrees. The commission can conceive of no legitimate purpose for such a requirement and reminds Entergy that discrimination against customers on the basis of income is specifically prohibited by PURA §39.101(c)

§25.478(d), Additional deposits by existing customers

In reference to subsection (d) TXU recommended language that would allow the affiliated REP and POLR to charge an additional deposit if a disconnection notice has been issued within the previous 12 months, rather than limiting the section to termination notices only.

The affiliated REP and POLR will not be issuing termination notices, but will issue disconnection notices. The commission has clarified the rule.

TXU also commented that a REP should be allowed to request an additional deposit at any time, not only during the first 12 months of service.

A customer's payment behavior may change over time. While the commission finds that customers should not be unduly punished for payment behavior in excess of 12 months in the past, the commission also believes that REPs should be able to respond to adverse changes in payment behavior. The commission finds that a REP should be able to charge an additional deposit if the customer has received a termination or disconnection notice within the last 12 months. The commission has revised the rule accordingly.

In further reference to subsection (d), TXU recommended language that would clarify that the time period for paying a deposit is based on calendar days.

The commission finds that this comment is outside the scope of this rulemaking. No change was made in response to this comment.

In addition, TXU recommended that the verbiage in subsection (d)(4) be changed from "usage payment" to "bill" to clarify that the customer may be receiving a bill that may include a previous month's amount and therefore would not be for the current usage only.

The commission finds that the current bill may include past due balances and has changed the term "usage payment" to "bill."

§25.478(f), Amount of deposit

HEAT supported proposed revisions subsection (f) that will allow a qualifying low-income customer to make a deposit in two installments for it will alleviate some of the financial strain on low-income customers and help maintain electric service. Consumer Groups advocated a more lenient approach whereby a low-income customer may pay a deposit over a three to six month period if the customer expresses an inability to meet the two-month payment period. In addition, Consumer Groups recommended that the REP should have the obligation to ascertain whether the customer is eligible for the special deposit provision, rather than requiring the customer to provide information to the REP when applying for POLR service.

The commission finds that allowing low-income customers to pay deposits in installments is consistent with its obligation to protect the health and safety of electric consumers. The period over which the installments may be made should not exceed the ratio of the amount of the maximum allowable deposit to the debt the customers may incur during that time. As the deposit may not exceed one-sixth of the customer's annual energy bill or the estimated bill for the two subsequent months, the commission finds that allowing a customer to make installment payments over two billing cycles is sufficient and appropriate. In reference to Consumer Groups request that REPs should be required to ascertain whether a customer is eligible for the low-income deposit provision, the commission finds that such a requirement would be overly burdensome. The commission declines to make any revisions to this section.

In reference to §25.478(f)(4)(B), TXU again requested that the number of days be clarified as referencing 40 calendar days. TXU also recommended that verbiage referencing "no sooner" be replaced with "no less" in order to resolve the timing notification contradiction in the language in this proposed section. In addition, TXU recommended the insertion of the word "deposit" before "installment."

The commission finds that the TXU's comment concerning the manner in which days will be counted is outside the scope of this rulemaking. The commission also finds that replacing "no sooner" with "no less" will resolve the timing notification contradiction, and that it is appropriate to insert the word "deposit" before "installment." The commission has revised the rule accordingly.

§25.478(k), Refunding deposits and voiding letters of guarantee

TXU recommended deletion of subsection (k)(3) in order to make the guarantee process for assuring credit worthiness of customers more efficient.

TXU failed to explain the rationale behind its proposed change and the commission can find none. No change was made in response to this comment.

§25.480. Bill Payment and Adjustments.

TXU recommended that subsection (j)(7) refer to both the affiliated REP and the POLR, rather than only the POLR, to clarify that both entities have the right to disconnect.

The commission finds TXU's suggestion to be consistent with the intent of the rule to allow affiliated REPs the right to disconnect and has revised the section accordingly.

TXU recommended that subsection (k)(1)(C) be revised to eliminate the option that would allow the REP to transfer the deposit to the customer's new REP. TXU stated that the within the current market structure, REPs do not necessarily communicate with each other, and the REP is not necessarily aware of who the customer has chosen as a provider.

The commission finds that this comment is outside the intended scope of this rulemaking and therefore declines to make the change requested by TXU.

§25.482. Termination of Contract.

§25.482(a), Applicability

TXU commented that proposed new subsection (a) concerning applicability be deleted. TXU was concerned that the language as proposed would not allow a REP to end its relationship with a customer if at the end of a term a new agreement for service could not be reached with a customer. TXU

commented that the remaining redline changes it had proposed were intended to be consistent with the concept that "Termination of Contract" can be exercised by a REP, regardless of whether that REP has disconnection authority.

The commission agrees that the language in the rule as proposed was overly broad because it would have prohibited an affiliated REP, which will have disconnect authority over its nonpaying customers as of the effective date of the rule, from terminating a customer to POLR for reasons other than non-payment. However, rather than deleting the provision as TXU recommended, the commission modified it to address TXU's concerns.

§25.482(b), Termination policy

Reliant commented that an addition be made to subsection (b) to require a non-paying customer that is dropped from a competitive REP to the affiliated REP to pay any outstanding balance owed to the affiliated REP to continue receiving service. This would place the customer in a similar position as under regulation, when the rules did not require reconnection of a customer until the customer paid or made arrangements to pay its previous unpaid bill amounts.

The commission disagrees that the change requested by Reliant is needed. Section 25.483 of this title provides that a customer may be disconnected for failure to pay an amount owed to a provider. Therefore, upon ten days notice, the affiliated REP can disconnect any non-paying customer transferred

to the affiliated REP by a competitive REP if the customer has an unpaid balance with the affiliated REP. No change was made in response to this comment.

§25.482(c), Termination prohibited

TXU recommended deleting subsection (c)(4) to remove possible conflicts with customers not following agreed payment arrangements as allowed in §25.480 (relating to Bill Payment and Adjustments).

The commission disagrees. The commission finds the change recommended by TXU is outside the scope of this rulemaking. Further, the commission does not believe that this provision prohibits disconnection of a customer who fails to comply with the terms of a deferred payment plan because averaging of payments over a period of time does not constitute "underbilling" for any particular period. No change was made in response to this comment.

TXU also recommended deletion of subsection (c)(7) in order to allow REPs the ability to offer estimated billing to customers. TXU commented that leaving subsection (c)(7) in may inhibit the growth of alternative billing options that may not rely on actual meter reads in rendering a customer's bill for service.

The commission disagrees. This comment is outside the scope of this rulemaking. Further, the commission notes that small and large non-residential customers with usage of 50 kW or more, the

customers that would most likely be targeted under the types of arrangements mentioned by TXU, have the ability to waive the provisions of the commission's customer protection rules under §25.471(a) of this title. No change was made in response to this comment.

TXU also recommended that subsection (c)(7) be revised to delete the option of transferring any remaining deposit amount to the customer's REP, at the option of the customer.

The commission disagrees. This provision may provide a service to the customer and TXU has provided no justification for its deletion. Further, TXU's comment falls outside the scope of this rulemaking. No change was made in response to TXU's comment.

§25.482(i), Contents of termination notice

TXU recommended that subsection (i)(6) be revised to clarify that customers terminated for reasons other than non-payment will still be transferred to the POLR.

The commission agrees and has revised the rule accordingly.

§25.482(j), Notification of the registration agent

TXU recommended language to clarify that only non-paying customers will be switched to the affiliated REP and that customers terminated for other reasons will be switched to the POLR.

The commission agrees and has changed the rule as recommended by TXU.

§25.483. Disconnection of Service.

§25.483(a), Disconnection and reconnection policy

Centerpoint commented that TDUs have designed work processes to ensure that field work such as connections, disconnections, meter readings, etc. is done in the most timely and cost-efficient manner. For example, Centerpoint schedules work orders like disconnections for non-payment in particular geographic areas on particular days of the month to minimize fuel consumption, use manpower efficiently, and expedite the reconnection process. In order to complete disconnection orders in the most efficient manner possible, Centerpoint stated that it will be important for REPs to closely coordinate with the TDUs in scheduling disconnects. Centerpoint suggested revising subsection (a) to require REPs to coordinate the scheduling of disconnections with TDUs in a manner consistent with the TDUs' field work processes.

