

PROJECT NO. 25360

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

**PROPOSAL FOR PUBLICATION OF
NEW §25.43, REPEAL OF EXISTING §25.43, AND AMENDMENTS TO §§25.478, 25.480,
25.482, AND 25.483 AS APPROVED AT THE MAY 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.43, relating to Provider of Last Resort (POLR); the repeal of existing §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. Project Number 25360, *Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service*, is assigned to this proceeding.

Proposed new §25.43 will alter the current structure for POLR service by phasing in the ability of all retail electric providers (REPs) to disconnect non-paying customers. In addition, the proposed new section will streamline the process for selecting POLRs by prescribing bid requirements and POLR selection methods and will make the POLR selection process transparent to the public. Proposed new §25.43 will also allow POLR rates to better follow market prices for power.

Proposed new §25.43 is intended to incorporate four standard terms of service agreements for the various types of POLR customers. These documents will be adopted by reference and can only be changed through the rulemaking process.

The proposed amendments to §25.478 will exempt medically indigent customers, as defined in the rule, from electric service deposit requirements and will allow low-income customers to pay deposits in two installments rather than one. The proposed amendments will also conform the provisions of this rule to the provisions of proposed §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 proposed amendment to §25.480 makes non-substantive changes to correct references to other rule sections as a result of amendments to §25.482 and §25.483. The proposed amendments to §25.482 and §25.483 will conform the provisions of those rules to the provisions of proposed new §25.43. More specifically, these amendments implement the introduction of the right to disconnect for all REPs.

When commenting on specific subsections of the proposed amendments, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only

interested in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Terri Eaton, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Eaton has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing these sections will be more efficient provision of POLR service and more appropriate deposit and credit requirements for low-income and medically indigent customers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Terri Eaton has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress

Avenue, Austin, Texas 78701, on Tuesday, July 2, 2002, at 10:00 a.m. in the Commissioners' Hearing Room located on the seventh floor.

The commission seeks comments on the proposed repeal, new section, and amendments from interested persons. Comments on the proposed sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is June 28, 2002. Reply comments may be submitted by July 8, 2002. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 25360.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

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.

2. Instead of requiring the POLR rate to automatically fluctuate if prices move either up or down by more than 50%, 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?
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?
4. Are the provisions of the Terms of Service Statements, in particular the provisions concerning limitation of liability, appropriate for POLR service? If not, what additional or alternative provisions are appropriate and why?
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 affiliated REP 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 to 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?

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?

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.
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 the affiliated REP 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?

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. The provisions of this section do not apply to any affiliated REP serving as POLR for non-paying residential and small non-residential customers of competitive REPs except as otherwise specifically stated herein.

- (3) A non-paying residential or small non-residential customer of an affiliated REP whose service is terminated for non-payment 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 December 31, 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 June 1, 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) **Large non-residential customer** — A non-residential customer with a peak demand above one megawatt (MW).
 - (3) **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 (relating to Rate Reduction Program).
 - (4) **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.
 - (5) **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 or an affiliated REP serving a customer whose service has been terminated for non-payment in accordance with the provisions of this section and §25.482 of this title.
 - (6) **Residential customer** — A residential customer as defined in §25.41 of this title (relating to the Price to Beat).
 - (7) **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 commission adopts by reference the following forms: Terms of Service Agreement, Provider of Last Resort (POLR) Residential Service; Terms of Service Agreement, Provider of Last Resort (POLR) Small Non-residential Service (Below 50 kW); Terms of Service Agreement, Provider of Last Resort (POLR) Small Non-residential Service (50 kW to 1 MW); and Terms of Service Agreement, Provider of Last Resort (POLR) Large Non-residential Service. These forms 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.
 - (2) **Provision of information to customers.** The POLR shall provide each new customer the terms of service agreement applicable to the specific customer.
- (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.** Beginning January 1, 2003, each POLR shall *serve* a two-year term. Notwithstanding the foregoing, in the Oncor Electric Delivery Company (Oncor), Texas-New Mexico Power Company (TNMP), and West Texas Utilities Company (WTU) POLR areas, the POLR term beginning January 1, 2003 shall expire on December 31, 2003. POLR service terms in the Oncor, TNMP, or WTU POLR areas shall, beginning in 2004, start in even-numbered years. POLR service terms in the Reliant Energy HL&P and Central Power and Light Company POLR areas shall start in odd-numbered years. The term for POLR service for other POLR areas shall be determined at the time customer choice is initiated in those areas.

