

**PROJECT NO. 52796**

**REVIEW OF MARKET PARTICIPANT QUALIFICATIONS AND REPORTING REQUIREMENTS**      §  
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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**PROPOSAL FOR PUBLICATION TO AMEND §25.30, REPEAL §§25.105, 25.107, AND 25.109, PROPOSE NEW §§ 25.105, 25.107, 25.109 AND AMEND §25.485 AND §25.495 AS APPROVED AT THE SEPTEMBER 29, 2022 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes: amendments to 16 TAC §25.30, relating to Complaints; the repeal of existing §25.105, relating to Registration and Reporting by Power Marketers, §25.107, relating to Certification of Retail Electric Providers (REPs) and §25.109, relating to Registration of Power Generation Companies and Self-Generators; new §25.105, relating to Registration by Power Marketers; new §25.107, relating to Certification and Obligations of Retail Electric Providers (REPs); and new §25.109, relating to Registration by Power Generation Companies and Self-Generators; amendments to §25.485, relating to Customer Access and Complaint Handling and §25.495, relating to Unauthorized Change of Retail Electric Provider. The commission also amends the certification and registration forms and other documents associated with §§25.105, 25.107, and 25.109.

The proposed rules amend §§25.30, 25.485, and 25.495 to change the time period for entities to respond to complaints from 21 days to 15 days. The proposed rules ensure the commission has current information on power marketers and power generation companies (PGCs), disallow certain persons from controlling REPs and PGCs, and strengthen the financial requirements for REPs.

***Growth Impact Statement***

The agency provides the following governmental growth impact statement for the proposed rules, as required by Tex. Gov't Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

(1) the proposed rules will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;

***Fiscal Impact on Small and Micro-Businesses and Rural Communities***

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Tex. Gov't Code §2006.002(c).

***Takings Impact Analysis***

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Tex. Gov't Code.

***Fiscal Impact on State and Local Government***

Mariah Benson, Economist, Market Analysis, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Tex. Gov't Code §2001.024(a)(4) as a result of enforcing or administering the sections.

***Public Benefits***

Ms. Benson 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 the section will be a reduction of risk to the market by enhancing the application processes for, and refining the obligations of, market participants. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections.

***Local Employment Impact Statement***

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Tex. Gov't Code §2001.022.

***Costs to Regulated Persons***

Tex. Gov't Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

*Public Hearing*

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Tex. Gov't Code §2001.029. The request for a public hearing must be received by December 1, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

*Public Comments*

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 14, 2022. Reply comments must be filed by December 1, 2022. 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 rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 52796.

**Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.**

*Statutory Authority*

The amended rules are proposed under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers

and jurisdiction. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §17.001, §17.003, and §17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §14.002, §15.051, §17.001, §17.003, §17.004, §35.032, §39.351, §39.352, §39.355, §39.356, and §39.357.

**§25.30. Complaints.**

- (a) **Complaints to the electric utility.** A customer or applicant may file a complaint in person, by letter, by email, by electronic form, or by telephone with the electric utility. The electric utility must promptly investigate and advise the complainant of the results within 15 days. The customer or applicant has the right to request from the electric utility a supervisory review of their complaint if they are not satisfied with the results of the electric utility's initial response to their complaint.
- (1) If the electric utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review must be made for the earliest possible date.
  - (2) Service must not be disconnected before completion of the review. If the customer chooses not to participate in a review then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §25.29 of this title (relating to Disconnection of Service).
  - (3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.
  - (4) Customers who are dissatisfied with the electric utility's supervisory review must be informed of their right to file a complaint with the commission.
- (b) **Complaints to the commission.**
- (1) If the complainant is dissatisfied with the results of the electric utility's complaint investigation or supervisory review, the electric utility must advise the complainant of the commission's informal complaint resolution process. The electric utility must also provide the customer the following contact information for the commission: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512)936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)936-7003, e-mail address: [customer@puc.texas.gov](mailto:customer@puc.texas.gov) , internet address: [www.puc.texas.gov](http://www.puc.texas.gov), TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

- (2) The electric utility must investigate all complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the electric utility.
- (3) The electric utility must keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record must show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or charges which require no further action by the electric utility need not be recorded.