The commission agrees that some level of coordination betweens REPs and the TDUs will be required to efficiently manage customer disconnections for non-payment and timely reconnections. The

commission finds that appropriate coordination requirements should be developed before the fall of 2004 when non-paying residential customers of competitive REPs will no longer be transferred to the affiliated REP. However, the commission finds that it is premature to address such issues in the rule at this time. No change was made in response to this comment.

First Choice requested that subsection (a) be revised to include provisions for waiver of the requirement that an entity seeking a physical disconnection or reconnection use the appropriate Texas Standard Electronic Transaction (SET). First Choice claimed that it would not be Texas SET compliant for another two to three years. Thus, it would need a waiver from this requirement in order to fulfill its POLR responsibilities in the near term.

To address the issue raised by First Choice, the commission has revised language requiring use of the appropriate Texas Standard Electronic Transaction (SET) to language requiring that transactions be conducted in accordance with standards imposed by ERCOT. This change should meet First Choice's requirements while still ensuring that transactions be conducted in a manner approved by ERCOT.

§25.483(b), Disconnection authority

Consumer Groups assailed the proposal to authorize all REPs to disconnect by 2005 unless adverse findings are made by the commission prior to that time. Consumer Groups claimed that there is no reason to make a decision now about such an important issue.

Consumer Groups also claimed that there is no rational or logical connection between the changes with respect to the POLR contained in this proposed rule and the future grant of a right to disconnect that will have a significant impact on residential customers and lower income customers in particular. There are likely to be significant changes and developments in the move to retail competition that will be unforeseen by the commission at this time. As the market develops, the debate about the ability of REPs to disconnect will take place in a different atmosphere than if competition is slow to develop or does not develop at all.

Consumer Groups also argued that the criteria proposed for not allowing REPs to disconnect service are entirely improper and do not reflect the commission's statutory obligations to protect the public health and safety. According to Consumer Groups, the commission should not focus on whether the market will be injured, but on the public interest including the potential injury to residential customers and the relationship of that injury to the development of a competitive market.

TXU commented that there should be a firm start date for all REPs to have disconnection authority and therefore recommended deletion of the provisions of subsection (b), which authorizes the commission to delay such authority under certain circumstances.

HEAT also supported the proposed transition to allow all REPs to disconnect by 2005. HEAT argued that this structure forces customers and electric providers to take responsibility for electric service and

encourages REPs and customers to work together on payment arrangements. According to HEAT, electric providers will not be able to transfer the burden of non-paying customers to another provider, and customers will be forced to make timely payments or risk disconnection.

The commission disagrees with both Consumer Groups and TXU. Disconnection has serious consequences for both customers and REPs. The commission finds that it is appropriate to reevaluate this issue in 2004 to ensure that the approach contemplated in the rule is in the public interest. For example, if billing errors recently experienced in the ERCOT market have not been corrected by 2004, it might be prudent for the commission to delay the effective date of provisions allowing all REPs to disconnect because of the adverse consequences such a rule could have for residential customers. Nevertheless, a specific date for moving forward should be established in order to communicate the commission's policy goals and ensure that market participants continue making reasonable progress toward developing systems and processes necessary to implement this change at the specified date. As discussed under preamble question 5, the commission will make an affirmative decision whether to implement the disconnection policy on October 1, 2004, or whether to delay implementation of such a policy until a later date. The commission has revised §25.483(b)(2) consistent with the discussion under preamble question 5.

§25.483(c), Disconnection with notice

TXU commented that the word "termination" had been used where "disconnection" was in fact the appropriate term.

The commission agrees and has corrected the rule.

TXU also recommended that a new subsection (c)(6) be added to allow disconnection of a customer when that customer returns for service and has failed to make appropriate payment to clear previous balances owed to the REP from whom the customer is seeking service.

The commission does not believe this change is necessary. Subsection (c)(1) already allows a REP to issue a disconnect notice for failure to pay a bill owed. The commission finds this provision allows the affiliated REP the ability to disconnect a non-paying customer transferred to it by a competitive REP if the customer fails to pay amounts owed the affiliated REP after notice requiring payment of such past due amounts is issued.

§25.483(d), Disconnection without prior notice

TIEC commented that, as discussed in its response to preamble question 5, REPs should not be allowed to request disconnection in the cases listed in this subsection, and particularly in the cases where no notice is required. TIEC commented that the cases listed in the rule involve intimate understandings of the customer's electric facilities and installations which REPs do not have. Because the TDU tariffs

currently contain similar authorizations for the TDU to disconnect, TIEC claimed that there is no need for REPs to be able to request disconnection for these events. TIEC suggested that REPs be permitted to request disconnection only for nonpayment of undisputed charges. According to TIEC, such a limited right to disconnect would satisfy the commission's goal of keeping nonpaying customers from being transferred to the POLR while preserving the safety and protection of facilities in Texas.

The commission has not made the change suggested by TIEC. First, the commission finds this change is outside the scope of this rulemaking and is therefore not appropriate for consideration in this project. Second, while the commission agrees that the TDU has the ability to disconnect a customer for non-payment if any of the conditions specified in subsection (d) exist, the REP may also have an interest in issuing a notice of disconnection if any of the circumstances identified in subsection (d), such as theft of service from the REP, exist.

§25.483(e), Disconnection prohibited

TXU commented that subsection (e)(2) should be amended by striking language suggesting that the commission regulates electric service because prices for electric service are not regulated by the commission except for the prices charged by POLR providers and under the affiliated REP's PTB tariffs. TXU also recommended that the reference to optional services be clarified as services that are not related to the provision of electric service.

The commission disagrees. Generally, retail electric service is subject to, and under the jurisdiction of, the commission. Therefore, the language that TXU seeks to have deleted is an accurate reflection of the commission's authority. No change was made in response to this comment.

TXU proposed deleting subsection (e)(4) to remove possible conflicts with customers not following agreed payment arrangements as allowed in §25.480.

This comment is outside the scope of this rulemaking; therefore, no change was made in response to this comment.

TXU recommended deleting subsection (e)(7) in order to allow REPs the ability to offer estimated billing. TXU argued that retaining this paragraph may inhibit the growth of alternative billing options that may not rely on actual meter reads in rendering a customer's bill for service.

As discussed in response to comments to §25.482(c), this comment is outside the scope of this rulemaking; therefore, no change was made in response to this comment.

§25.483(h), Disconnection of ill and disabled

TXU recommended deleting the generic reference to "public health official" to ensure that appropriate qualification exists for persons acting under the provisions of paragraph (1)(A).

The commission finds that the issue raised by TXU is outside the scope of this rulemaking. No change was made in response to TXU's comment.

§25.483(l), Disconnection notices

TXU recommended a new paragraph (3) that would allow a notice of disconnection to be issued concurrently with a customer's bill. TXU claimed that this provision was needed to provide efficiency in communication with customers.

The commission disagrees. First, this change is outside the scope of this project and therefore is not ripe for consideration. Second, the commission does not believe it is reasonable to issue a disconnect notice at the time a bill is issued. The commission finds that all customers should be afforded a reasonable opportunity to pay their bill before disconnection is threatened. No change was made in response to this comment.

§25.483(m), Contents of disconnection notice

TXU recommended that paragraph (7) be revised by striking language giving the customer the option of having the remaining portion of its deposit remitted to its new REP.

The commission disagrees. This change is outside the scope of this rulemaking and is therefore not ripe for consideration at this time. Further, the commission finds that this provision provides customers some flexibility in addressing new deposit requirements and therefore may be beneficial to the customer. No change was made in response to this comment.

This commission has also made clarifying changes to §25.482 and §25.483 of this title to ensure that the rules accurately reflect the POLR structure created under this rulemaking. Specifically, these changes clarify that both the POLR and, beginning September 24, 2002, the affiliated REP, may disconnect a customer for non-payment. Residential and small non-residential customers who do not pay their competitive REP shall be terminated to the affiliated REP until October 1, 2004, at which point any REP will be able to disconnect a customer for non-payment.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This repeal, new section, and amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2002) (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101(b)(4) which provides that a customer is entitled to be served by a provider of last resort; §39.101(e) which authorizes the commission to enact rules to carry out the provisions of §39.101(a)-(d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit

and termination of service; and §39.106 which directs the commission to designate providers of last resort in areas of the state where customer choice is in effect.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101(b)(4), 39.101(e), and 39.106.

§25.43. Provider of Last Resort (POLR).