- (h) **REP eligibility to serve as POLR.** Each 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. 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) On a national basis, the REP and its affiliates did not serve on the first business day of June of the year an amount of load that was equal to or greater than 1.0% of the peak load in Texas for the customer class in areas where customer choice was in effect;

- (C) Information available to the commission indicates that the REP may not 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 will not have served customers in Texas for at least 18 months;
 - (E) The REP does not serve the applicable customer class in Texas; or
 - (F) The REP's customers are limited to its own affiliates.
- (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, 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.

(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.** If on the first business day of June of the year in which a bid is submitted, the bidder serves, on a nationwide basis, an amount of load that is less than 5.0% of the total peak load in Texas on that day for the particular class for which the bid is submitted, and the bidder submits more than one bid for POLR service for that class, then the bidder 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. All bids 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 will be serving as POLR for the customer class in another area during the upcoming POLR term and on the first business day of June the REP served, on a nationwide basis, an amount of load that was less than 5.0% of the total peak load in Texas for that particular customer class in areas of Texas where customer choice is in effect.
- (2) **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 POLR rate for each customer class shall consist 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.
- (2) **Elements of a bid.**
 - (A) **Residential customer class.** Each bid for POLR service for the 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; 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 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 monthly usage levels of 7,500 and 15,000 kWh. 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 monthly usage levels of 720,000 kWh and 1,440,000 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.
- (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. 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 on the first day of the month following the recalculation. Adjustments shall not occur during the month. The POLR shall submit its monthly rate to the commission within 15 days of the beginning of the 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 12-month forward New York Mercantile Exchange (NYMEX) Henry Hub natural gas prices as reported in the <i>Wall Street Journal</i> for the last five business days of the month.
G_E =	the average of the closing 12-month forward NYMEX Henry Hub natural gas prices as reported in the <i>Wall Street Journal</i> 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 12-month forward NYMEX Henry Hub natural gas prices as reported in the <i>Wall Street Journal</i> , 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 affiliated REP 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. ERCOT 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).

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

- (1) POLR service for a requesting customer is initiated when the customer makes arrangements for service.
- (2) If the applicable independent organization, as specified by PURA §39.151, becomes aware that a REP is no longer scheduling for a customer, unless service to that customer has been interrupted for the reasons described in §25.483(c) of this title (relating to Disconnection of Service) or for non-payment of electric service charges, it will notify the POLR that the customer is switched to POLR service in accordance with the operating rules of the independent organization.
- (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.

(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 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. No such report may be filed under a claim of confidentiality and the information provided in the report shall be made publicly available.

(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 other than an affiliated REP acting as POLR for non-paying customers 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 (relating to Credit Requirements and Deposits) 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 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, other than an affiliated REP serving as POLR for non-paying customers, 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;
 - (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 other than an affiliated REP acting as POLR for non-paying customers shall report the average number of calendar days a customer received POLR service.

§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) – (2) (No change.)

(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) (No change.)

(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; and

~~(iv) did not have service disconnected for nonpayment.~~

(B) (No change.)

- (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 incurred within the last 12 months ~~two years~~ for the same type of service applied for.
- (D) (No change.)
- (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:
- (i) the customer's household income must be at or below 150% of the poverty guidelines as certified by a government funded energy assistance program provider; and
 - (ii) the customer or customer's spouse must have been certified by that person's attending physician (for the purposes of this subsection, the term "physician" shall mean any public health official, including home care providers, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar health official) as being unable to perform three or more activities of daily living, or the customer's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income.

(F)(E) 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)(F) 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) (No change.)

(b) (No change.)

(c) **Initial deposits.**

(1) (No change.)

(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 ~~termination~~ notice ~~(or, in the case of the POLR, a notice of disconnection of service)~~ 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) (No change.)

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

(1) During the first 12 months of a residential customer's service, an affiliate REP or POLR may request an additional deposit if:

(A) (No change.)

(B) a termination notice has been issued or the account disconnected ~~(or, in the case of the POLR, a notice of disconnection of service)~~ for the account 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~~termination of service~~ notice ~~(or, in the case of the POLR, a notice of disconnection of service)~~ and requested the additional deposit.

(3) (No change.)

(4) An affiliate REP or the POLR may disconnect service ~~may terminate service (or in the case of the POLR, disconnect service)~~ if the additional deposit is not paid within ten days of the request, provided a written ~~termination or~~ disconnection notice has been issued to the customer. A ~~termination or~~ disconnection notice may be issued concurrently with either the written request for the additional deposit or current usage payment. ~~An affiliate REP may initiate a "drop" request to the registration agent if the customer does not pay the additional deposit demanded by the affiliate REP as a condition of continuing service.~~ 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) (No change.)