**§25.105. Registration by Power Marketers. (REPEAL)****§25.105. Registration by Power Marketers.**

- (a) **Applicability.** This section contains the registration and renewal of registration requirements for a power marketer. A person must be registered as a power marketer with the commission to participate in the Texas wholesale market as a power marketer. The registration of a person already registered as a power marketer as of the effective date of this section expires on June 1, 2023, unless the person files a new registration in compliance with the requirements of this section.
- (b) **Registration information.** To register as a power marketer, a person must submit the following information in the manner established by the commission.
- (1) The registrant's contact information, including the registrant's:
    - (A) physical and business mailing address;
    - (B) business telephone number; and
    - (C) business e-mail address.
  - (2) The name of the current regulatory contact, and the contact's e-mail address and telephone number.
  - (3) The addresses of any facilities used by the registrant in Texas.
  - (4) A description of the activities the registrant will participate in, and services provided.
  - (5) As applicable, copies of all information filed with the Federal Energy Regulatory Commission (FERC) relating to the registrant's FERC registration to sell electric energy at market-based rates.
  - (6) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant affirming that the registrant qualifies as a power marketer. The affidavit must also include the following information:
    - (A) the business name of any affiliated entity registered with the commission and the type of commission registration associated with each affiliated entity;



- (B) whether each affiliate buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric cooperative or municipally owned utility in Texas; and
  - (C) the business name of any affiliated qualified scheduling entity.
  
- (c) **Update of registration.** A power marketer must update, in a manner established by the commission, its registration within 30 days of a change to information listed under subsection (b) of this section.
  
- (d) **Renewal of registration.** A power marketer must renew its registration on or before November 1 of each calendar year by submitting, in a manner established by the commission, the information required by subsection (b) of this section or by submitting a statement that the power marketer's registration information on file with the commission is current.
  - (1) Commission staff will send one notice to the regulatory contact listed for a power marketer that has not submitted its registration renewal by November 1st. Commission staff's failure to send this notice does not excuse a power marketer from complying with any of the requirements of this section.
  - (2) A power marketer registration that is not renewed by December 31st of each calendar year expires.
  - (3) Commission staff will notify the Electric Reliability Council of Texas of a power marketer whose registration has expired.
  - (4) A person may not continue to operate as a power marketer in Texas after its registration has expired.
  - (5) A person whose power marketer registration is expired may apply for a new registration at any time.
  
- (e) **Commission list of power marketers.** The commission will maintain a list of power marketers registered in Texas on the commission's website. A power marketer that fails to renew its registration under subsection (d) of this section may be listed as "Expired" on the commission's list of power marketers.

**§25.107. Certification of Retail Electric Providers (REPs) (REPEAL)****§25.107. Certification and Obligations of Retail Electric Providers (REPs).****(a) Applicability.**

- (1) This section contains the certification and reporting requirements applicable to a retail electric provider (REP).
  - (A) A person must obtain a REP certificate under this section before purchasing, taking title to, or reselling electricity to provide retail electric service. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information as required by this section.
  - (B) A person that does not purchase, take title to, or resell electricity to provide electric service to a retail customer is not a REP and must not act as a REP without obtaining a certificate under this section. A REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider.
  - (C) A person operating an electric-vehicle charging station is not, for that reason, required to be certified as a REP.
- (2) This section also applies, where specifically stated, to an independent system operator or transmission and distribution utility (TDU).
- (3) A person already certified as an Option 1 REP as of the effective date of this section must come into compliance with the requirements of this section by August 15, 2023.
  - (A) A REP must complete and file a commission approved compliance update form that demonstrates the REP is in compliance with this section on or before August 15, 2023.
  - (B) A REP who does not demonstrate compliance with this section on or before August 15, 2023 may be subject to a suspension of acquiring new customers under subsection (l) of this section.

- (b) **Definitions.** The following words and terms when used in this section have the following meanings unless the context indicates otherwise.
- (1) Affiliate -- As defined in §25.5 of this title (relating to Definitions).
  - (2) Assumed name -- has the meaning assigned in Chapter 71 of the Texas Business and Commerce Code.
  - (3) Continuous and reliable electric service -- Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP.
  - (4) Control -- The term control (including the terms controlling, controlled by and under common control with) means the direct or indirect possession of binding authority to direct or cause the direction of the management, policies, operations, or decision-making of a person, whether through ownership of voting securities, by contract, formation documents, or otherwise. A principal is a controlling person. A third-party provider may be a controlling person.
  - (5) Default -- As defined in a TDU tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement, ERCOT standard form market participant agreement (SFA), or any similar agreement with an applicable independent organization other than ERCOT.
  - (6) Executive officer -- An entity's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions. Executive officers of subsidiaries may be deemed executive officers of the entity if they perform such policy making functions for the entity.
  - (7) Guarantor -- A person that provides an irrevocable guaranty agreement using the standard form approved by the commission under this section.
  - (8) Investment-grade credit rating -- A long-term unsecured credit rating issued by the bond credit rating companies Moody's Investors' Service (Moody's), Standard & Poor (S&P), or Fitch of at least "Baa3" from Moody's or "BBB-" from S&P or Fitch.