(a) **Purpose.** The purpose of this section is to ensure that, as mandated by the Public Utility Regulatory Act (PURA) §39.106:

(1) A basic, standard retail service package will be offered by a POLR at a fixed, non-discountable rate to any requesting customer in all of the Texas transmission and distribution utilities' (TDU's) service areas that are open to competition; and

(2) All customers will be assured continuity of service if a retail electric provider (REP) terminates service in accordance with the termination provisions of Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service).

(b) **Application.**

(1) This section applies to REPs that may be designated as POLRs in TDU service areas in Texas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) exercises its right to designate a POLR within its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (p) of this section to select a POLR within the electric cooperative's service area.

(2) POLR service for a residential or small non-residential customer of a competitive REP whose electric service is terminated for non-payment under the provisions of §25.482

of this title (relating to Termination of Contract) shall be provided by the affiliated REP for that POLR area. In the case of the territory encompassed by Sharyland Utilities, LP, the affiliated REP shall be deemed to be First Choice Power, Inc., the entity providing default service in that area. The provisions of this section do not apply to any affiliated REP serving non-paying residential and small non-residential customers of competitive REPs except as otherwise specifically stated herein.

(3) As of September 24, 2002, a non-paying residential or small non-residential customer of an affiliated REP shall not be transferred to the POLR selected under this section.

(4) A large non-residential customer whose service is terminated for non-payment shall not be transferred to the POLR after September 24, 2002. Notwithstanding the foregoing, a non-paying large non-residential customer may be transferred to the POLR if that customer is receiving service under a contract entered into prior to September 24, 2002, the original term of which has not expired at the time transfer to POLR is requested, and if the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

(c) **Definitions.** The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

(1) **Basic firm service** — Electric service that is not subject to interruption for economic reasons and that does not include value added options offered in the competitive market. Basic firm service excludes, among other competitively offered options,

emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(2) **Billing cycle** — A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used a service.

(3) **Billing month** — Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through meter readings.

(4) **Large non-residential customer** — A non-residential customer with a peak demand above one megawatt (MW).

(5) **Load ratio** — The amount of load for a particular customer class served by a REP on a nationwide basis in comparison to the amount of load for that class in areas in Texas where customer choice is in effect. This determination is to be made by dividing the REP's nationwide total megawatt-hour sales to the customer class during the prior year by the total megawatt-hour sales to such class in areas in Texas where customer choice was in effect during any portion of the prior year.

(6) **Non-discountable rate** — A rate that does not allow for any deviation from the price offered to all customers within a class, except as provided in §25.454 of this title (relating to Rate Reduction Program).

(7) **POLR area** — The service area of a TDU in an area where customer choice is in effect, except that the POLR area for Central Power and Light Company shall be deemed to include the area served by Sharyland Utilities, L.P.

(8) **Provider of last resort (POLR)** — A REP certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with this section to customers that are not being served by a REP for reasons other than non-payment.

(9) **Residential customer** — A residential customer as defined in §25.41 of this title (relating to the Price to Beat).

(10) **Small non-residential customer** — A small commercial customer as defined in §25.41 of this title.

(d) **POLR service**.

(1) For the purpose of POLR service, there will be three classes of customers: residential, small non-residential, and large non-residential.

(2) The POLR may be designated to serve any or all of the three customer classes in a POLR area. Within the customer class it is designated to serve, the POLR shall provide service to the following customers:

(A) Any customer requesting POLR service; and

(B) Any customer not receiving service from its selected REP for any reason other than non-payment who is automatically assigned to the POLR.

(3) The POLR shall offer a basic, standard retail service package, which will be limited to:

(A) Basic firm service;

(B) Call center facilities for customer inquiries;

(C) Standard retail billing (which may be provided either by the POLR or another entity);

(D) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund; and

(E) Standard metering, consistent with PURA §39.107(a) and (b) (which may be provided either by the POLR or another entity).

(4) The POLR shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), provide billing and collection duties for REPs who have defaulted on payments to the servicer of transition bonds or to TDUs.

(e) **Standards of service**.

(1) A REP who has been designated by the commission to serve as POLR for a class in a given area shall serve any customer in that class as described in subsection (d)(2) of this section.

(2) A POLR shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter. In addition, the POLR shall be held to the following general standards:

(A) The POLR shall inform any customer transferred to it that it is now providing service to the customer and disclose all charges for which the customer will be responsible;

(B) The POLR shall provide a commission-maintained list of certified REPs to any customer who inquires about selecting a provider;

(C) The POLR may not require that a customer sign up for a minimum term as a condition of service, except that if the POLR offers a level or average payment plan in accordance with Subchapter R of this chapter, a residential or small non-residential customer who elects to receive service under such plan may be required to sign up for a minimum term of no more than six months.

(f) **Customer information**.

(1) **Forms**. The forms in subparagraph (A)-(C) of this paragraph are effective for all POLR service rendered after December 31, 2002. These forms may only be changed through the rulemaking process and are available in the commission's Central Records Division and on the commission's website at www.puc.state.tx.us.

(A) Terms of Service Agreement, Provider of Last Resort (POLR) Residential Service:

Figure: 16 TAC §25.43(f)(1)(A)

(B) Terms of Service Agreement, Provider of Last Resort (POLR) Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B)

(C) Terms of Service Agreement, Provider of Last Resort (POLR) Large Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C)

(2) **Provision of information to customers**. The POLR shall provide each new customer the terms of service agreement applicable to the specific customer. Such terms of service agreements shall be updated as required under §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers.)

(g) **General description of POLR selection process**.

(1) **POLR selected for areas where customer choice is in effect.** The commission shall designate certified REPs to serve as POLRs in areas of the State in which customer choice is in effect, except that the commission shall not designate the POLR in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated its POLR designation authority to the commission in accordance with subsection (p) of this section.

(2) **Process.** The commission will solicit bids for POLR service for two-year terms as specified in paragraph (3) of this subsection. Bids shall be solicited from REPs that are eligible to provide POLR service under the provisions of subsection (h) of this section. The process for evaluating such bids is specified in subsection (i) of this section and the basis upon which bids shall be compared is specified in subsection (k)(3) of this section.

If no eligible bids for a POLR customer class in a POLR area are submitted, the POLR shall be selected by lottery under the procedures set forth in subsection (j) of this section and the POLR rate established under the provisions of subsection (k) of this section.

(3**)** **Term**. POLRs shall serve two-year terms beginning in January of each odd-numbered year. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule shall be set at the time POLRs are initially selected in such areas.

(h) **REP eligibility to serve as POLR.** In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR for the terms scheduled to commence in January of the next year.

(1) **Information requirements.** The commission may require a REP and its affiliates to provide information to the commission necessary to establish that REP's eligibility to serve as POLR. Specific information received from a REP that is responsive to such a request by the commission shall be treated confidentially if it is submitted to the commission in accordance with the provisions of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). However, the commission's determination regarding eligibility of a REP to serve as POLR under the provisions of this section shall not be considered confidential information.

(2) **Criteria.** During the term of the price to beat for a particular customer class, an affiliated REP is ineligible to serve as POLR for that class in the POLR area defined by the boundaries of its affiliated TDU, unless the affiliated REP submits a bid to provide POLR service in the POLR area defined by the boundaries of its affiliated TDU at the price to beat. A REP is also ineligible to provide POLR service to a particular customer class in a POLR area if:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission or that REP's certificate has been suspended or revoked by the commission;

(B) The REP's load ratio for the particular class is less than 1.0%;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the POLR term;

(D) On the expected date of bid submittal, the REP or its predecessor, including a REP that has assumed the responsibilities of another REP, will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class in Texas;

(F) The REP's customers are limited to its own affiliates; or

(G) The REP is certified only to provide POLR service for an affiliate.

(3) **Publication of notice of eligibility.** For each POLR term scheduled to commence in January of the next year, except for the year 2003, the commission shall publish the

names of all of the REPs eligible to provide POLR service for each customer class in each POLR area. The notice shall be published in the *Texas Register* prior to or contemporaneously with publication of the invitation for bids. For 2003, only affiliated REPs shall be considered eligible REPs.

(i) **Bid process**. Initially, a competitive bid process will be used to select the POLR for each customer class in each designated POLR area.

(1) **Invitation to bid**. Before the expiration of a term of POLR service in a POLR area, the commission shall issue an invitation for bids for POLR service for each customer class in the POLR area. Notice of the bid invitation, any submission requirements, the submission deadline, and the project number assigned to the bid process for that POLR area shall be published in the *Texas Register*. A separate project number shall be designated for each POLR area.

(2) **Bidder qualifications**. A REP that has met the eligibility requirements of subsection (h) of this section shall be considered a qualified bidder.