(f) **Amount of deposit.**

(1) – (3) (No change.)

(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 an additional deposit.

- (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 sooner than ten days, prior to the due date for the second installment.

(g) – (i) (No change.)

- (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) – (5) (No change.)

- (6) The REP may initiate termination of service (or disconnection of service for the POLR, affiliated REP or any REP having disconnect authority) to the guarantor for nonpayment of the guaranteed amount only if the termination of ~~or~~ 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) – (2) (No change.)

(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) – (m) (No change.)

§25.480. Bill Payment and Adjustments.

(a) – (i) (No change.)

(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) (No change.)

(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)(~~4~~) of this title (relating to Termination of Contract) or §25.483(j)(~~4~~) of this title (relating to Disconnection of Service).

(3) – (5) (No change.)

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

(A) – (F) (No change.)

(G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(c)(~~4~~)(~~5~~) of this title (relating to General Provisions of Customer Protection Rules); and

(H) (No change.)

(7) A REP may pursue termination of service (or disconnection of service in the case of the POLR) 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 for the POLR or §25.482 of this title for other REPs, 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) (No change.)

§25.482. Termination of Contract.

(a) **Applicability.** This section applies only to retail electric providers (REPs) that may not authorize disconnection of a customer's electric service pursuant to §25.483 of this title (relating to Disconnection of Service).

(b)(a) **Termination policy.** A REP ~~retail electric provider (REP)~~ 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 affiliated REP acting as the provider of last resort (POLR) for non-paying customers. 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)(b) **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)(e) **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)(d) **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)(e) **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)(f) **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 ~~and~~ 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)(g) **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)(4) **Contents of termination notice.** Any termination notice shall include the following information:

- (1) The reasons~~reason~~ 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 affiliated ~~REP~~^{POLR}, 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 ~~with~~ 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)(i) **Notification of the registration agent.** After the expiration of the notice period in subsection (h) ~~(g)~~ 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 REPPOLR, unless the customer selects another REP or the POLR prior to the effective date of the switch.

(k)(i) **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, using the appropriate Texas Standard Electronic Transaction (SET), 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) Any REP or the provider of last resort (POLR) 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 June 1, 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 January 1, 2005, 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. After January 1, 2005, any REP or the POLR may disconnect a residential or small non-residential customer unless, prior to that date, the commission determines that authorizing all REPs to disconnect would be injurious to the market or would result in unlawful disconnections of residential and small non-residential customers. No later than June 1, 2004, commission staff shall file a report with the commission assessing the potential consequences of authorizing all REPs to disconnect residential and small non-residential customers.

(c)(b) **Disconnection with notice.** A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, ~~provider of last resort (POLR)~~ may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the termination date in the notice for any of the following reasons:

- (1) failure to pay a bill owed to the REPPOLR 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 REPPOLR;
- (3) violation of the REP'sPOLR'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 REPPOLR has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(d)(e) **Disconnection without prior notice.** Any A-REP, including a POLR, REP or affiliate 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)(d) **Disconnection prohibited** A REP having disconnection authority under the provisions of subsection (b) of this section ~~POLR~~ 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 ~~other services that are optional and are not included in regulated POLR service;~~
- (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 ~~POLR~~ 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 REPPOLR is unable to obtain the meter reading due to circumstances beyond its control.

(f)(e) **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 sectionPOLR 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 POLR'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)(f) **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)(g) **Disconnection of ill and disabled** A REP having disconnection authority under the provisions of subsection (b) of this section POLR 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)(h) **Disconnection of energy assistance clients.** A REP having disconnection authority under the provisions of subsection (b) of this section ~~POLR~~ shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP~~POLR~~ receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.

(j)(i) **Disconnection during extreme weather.** A REP having disconnection authority under the provisions of subsection (b) of this section ~~POLR~~ 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 ~~POLR~~ 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)(i) **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 ~~POLR~~ shall send a notice to the customer as required by subsection (l)(k) of this section. At the time such notice is issued, the REP ~~POLR~~, 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~~provider~~ 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)."

(1)(4) **Disconnection notices.** A disconnection notice for nonpayment issued by a ~~POLR~~ shall:

- (1) not be issued before the first day after the bill is due, to enable the REP~~POLR~~ to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's~~POLR's~~ authorized payment agency is considered payment to the REP~~POLR~~;
- (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)(4) **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 REPPOLR to discuss the notice of disconnection or to file a complaint with the REPPOLR, 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 REPPOLR, 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 REPPOLR 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 REPPOLR.

(n)(m) **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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF MAY 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**