- (9) Option 1 REP -- A REP that provides its service offerings to any customer class based on geographic service area.
- (10) Option 2 REP -- A REP that limits its service offerings to specifically identified customers, each of whom contracts for one megawatt or more of capacity.
- (11) Option 3 REP -- A REP that sells electricity exclusively to a retail customer, other than a small commercial or residential customer, from a distributed generation facility owned by a power generation company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators) located on the same geographic site as the customer.
- (12) Person -- An individual or any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation. Person does not include an electric cooperative or a municipal corporation.
- (13) Principal -- Includes:
  - (A) A sole proprietor;
  - (B) A general partner;
  - (C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);
  - (D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;
  - (E) A shareholder with more than 10% equity of the REP, if a public company;  
or
  - (F) A person who has apparent or actual authority to exercise control over the REP or exercises control over a principal otherwise described by this subsection. A consultant or third-party provider can be a principal to the extent they exercise control over the REP or its principals.
- (14) Shareholder -- The legal or beneficial owner of any of the equity of any business entity as the context and applicable business entity requires, including, stockholders

of corporations, members of limited liability companies and equity partners of partnerships.

- (15) Tangible net worth -- Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.
- (16) Third-party provider -- An entity to which a REP outsources or plans to outsource any retail or wholesale electric functions, including a contractor, consultant, agent, or any other person not directly employed by the REP. A third-party provider can be a principal to the extent it exercises control over the REP or its principals.

(c) **Application processing.**

- (1) A person can apply for REP certification by submitting a complete application on a form approved by the commission. Commission staff will review each application for sufficiency and submit a recommendation to the presiding officer within 20 days after the application is filed. The presiding officer will make a determination of sufficiency of the application within ten days of receipt of commission staff's recommendation. If the presiding officer finds that the application is deficient, the presiding officer must notify the applicant. The applicant will have ten days from the issuance of the notice to cure the deficiencies. If the deficiencies are not cured within ten days, the presiding officer may notify the applicant that the certification request is rejected without prejudice.
- (2) While an application for certification or amendment is pending, an applicant must notify the commission of any material change to the information provided in the application within ten days of any such change.
- (3) Except where good cause exists to extend the time for review, the presiding officer will issue an order approving, rejecting, or approving with modifications, an application within 90 days of finding an application sufficient.
- (4) For applications to certify as an Option 1 REP, the presiding officer will deny an application if the configuration of the proposed geographic area would unduly discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically

distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.

- (5) For applications to certify as an Option 2 REP, if the REP does not file an affidavit from a customer with which it has contracted to provide one megawatt or more of energy by the 30th day of the application being approved, then the presiding officer will administratively revoke the REP certificate without prejudice. The person can file a new application for certification at any time.

(d) **Basic requirements.**

- (1) A REP must maintain its certification by complying with the following subparagraphs.
- (A) Only provide retail electric service under the name or names set forth in an approved application for certification or subsequent amendment application. A REP's certificate must contain the REP's legal business name and all assumed names under which it proposes to provide service.
- (B) Not use more than five assumed names in the REP's regular course of business.
- (C) Maintain an active business registration with the Texas Secretary of State.
- (D) Maintain current and accurate contact information including:
- (i) physical and business mailing address;
  - (ii) business telephone number;
  - (iii) business e-mail address;
  - (iv) regulatory contact name, telephone number, and e-mail address; and
  - (v) customer complaint contact name, telephone number, and e-mail address;
  - (vi) emergency contact's name, telephone number, and e-mail address; and
  - (vii) primary contact's name, telephone number, and e-mail address.
- (E) Maintain current and accurate office information including:

- (i) an office open during normal business hours with a street address located within Texas for the purpose of providing customer service and making available to commission staff books and records sufficient to establish the REP's compliance with Public Utility Regulatory Act (PURA) and commission rules; the office must have a business telephone number, business e-mail address, and business postal address where the REP's staff can be directly reached; and
    - (ii) an office located within Texas for the purpose of accepting service of process.
  - (F) Comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other protocols established by the applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.
  - (G) Comply with the registration and certification requirements of the applicable independent organization and its system rules and protocols, or each contract for services with a third-party provider that is required to be registered with or certified by the applicable independent organization.
  - (H) Maintain adequate staffing and employee training to meet all service level commitments.
  - (I) Respond within five working days to any commission staff request for information.
- (2) An applicant must provide the following information to the commission to certify as a REP under this section.
- (A) An application for certification or amendment to a certificate must be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.