(3) **Submission of bids**.

(A) **Separate bids required.** A bidder may submit a bid to serve any of the three customer classes in a POLR area. Bids for each customer class in a POLR area shall be submitted separately. A REP may submit a separate bid for POLR service for each customer class and POLR area for which it seeks to provide service.

(B) **Filing and content.** Each bid shall be filed in the appropriate project number on or before the date and time specified in the bid invitation; identify only one POLR area; specify only one customer class; include a bid in conformance with the rate structure for the class; and not contain any information that will be considered, after the closing date for submission of all bids, to be confidential or proprietary by the filing party.

(C) **Designation of preference.** A REP whose load ratio for a particular class is less than 5.0% that submits more than one bid for POLR service for that class may include in its bid a statement indicating its order of preference in POLR areas.

(4) **Filing under seal.** Prior to the closing date specified in the bid invitation, bids must be filed under seal for the limited purpose of ensuring the confidentiality of the bids submitted.

(5) **Bid opening and public comment**.

(A) All bids filed under seal shall be opened and filed publicly by commission staff in the applicable project number by 5:00 p.m. on the third business day following the submission date identified in the bid invitation.

(B) If the bid opening is cancelled, the bids filed under seal will be returned unopened to the bidders.

(C) Interested persons may submit comments on bids in the applicable project up to the 10th calendar day after the bid submission deadline specified in the bid

invitation. Interested persons may submit reply comments on bids up to the 15th calendar day after the submission deadline specified in the invitation. All comments and reply comments shall be filed in the applicable project.

(6) **Evaluation of bids**.

(A) Bids that have been rejected pursuant to subparagraph (B) of this paragraph shall not be evaluated. The bids received for each customer class in each POLR area shall be evaluated on the basis of price in accordance with the provisions of subsection (k)(3) of this section. If two or more bidders bid the same lowest price, the lowest bidder shall be determined by lottery in accordance with the provisions of subsection (j) of this section, with the pool of lottery candidates limited to the bidders submitting tie bids. If, with respect to a particular class of customers, a bidder described in paragraph (3)(C) of this subsection submits the lowest bid for that class of customers in two or more POLR areas, staff shall determine that the bidder submitted the lowest price in the POLR area according to the preference statement submitted by the bidder with its bids. If the bidder did not state a preference or the preferences stated are irreconcilable, the bidder shall be deemed to prefer to serve in the POLR area to which the lowest project number has been assigned.

(B) The commission shall reject a bid for any of the following reasons:

(i) The bidder is not qualified.

(ii) The bid was received by the commission after the date and time specified in the bid invitation.

(iii) The bid did not conform to a requirement described in the bid invitation.

(iv) The rate structure submitted in the bid deviated from the rate structure applicable to the customer class or the bid price exceeds the maximum level specified in subsection (k)(3) of this section.

(v) The bidder asserts to the commission that the bid contains information considered, after the closing date for submission of all bids, to be confidential or proprietary.

(vi) In the event a bidder described in paragraph (3)(C) of this subsection submits two or more bids for the same customer class in different POLR areas then all bids from that bidder for that customer class, other than the preferred bid, shall be rejected.

(7) **Report to the commission**. Staff shall report on the bid process for each POLR area to the commission. The report shall identify the POLR customer classes and POLR areas for which no bids were submitted. The report shall also identify all rejected bids and state the reason why each bid was rejected, describe conforming bids, and summarize the comments and reply comments received. For each customer class in each POLR area, the report shall include a recommendation by staff that POLR service be awarded to the bidder that offered the lowest price in a conforming bid or that the

POLR for a given customer class and POLR area should be selected by lottery because no eligible bids were received.

(8) **Commission action**. For a particular POLR class and POLR area, the commission shall either award a bid consistent with the provisions of this section or reject all bids and direct that the POLR for that customer class and POLR area be determined by lottery.

(j) **Lottery.** The provisions of this subsection shall govern the manner in which a lottery to select a POLR for a given POLR area and customer class is conducted.

(1) **Lottery candidacy**. The commission shall designate a pool of lottery candidates for each customer class in each POLR service area. Every REP eligible to serve as a POLR is a candidate for the lottery unless:

(A) By virtue of having successfully bid for POLR service, the REP will be serving as POLR for that customer class in two or more service areas in January of the next year; or

(B) The REP's load ratio for the customer class is less than 5.0% and the REP will be serving as POLR for the customer class in another area during the upcoming POLR term.

(2) **Elimination from lottery pool**. A REP otherwise eligible for the lottery pool that will be serving a particular customer class as POLR during the upcoming term in the POLR area defined by the boundaries of CenterPoint Energy Houston Electric shall be

eliminated from the lottery pool for that class for the POLR area defined by the boundaries of the Oncor Electric Delivery Company. Similarly, a REP otherwise eligible for the lottery pool that will be serving a particular customer class as POLR during the upcoming term in the POLR area defined by the boundaries of the Oncor Electric Delivery Company shall be eliminated from the lottery pool for that class for the POLR area defined by the boundaries of CenterPoint Energy Houston Electric.

(3) **Drawing**. At a time and date noticed by the commission in the *Texas Register*, a separate drawing will be held for each customer class in each POLR area for which a POLR was not selected by bid. The drawings shall be held in the order of the project numbers assigned to the POLR service areas and interested persons may attend. The names of the lottery candidates shall be written on separate pieces of paper of identical size and color. A staff member shall place the names of the lottery candidates in a receptacle. A commission representative shall draw a piece of paper from the receptacle. The REP whose name is written on the piece of paper shall serve as the POLR for that customer class in that POLR area at the rate specified in subsection (k)(4) of this section.

(k) **POLR rate.**

(1) **Components of POLR rate when service awarded by bid.** The provisions of this paragraph apply to the POLR rate when POLR service is awarded by bid. The POLR rate for the residential and small non-residential customer classes shall be either the

price to beat or a rate consisting of non-bypassable charges, a monthly customer charge that does not change during the term of the POLR, an energy charge, and, for small and large non-residential customers, a demand charge. For residential and small non-residential customers, the applicable standard price to beat rate shall be a floor on the POLR rate and the POLR rate may not fall below the PTB. For large non-residential customers, the POLR rate for large non-residential customers shall consist of non-bypassable charges, a monthly customer charge that does not change during the term of the POLR, an energy charge, and a demand charge.

(2) **Elements of a bid.**

(A) **Residential customer class.** Each bid for POLR service for the residential customer class shall be either a bid to serve customers at the price to beat or a bid that includes:

(i) A monthly customer charge that shall not change during the POLR term and that customer charge may be zero dollars; and

(ii) An energy charge subject to adjustment under the provisions of subsection (l) of this section, expressed as cents per kilowatt-hour (kWh). The energy charge may be differentiated into peak months (May through October) and off-peak months (November through April).

(B) **Small non-residential customer class.** Each bid for POLR service for the small non-residential class shall be either a bid to serve customers at the price to

beat or shall include the components for bids for the residential customer class as set forth in subparagraph (A) of this paragraph and a demand charge that may be zero dollars.

(C) **Large non-residential customer class.** Each bid for POLR service for the large non-residential customer class shall include:

(i) A monthly customer charge that shall not change during the POLR term and that customer charge may be zero dollars;

(ii) A demand charge that may be zero dollars; and

(iii) The percent over the energy reference price specified by the commission that the bidder will charge for energy. For POLR areas in the Electric Reliability Council of Texas (ERCOT), the energy reference price shall be the market clearing price for energy (MCPE) determined on the basis of 15-minute intervals. For POLR areas outside of ERCOT, the commission shall specify the energy reference price prior to the inception of retail customer choice.

(3) **Comparison and rejection of bids.** Bids for POLR service for residential and small non-residential service shall be compared on the basis of price as specified in this paragraph.

(A) **Residential customer class.** Bids for POLR service for residential customers shall be compared assuming monthly residential energy usage of 1000 kWh. If a bid for POLR service for this average usage level exceeds 125% of the

applicable standard residential price to beat rate for that usage level at the time bids are submitted, the bid shall be rejected. For purposes of this rule, the standard residential price to beat rate for residential service in each POLR area shall refer to the following price to beat tariffs, as amended or replaced:

Service Area	Affiliated REP	Tariff
Oncor	TXU Energy Services	Rate R — Residential Service
Centerpoint	Reliant Energy Services	Rate PTB-RS — Residential Service
AEP/CPL	Mutual Energy CPL	Rate SRS — Standard Residential Service
AEP/WTU	Mutual Energy WTU	Rate RS — Residential Service
TNMP	First Choice Power	Residential Service

(B) **Small non-residential class.** Bids for POLR service for small non-residential customers shall be compared assuming a demand level of 35 kW and a monthly usage level of 12,500kWh. If the POLR rates bid for these average usage levels exceed 125% of the applicable standard commercial price to beat rate for both usage levels at the time bids are submitted, the bid shall be rejected. For purposes of this rule, standard commercial price to beat rate shall refer to the following price to beat tariffs, as amended or replaced:

Service Area	Affiliated REP	Tariff
Oncor	TXU Energy Services	Rate GS — General Service Secondary
Centerpoint	Reliant Energy Services	Rate PTB-MGS — Misc. General Service
AEP/CPL	Mutual Energy CPL	Rate LPS — Lighting and Power Service
AEP/WTU	Mutual Energy WTU	Rate GS — General Service
TNMP	First Choice Power	General Service

(C) **Large non-residential class.** Bids for POLR service for large non-residential customers shall be compared assuming a monthly demand of 2.5 MW and a monthly usage level of 1,000,000 kWh.

(4) **POLR rates where POLR selected by lottery.** This paragraph specifies the POLR rates that will be charged in a POLR area when the POLR is selected by lottery.

(A) **Residential and small non-residential customer classes.** The rate charged by a POLR selected by lottery shall be 125% of the applicable standard price to beat rate.

(B) **Large non-residential class.** The rate charged by a POLR selected by lottery shall be non-bypassable charges plus 150% of the applicable energy reference price as determined under paragraph (2)(C)(iii) of this subsection and a monthly customer charge of $2897. The minimum energy reference price shall be $7.25 per megawatt hour.

(5) **Good cause adjustment to POLR rates**. On a showing of good cause, the commission may permit the POLR to adjust the POLR rate, if necessary to ensure that

the rate is sufficient to allow the POLR to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, POLR rates may be adjusted on an interim basis for good cause shown and after at least three days' notice and an opportunity for hearing on the request for interim relief. Alternatively, the commission may rebid POLR service and relieve the current POLR of its POLR responsibilities. If POLR service is rebid, the process specified in subsection (i) of this section shall be followed except that eligible REPs shall be those REPs identified in the last list that was published, with the POLR that is being relieved of its duties deleted from the list. If the commission elects to rebid POLR service and the bid process is unsuccessful, the commission may reconsider adjusting the POLR rates or select an alternate POLR provider by lottery in accordance with the provisions of subsection (j) of this section.

(l) **Adjustment to energy charge component of residential and small non-residential POLR rates**. The energy charge component of the POLR rate for the residential and small non-residential customer classes shall be adjusted as specified in this subsection if POLR service was awarded by bid.

(1) **Energy charge component reevaluated monthly.** The energy charge component of the POLR rate for the residential and small non-residential customer classes shall be recalculated at the end of every month during the POLR term in accordance with the provisions of paragraph (2) of this subsection. If the recalculated energy charge varies

by more than 5.0% from the time the energy charge was bid or last adjusted, then the energy charge of the POLR rate for the following month shall be equal to the recalculated energy charge. If the recalculated energy charge does not vary by more than 5.0% from the time the energy charge was bid or last adjusted, then the energy charge component shall not be adjusted for the following month. All adjustments shall take place during the first billing cycle of the billing month following the recalculation. Adjustments shall not occur during the customer's billing month. The POLR shall submit its monthly rate to the commission at least 15 days prior to the beginning of the applicable month.

(2) **Energy charge calculation.**

$E_N = E_E * G_N / G_E$	
Where:	
E_N =	recalculated energy charge
E_E =	existing energy charge
G_N =	the average of the closing one-month forward New York Mercantile Exchange (NYMEX) Henry Hub natural gas prices as reported in the *Wall Street Journal* for the last five trading days of the month ended 30 days prior to the effective date of the recalculated energy charge.
G_E =	the average of the closing one-month forward NYMEX Henry Hub natural gas prices as reported in the *Wall Street Journal* for the last five business days preceding the bid due date for the first gas price adjustment of the POLR term. For subsequent adjustments, G_E = the average of the closing one-month forward NYMEX Henry Hub natural gas prices as reported in the *Wall Street Journal*, at the time the existing energy charge was last adjusted.

(3) **Refunds.** If in response to a complaint or upon its own investigation, the commission determines that a POLR failed to properly adjust the energy charge component of the POLR rate and as a result overcharged its customers, the commission shall require the POLR to issue refunds to the specific customers who were overcharged.

(m) **Marketing to POLR customers.** An employee answering the POLR phone line will read from a script to describe POLR service but may market the services of its affiliates or any other REP that has entered into a marketing agreement with the POLR. The POLR shall not discriminate between unaffiliated REPs in the terms and conditions of any such marketing agreement. The POLR shall provide to REPs and aggregators on at least a quarterly basis an updated mass customer list of customers served by the POLR containing information similar to the information that the registration agent is authorized to release under §25.472 of this title (relating to Privacy of Customer Information). The POLR shall not be required to comply with the provisions of §25.472(a)(2) of this title prior to releasing its list of customers

(n) **Transition of customers to POLR service**.

(1) POLR service for a requesting customer is initiated when the customer makes arrangements for service.

(2) A customer other than a residential customer or small commercial customer (as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) may agree to a contract or terms of service that allow a REP to transfer the customer to POLR for reasons other than non-payment, including the failure of the customer and its REP to agree on terms of renewal or extension. Unless ERCOT has a transaction that allows REPs to transfer such customers to the POLR, the POLR shall accept written requests for such transfers from REPs and shall initiate a switch for the customer to be

transferred to the POLR. The acquisition by the POLR of such customers is not a prohibited enrollment under §25.474 of this title (relating to the Selection or Change of Retail Electric Provider). Further, §25.472(d) of this title (relating to Privacy of Customer Information) does not apply to such permitted customer transfers.

(3) If the REP terminates service to a customer whose consumption is determined by monthly meter readings without giving notice, the POLR shall prorate the customer's usage based on the customer's historic data or load profile to establish the customer's charges for the relevant portion of the billing cycle, unless the customer requests and is willing to pay for an out-of-cycle meter read. Nothing in this section precludes a POLR from having an out-of-cycle meter read performed for a new customer on its own initiative provided the POLR does not pass on the cost of that meter read to the customer.

(4) The POLR is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for POLR service at the POLR rate in effect at that time.

(5) If a REP terminates service to a customer, it is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination of the service and until the switchover to the POLR is complete.

(6) The POLR is financially responsible for all costs of providing electricity to customers from the time the switchover or initiation of service is complete until such time as the customer leaves POLR service.

(o) **Termination of POLR status**.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR fails to maintain REP certification;

(B) If the POLR fails to provide service in a manner consistent with this section; or

(C) For good cause, provided the commission affords the POLR due process.

(2) If a POLR defaults or has its status revoked before the end of its term, the commission may appoint any certified REP, other than a REP serving only its own affiliates, serving a customer class in that area to become the POLR until a new POLR is selected pursuant to the provisions of this rule. The rate for such POLR service shall be the rate established pursuant to subsection (k)(4) of this section.

(3) The provisions of this paragraph address the transition to a new POLR at the end of a POLR term.

(A) At the end of the POLR term the outgoing POLR may chose either to continue to serve POLR customers who do not select another provider through a competitive affiliate at a rate specified by the competitive affiliate or to terminate the customers who do not select another provider to the incoming POLR on the first meter read date after the term of the incoming POLR commences.

(B) A notice containing the information specified in either subparagraph (C) or (D) of this paragraph, as applicable, shall be provided to each POLR customer at

least 60 days prior to the end of the POLR term. The notice shall be in type no smaller than 12 points in size. The notice shall satisfy the requirements of §25.474(m) of this title in the event that the customer fails to switch to another provider and is transferred by the POLR to a competitive affiliate of the outgoing POLR or the customer fails to switch to another provider and is transferred to the incoming POLR by the outgoing POLR. The notice shall also include a phone number for the outgoing POLR for the customer to call to obtain more information.

(C) The notice provided by a POLR that elects to transfer customers who fail to switch to another provider to a competitive affiliate shall include a comparison of the POLR rates currently charged to the customer to the rate offered by the competitive affiliate of the outgoing POLR as well as the applicable price to beat rate. The notice shall specify the deposit requirements of the competitive affiliate of the outgoing POLR and shall state that other providers may also require a deposit and may require payment of any amounts owed the provider for services previously rendered. The notice shall state where the customer may find additional information about offerings of other providers and shall inform the customer that, if the customer does not select another provider or request service from the incoming POLR by a specified date, that a competitive affiliate of the outgoing POLR will continue to serve the customer at the rate specified in the notice.

(D) If the POLR elects to transfer customers who do not select another provider to the incoming POLR on the first meter read date after the term of the incoming POLR commences, the notice to customers shall state where the customer can find more information about other offerings as well as the rates of the incoming POLR. The notice shall inform the customer that if the customer does not select another provider by a specified date, the customer will be transferred to the incoming POLR on the first meter read date after the commencement of the POLR term. The notice shall also inform the customer that the incoming POLR will bill the customer for a deposit and that the deposit can be made in two installments as will be described further in the notice from the incoming POLR.

(E) If a POLR customer either requests service from the incoming POLR or is terminated to the incoming POLR by the outgoing POLR, the outgoing POLR shall offset the customer's final bill against the customer's deposit and refund any remaining balance to the customer within 20 days from the customer's final meter read date. The customer shall be entitled to pay the deposit required by the incoming POLR in two installments in the manner provided in §25.478(f)(4) of this title (relating to Credit Requirements and Deposits).

(p) **Electric cooperative delegation of authority**. An electric cooperative that has adopted customer choice may propose to delegate to the commission its authority to select a POLR under PURA §41.053(c) in its certificated service area in accordance with this section. After

notice and opportunity for comment, the commission will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions will apply:

(1) The board of directors will provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority will be made at least 30 days prior to the time the commission issues an invitation for bids to establish a POLR for a contiguous or surrounding POLR area;

(3) The delegation of authority will be for a minimum period corresponding to the period for which the solicitation will be made;

(4) The electric cooperative wishing to delegate its authority to designate a POLR will also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR within the electric cooperative's certificated service area; and

(5) If the competitive bidding process that includes the electric cooperative certificated area fails, the commission will automatically reject the delegation of authority.

(q) **Reporting requirements**. Each POLR and affiliated REP serving nonpaying customers of competitive REPs shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 days of the end of the quarter.

Except as provided in paragraph (5) of this subsection, information filed by an affiliated REP in accordance with paragraph (1) of this subsection will be made publicly available by the commission on an aggregated basis. Except as provided in subsection (5) of this section, information filed by a POLR in accordance with paragraphs (2)-(4) of this subsection will be made publicly available by the commission for each POLR area.

(1) For each month of the reporting quarter, the affiliated REP shall report:

(A) The number of residential customers who were disconnected for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title;

(B) The number of residential customers who were transferred to the affiliated REP by a competitive REP for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title;

(C) The average amount owed to the affiliated REP by residential customers at the time of disconnection;

(D) The average amount owed to the affiliated REP by residential customers eligible for the rate reduction program at the time of disconnection;

(E) The number of small non-residential customers who were disconnected for non-payment;

(F) The average amount owed to the affiliated REP by small non-residential customers at the time of disconnection.

(2) For each month of the reporting quarter, each POLR shall report the total number of new customers acquired by the POLR and the following information regarding these customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title and the average amount of deposit requested;

(C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

(3) For each month of the reporting quarter each POLR shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the POLR;

(C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title (relating to Disconnection of Service);

(D) The average amount owed to the POLR by each disconnected customer at the time of disconnection; and

(E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.

(4) For the entirety of the reporting quarter, each POLR shall report the average number of calendar days a customer received POLR service.

(5) Reports filed under this subsection are subject to release as public information unless the reports or specific parts of the reports can be shown to be exempt from disclosure under Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act (TPIA). If a reporting entity contends that all or part of a report is confidential, then the reporting entity shall file the information in accordance with the requirements of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). The reporting entity must submit in writing specific detailed reasons, including relevant legal authority, in support of its contentions that the material is exempt from disclosure under the TPIA. All reports and parts of reports that are not marked as confidential will be automatically considered public information upon submittal. The

validity of any claim of confidentiality may be determined by the commission through a contested case proceeding, by the Office of the Attorney General pursuant to the provisions of the TPIA, or both.

(r) **Waiver of customer protection rules.** The provisions of §25.475(d) of this title requiring issuance of a revised terms of service statement to customers 45 days prior to any material change in the customer's terms of service shall not apply with respect to the implementation of the provisions of subsection (b)(3) of this section or §25.483(b) of this title.

§25.478. Credit Requirements and Deposits.

(a) **Credit requirements for permanent residential customers**. A retail electric provider (REP) may require residential customers to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer of an affiliate REP or provider of last resort (POLR) can demonstrate satisfactory credit using any one of the criteria listed in subparagraphs (A) through (D) of this paragraph. A competitive retailer may establish other criteria by which a customer can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) A residential customer may be deemed as having established satisfactory credit if the customer:

(i) has been a customer of any REP or the electric utility (prior to 2002) within the two years prior to the customer's request for electric service;

(ii) is not delinquent in payment of any such electric service account; and

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once.

(B) A residential customer may be deemed as having established satisfactory credit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency.

(C) A residential customer may be deemed as having established satisfactory credit if the customer is 65 years of age or older and the customer's account with the electric utility (prior to 2002) or any other REP has not had a delinquent balance credit if the customer is 65 years of age or older and the customer's incurred within the last 12 months for the same type of service applied for.

(D) A residential customer may be deemed as having established satisfactory credit if the customer has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliate REP or POLR.

(E) A residential customer may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer to be considered medically indigent, the customer must make a demonstration that the following criteria are met. Such demonstration must be made annually:

(i) the customer's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and

(ii) the customer or customer's spouse must have been certified by that person's physician (for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq*) as being unable to perform three or more activities of daily living as defined in 22 TAC §218.2, or the customer's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income.

(F) Pursuant to PURA §39.107(g), a REP who requires pre-payment by a metered residential customer as a condition of initiating service may not charge the customer an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(G) The REP may obtain payment history information from the customer's previous REP or from an accredited credit reporting agency. The REP shall obtain the customer's authorization pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider), prior to obtaining such information from the

customer's prior REP. A REP shall maintain payment history information for two years after electric service has been terminated to a customer in order to be able to provide credit history information at the request of the former customer. Additionally, a REP may utilize credit reporting agencies to document customers with poor credit/payment histories.

(4) If satisfactory credit cannot be demonstrated by the residential customer of an affiliate REP or POLR using these criteria, the customer may be required to pay a deposit pursuant to subsections (c) and (d) of this section.

(b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria to evaluate the credit requirements for non-residential customers and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer using the criteria established by the REP, the customer may be required to pay a deposit. No such deposit shall be required if the customer is a governmental entity.

(c) **Initial deposits**.

(1) An affiliate REP or POLR shall offer a residential customer who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (j) of this section, instead of paying a cash deposit. The letter of guarantee may be conditioned on the agreement of the guarantor to become or remain a customer of the

provider affiliate REP or POLR for the term during which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the affiliate REP or POLR, the provider affiliate REP or POLR may require the customer who was obligated to pay the initial deposit to pay such deposit as a condition of continuing the contract for service.

(2) An affiliate REP or POLR shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be issued concurrently with the request for deposit. Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(3) A competitive retailer that collects deposits from customers shall do so pursuant to subsections (f)-(i), (k), and (m) of this section.

(d) **Additional deposits by existing customers**.

(1) An affiliate REP or POLR may request an additional deposit if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original estimated annual billings; and

(B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.

(2) A customer shall pay an additional deposit within ten days after the affiliate REP or POLR has issued a disconnection notice and requested the additional deposit.

(3) Instead of an additional deposit, a residential customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(4) An affiliate REP or the POLR may disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be issued concurrently with either the written request for the additional deposit or current bill. However, the affiliate REP is not required to request an additional deposit as a condition of continuing service unless such a requirement is contained within the REP's terms of service document.

(e) **Deposits for temporary or seasonal service and for weekend residences.** A REP may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or weekend residences, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.

(f) **Amount of deposit**.

(1) The total of all deposits, initial and additional, required by a REP, other than the POLR, from any residential customer shall not exceed an amount equivalent to the greater of either:

(A) the sum of the estimated billings for the next two months; or

(B) one-sixth of the estimated annual billing.

(2) For the purpose of calculating the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer.

(3) The POLR shall not collect a total deposit that exceeds an amount equivalent to one-sixth of the estimated annual billing.

(4) If a customer is qualified for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer shall be eligible to pay any deposit that exceeds the actual estimated billing for the next month or one-twelfth of the estimated annual billing in two installments. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program.

(A) The first installment shall not exceed the greater of the estimated billing for the next month or one-twelfth of the estimated annual billing and shall be due no earlier than ten days after the issuance of written notification.

(B) The second installment for the remainder of the deposit shall be due no earlier than 40 days after the issuance of written notification. The REP or POLR shall issue a written notification regarding the remaining deposit amount due within 20 days, but no less than ten days, prior to the due date for the second deposit installment.

(g) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(h) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall

be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(i) **Records of deposits.**

(1) A REP that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) The REP that collects a deposit shall, upon the request of the customer, issue a receipt of deposit to each customer paying a deposit and shall provide means for a depositor to establish a claim if the receipt is lost.

(3) The REP shall maintain a record of each unclaimed deposit for at least four years.

(4) The REP shall make a reasonable effort to return unclaimed deposits.

(j) **Guarantees of residential customer accounts**. A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to these minimum requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the

continuation of the guarantee agreement, that the guarantor remain a customer of the REP during the term of the guarantee agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) If the guarantor ceases to be a customer of the REP, the provider may treat the guarantee agreement as in default and demand the amount of the cash deposit from the residential customer as a condition of continuing service.

(5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

(B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).

(6) The REP may initiate termination of service (or disconnection of service for the POLR, or any REP having disconnect authority) to the guarantor for nonpayment of the

guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the terms of service document, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Contract) or §25.483 of this title (relating to Disconnection of Service).

(k) **Refunding deposits and voiding letters of guarantee**.

(1) **Retention period for deposits and letters of guarantee.**

(A) A deposit held by a POLR shall be refunded when the customer has paid POLR bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without having more than two occasions in which a bill was delinquent.

(B) A REP, other than the POLR, may keep a deposit for the entire time a customer receives electric service from the REP.

(C) Upon termination of a customer's electric service, a REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, at the customer's direction. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be voided and returned to the guarantor. Alternatively, the REP may provide the

guarantor with written documentation that the contract has been voided. If the customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained.

(2) If a customer's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the contract has been voided, or refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

(3) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

(l) **Re-establishment of credit.** Every customer who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment

agreement, if offered, and reestablish credit. Upon request, the REP shall reasonably demonstrate the amount of electric service received, but not paid for, and the reasonableness of any charges for the unpaid service, and any other charges required to be paid as a condition of electric service restoration to such premise.

(m) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records, provided that the deposits were not returned to the customers and the legal successor accepts transfer of such deposits.

§25.480. Bill Payment and Adjustments.

(a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) **Bill due date.** A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. The issuance date is the issuance date on the bill or, if there is no issuance date on the bill, the postmark date on the envelope. A payment for electric service is delinquent

if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next business day after the sixteenth day.

(c) **Penalty on delinquent bills for electric service.** A one-time penalty not to exceed 5.0% may be charged on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. A bill issued to a state agency, as defined in the Government Code, Chapter 2251, shall be due and bear interest if overdue as provided in Chapter 2251.

(d) **Overbilling.** If charges are found to be higher than authorized in the REP's terms and conditions for service, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.

(A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment or from the issuance date of the erroneous bill.

(B) All interest shall be compounded monthly based on the approved annual rate.

(C) Interest shall not apply to leveling plans or estimated billings.

(e) **Underbilling.** If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.

(1) The REP may backbill the customer for the amount that was underbilled. The backbilling shall not include charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.

(2) The REP may terminate service, or the POLR may disconnect service, if the customer fails to pay the additional charges within a reasonable time.

(3) If the underbilling is $50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(4) The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer, as defined in §25.126 of this title (relating to Meter Tampering). Interest on

underbilled amounts shall be compounded monthly at the annual rate. Interest shall accrue from the day the customer is found to have first stolen the service.

(f) **Disputed bills.** If there is a dispute between a customer and a provider about the REP's bill for any service billed on the retail electric bill, the REP shall promptly investigate and report the results to the customer. The provider shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).

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

(1) **Notice required.** When a customer contacts a REP and indicates inability to pay a bill or a need for assistance with the bill payment, the REP shall inform the customer of all alternative payment and payment assistance programs that are offered by or available from the REP, such as bill payment assistance, deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each.

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

(A) Each REP shall implement a bill payment assistance program for residential customers. At a minimum, such a program shall solicit voluntary donations from customers by a check-off box on the retail electric bill.

(B) Each REP shall provide an annual report to the commission summarizing:

(i) the total amount of customer donations;

(ii) the amount of money set aside for bill payment assistance;

(iii) the assistance agency or agencies selected to disburse funds to customers; and

(iv) the amount of money provided to each assistance agency to disburse funds to customers.

(C) An assistance agency selected by a REP to disburse bill payment assistance funds shall not discriminate in the distribution of such funds to customers based on the customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

(h) **Level and average payment plans.** A REP shall offer a level or average payment plan to its customers. A REP shall not limit participation to only credit-worthy customers. A REP may collect under-recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. Additionally, a REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.

(i) **Payment arrangements.** A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issued a termination notice (or in the case of the POLR, a disconnection notice) before the payment arrangement was made, that termination or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be terminated (or disconnected in the case of the POLR) after the later of the due date for the payment arrangement or the termination or disconnection date indicated in the notice, without issuing an additional disconnection notice. A REP may switch terminated customers to the POLR by notifying the registration agent.

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

(1) A REP may offer a deferred payment plan to any residential customer who has expressed an inability to pay his or her bill.

(2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described in subsection (e) of this section, or to customers who qualify for such plans

pursuant to §25.482(g) of this title (relating to Termination of Contract) or §25.483(j) of this title (relating to Disconnection of Service).

(3) An affiliate REP or POLR shall offer such plans unless the customer:

(A) has been issued more than two termination or disconnection notices during the preceding 12 months; or

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

(i) sufficient credit; or

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

(4) Any deferred payment plans offered by a REP shall be implemented in a non-discriminatory manner, according to the provisions of this subsection.

(5) Every deferred payment plan offered by a REP shall provide that the delinquent amount be paid in equal installments over at least three billing cycles.

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

(A) shall include a statement, in type no smaller than 14 point size, that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact your retail electric provider." In addition, where the customer and the REP's representative or agent meet in person, the representative shall read the preceding statement to the customer. The REP shall provide information to the

customer in English or Spanish as necessary to make the preceding required statement understandable to the customer;

(B) may include a 5.0% penalty for late payment but shall not include a finance charge;

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

(D) shall state the total amount to be paid under the plan;

(E) shall state the specific amount of each installment;

(F) shall allow for the termination or disconnection of service (as appropriate) if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection or termination of service;

(G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules); and

(H) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

(7) A REP may pursue termination of service (or disconnection of service in the case of the POLR or a REP with disconnect authority pursuant to §25.483(b) of this title (relating to Disconnection of Service)) when a customer does not meet the terms of a deferred payment plan. However, service shall not be terminated or disconnected until appropriate notice has been issued, pursuant to §25.483 of this title or §25.482 of this

title, as applicable, to the customer indicating that the customer has not met the terms of the plan. The REP may renegotiate the deferred payment plan agreement prior to disconnection. If the customer does not fulfill the terms of the plan, and the customer was previously provided a disconnection notice or termination notice for the outstanding amount, no additional disconnection or termination notice shall be required.

(k) **Allocation of partial payments.** A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to other non-electric services billed by the REP. A contract for electric service cannot be terminated for non-payment of non-electric services.

§25.482. Termination of Contract.

(a) **Applicability**. This section applies only with respect to customers who are subject to termination, but not disconnection, by their retail electric provider (REP)' pursuant to §25.483 of this title (relating to Disconnection of Service).

(b) **Termination policy**. A REP other than a REP that is authorized to disconnect for nonpayment pursuant to the provisions of §25.483(b) of this title may terminate its contract with a customer

for nonpayment of electric service charges and, if no other REP extends service to that customer, service shall be offered by the POLR until September 24, 2002, and thereafter by the affiliated REP. If a customer makes payment or satisfactory payment arrangements prior to the termination date, a REP shall continue serving the customer under the existing terms and conditions that were in effect prior to the issuance of a termination notice. If a REP chooses to terminate its contract with a customer, it shall follow the procedures in this section, or modify them in ways that are more generous to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.

(c) **Termination prohibited**. A REP may not terminate its contract with a customer for any of the following reasons:

(1) delinquency in payment for electric service by a previous occupant of the premises if the occupant is not of the same household;

(2) failure to pay for any charge that is not related to electric service;

(3) failure to pay for a different type or class of electric utility service unless charges for such service were included on that account's bill at the time service was initiated;

(4) failure to pay charges arising from an underbilling, except theft of service, more than six months prior to the current billing;

(5) failure to pay disputed charges until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;

(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the transmission and distribution utility is unable to read the meter due to circumstances beyond its control.

(d) **Termination on holidays or weekends**. Unless requested by the customer, a REP shall not terminate a contract for electric service on holidays or weekends.

(e) **Termination due to abandonment by the REP**. A REP shall not abandon a customer or a service area without advance written notice to its customers and the commission and approval from the commission. In the event a provider terminates a customer's contract due to abandonment, that provider shall not collect or attempt to collect penalties from that customer.

(f) **Termination of energy assistance clients**. A REP shall not terminate a contract for service to a delinquent residential customer for a billing period in which the provider receives a pledge,

letter of intent, purchase order, or other notification that an energy assistance provider is forwarding sufficient payment to continue service.

(g) **Extreme weather**. A REP shall not seek to terminate a residential customer's contract for electric service due to non-payment during an extreme weather emergency. A REP shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" means the weather conditions described in §25.483 of this title (relating to Disconnection of Service).

(h) **Termination notices**. Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) a REP may issue a notice of termination of contract. Any termination notice shall:

(1) not be issued before the first day after the bill is due, to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP.

(2) be a separate mailing or hand delivered with a stated date of termination with the words "termination notice" or similar language prominently displayed. A REP may send an additional notice by email or facsimile.

(3) have a termination date that is not a holiday or weekend day and that is not less than ten days after the notice is issued.

(i) **Contents of termination notice**. Any termination notice shall include the following information:

(1) The reasons for the termination of the contract;

(2) The actions, if any, that the customer may take to avoid the termination of the contract;

(3) If the customer is in default, the amount of all fees or charges which will be assessed against the customer as a result of the default under the contract, if any, as set forth in the REP's terms of service document provided to the customer;

(4) The amount overdue, if applicable;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of termination or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm."

(6) A statement that informs the customer of the right to obtain services from another licensed REP, including the affiliated REP or a POLR, and that information about other REPs, the affiliated REP, or the POLR can be obtained from the commission and the POLR. Customers that do not exercise their right to choose another REP shall have

their electric service transferred to the POLR or the affiliated REP, if termination is for non-payment, in accordance with the applicable rules or protocols, and may be required to pay a deposit, or prepay, to receive ongoing electric service. The REP shall not state or imply that nonpayment by the customer will result in physical disconnection of electricity or affect the customer's ability to obtain electric service from another REP, the affiliated REP, or the POLR.

(7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation.

(8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.

(9) A description of the activities that the REP will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(j) **Notification of the registration agent**. After the expiration of the notice period in subsection (h) of this section, a REP shall notify the registration agent of a switch request in a manner established by the registration agent so that the customer will receive service from the affiliated REP pursuant to §25.43(b)(2) and (3) of this title (relating to the Provider of Last Resort

(POLR) or the POLR pursuant to §25.43(b)(1) and (4) and (d) of this title, unless the customer selects another REP or the POLR prior to the effective date of the switch.

(k) **Customer's right to terminate a contract without penalty**. As disclosed in the customer's terms of service document, a customer may terminate a contract without penalty in the event:

(1) The customer moves to another premises;

(2) Market conditions change and the contract allows the REP to terminate the contract without penalty in response to changing market conditions; or

(3) A REP notifies the customer of a material change in the terms and conditions of their service agreement.

§25.483. Disconnection of Service.

(a) **Disconnection and reconnection policy**. Only a transmission and distribution utility, municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate transmission and distribution utility, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the requirements of the Electric Reliability Council of Texas, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall follow the procedures in this section or procedures that are more generous

to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and the period between notice and disconnection. Nothing in this section shall be interpreted to require a REP to disconnect a customer.

(b) **Disconnection authority**.

(1) The provider of last resort (POLR) and, beginning September 24, 2002, any REP may authorize the disconnection of a large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), unless that customer is receiving service under a contract entered into prior to September 24, 2002, the original term of which has not expired at the time transfer to POLR is requested, and if the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

(2) Until October 1, 2004, and except as provided in subsection (d) of this section, only the affiliated REP or the POLR may authorize disconnection of residential and small non-residential customers, as those terms are defined in §25.43 of this title. No later than June 1, 2004, commission staff shall file a report with the commission assessing the potential impact on the public interest of authorizing all REPs to disconnect residential and small non-residential customers. On or before October 1, 2004, the commission shall make a determination as to whether authorizing all REPs to disconnect would be contrary to the public interest, taking into consideration such factors as the impact on the retail market as a whole and the likelihood of unauthorized disconnections. If the

commission determines that authorizing all REPs to disconnect is not contrary to the public interest, REPs shall have such authority as of October 1, 2004, or another date determined by the commission, and after that date residential and small non-residential customers shall not be transferred to their affiliated REP for non-payment.

(c) **Disconnection with notice**. A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the disconnection date in the notice for any of the following reasons:

(1) failure to pay a bill owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice;

(2) failure to comply with the terms of a deferred payment agreement made with the REP;

(3) violation of the REP's' terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or

(5) failure of the guarantor to pay the amount guaranteed, when the REP has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(d) **Disconnection without prior notice**. Notwithstanding any contrary provision of subsection (b) of this section, any REP may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

(1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) Where service is connected without authority by a person who has not made application for service;

(3) Where service is reconnected without authority after disconnection for nonpayment;

(4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or

(5) Where there is evidence of theft of service.

(e) **Disconnection prohibited**. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

(1) Delinquency in payment for electric service by a previous occupant of the premises;

(2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or optional services;

(3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;

(4) Failure to pay charges resulting from an underbilling, except theft of service, more than six months prior to the current billing;

(5) Failure to pay disputed charges, except for the amount under dispute, until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;

(6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the REP is unable to obtain the meter reading due to circumstances beyond its control.

(f) **Disconnection on holidays or weekends**. Unless a dangerous condition exists or the customer requests disconnection, a REP having disconnection authority under the provisions of subsection (b) of this section shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments and request

reconnection of service and personnel of the transmission and distribution utility, municipally owned utility, or electric cooperative are available to reconnect service.

(g) **Disconnection due to abandonment by the POLR**. A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(h) **Disconnection of ill and disabled**. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

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

(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;

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

(C) Enter into a deferred payment plan.

(2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.

(i) **Disconnection of energy assistance clients**. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.

(j) **Disconnection during extreme weather**. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnect for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" shall mean a day when:

(1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(2) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

(k) **Disconnection of master-metered apartments**. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (l) of this section. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

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

(1) not be issued before the first day after the bill is due, to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed;

(3) have a disconnection date that is not a holiday or weekend day, and is not less than ten days after the notice is issued;

(4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

(m) **Contents of disconnection notice**. Any disconnection notice shall include the following information:

(1) The reason for disconnection;

(2) The actions, if any, that the customer may take to avoid disconnection of service;

(3) The amount of all fees or charges which will be assessed against the customer as a result of the default;

(4) The amount overdue;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: 'If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O.

Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm;"

(6) A statement that informs the customer of the right to obtain services from another licensed REP, and that information about other REPs can be obtained from the commission;

(7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation;

(8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and

(9) A description of the activities that the REP will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(n) **Reconnection of service**. Upon a customer's satisfactory correction of reasons for disconnection, the REP shall notify the transmission and distribution utility, municipally owned utility, or electric cooperative, within one day, to reconnect the customer's electric service and shall reinstate the service.

This agency hereby certifies that the rules, as adopted, have 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 new §25.43, relating to Provider of Last Resort (POLR) and amendments to §§25.478, relating to Credit Requirements and Deposits; 25.480, relating to Bill Payment and Adjustments; 25.482, relating to Termination of Contract; and 25.483, relating to Disconnection of Service are hereby adopted with changes to the text as proposed. The commission adopts the repeal of existing §25.43, relating to Provider of Last Resort (POLR) with no changes as published.

ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF AUGUST 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

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Rebecca Klein, Chairman

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Brett A. Perlman, Commissioner