- (B) The applicant's Texas Secretary of State registration to verify the information required under paragraphs (1)(A) and (B) of this subsection. A business name must not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.
- (C) The applicant's current contact information required under paragraph (1)(D) of this subsection.
- (D) The applicant's current office information required under paragraph (1)(E) of this subsection.
- (E) Information on controlling persons, including:
  - (i) an ownership and corporate structure chart that includes the share percentage each person holds, including:
  - (ii) a list of the registrant's and corporate parent's affiliates identified by name and type of commission registration, provided via external storage for digital media, in Microsoft Excel format;
  - (iii) a list of all principals, provided via external storage for digital media, in Microsoft Excel format;
  - (iv) a list of all executive officers, provided via external storage for digital media, in Microsoft Excel format; and
- (F) A statement affirming compliance with paragraphs (1)(F)-(H) of this subsection and a short summary describing how the applicant has complied with each subparagraph.
- (G) The project and item number where the applicant has filed its Emergency Operations Plan as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).
- (H) An applicant for an Option 1 REP certificate must designate one of the following categories as its geographic service area:
  - (i) The geographic area of the entire state of Texas;
  - (ii) A specific geographic area (indicating the zip codes applicable to that area);



- (iii) The service area of one or more specific TDUs, municipal utilities, or electric cooperatives in which competition is offered; or
  - (iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.
- (I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of energy. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.
- (J) An applicant for an Option 3 REP certificate must:
  - (i) identify the name of the PGC that owns the distributed generation facilities and affirm that the PGC is registered under §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators); and
  - (ii) provide a signed, notarized affidavit from an executive officer of the PGC confirming:
    - (I) the PGC operating the distributed generation facility conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);

- (II) the distributed generation facility is installed by a licensed electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and
  - (III) the distributed generation facility is installed in accordance with the National Electric Safety Code as adopted by the Texas Department of Licensing and Regulation and otherwise complies with all applicable local and regional building codes.
  
- (e) **Technical and managerial requirements.** An Option 1 REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, applicable independent organization protocols, and other applicable laws. This subsection does not apply to an Option 2 or Option 3 REP.
  - (1) **Technical and managerial resource requirements.** The following are technical and managerial resource requirements a REP must maintain.
    - (A) One or more executive officers or employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. A third-party provider's experience may not be used to meet this requirement.
    - (B) At least one executive officer or employee who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may enter into a contract for a term not less than two years with a third-party provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$10,000,000.
    - (C) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis.

- (D) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.
- (2) **Technical and managerial documentation requirements.** The following must be provided by an applicant to demonstrate compliance with the technical and managerial requirements under paragraph (1) of this subsection.
- (A) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided via external storage for digital media, in Microsoft Excel format.
  - (B) Resumes showing prior experience of one or more of the applicant's executive officers or employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, five years' experience in commodity risk management.
  - (C) If relying upon a third-party provider for commodity risk management services to satisfy the requirement for paragraph (1)(B) of this subsection, a copy of the executed contract is required.
  - (D) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding: the applicant; the applicant's and corporate parent's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons.
    - (i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State,

Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information must include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

- (ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the complaint history of the applicant's principals and affiliates, disciplinary record, and compliance record.
  - (iii) Any complaint information on file at the commission may also be considered when reviewing the application.
- (E) The following statements must be supported by a signed notarized affidavit made by an executive officer of the applicant.
- (i) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.
  - (ii) A statement that identifies whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.
  - (iii) A statement that the applicant will register with or be certified by the applicable independent organization and that the applicant will comply with the technical and managerial requirements of this subsection; and that third-party providers with whom the applicant has a contractual relationship are registered with or certified by the independent organization, as appropriate, and will comply with all system rules and protocols established by the applicable independent organization.

- (iv) A statement that describes an applicant's relationship with any of the following persons.
  - (I) Identification of all of the applicant's principals, executive officers, employees, third-party providers, and third-party provider's employees that:
    - (-a-) exercised direct or indirect control over a REP that experienced a mass transition of the REP's customers under §25.43 of this title (relating to Provider of Last Resort (POLR)) at any time within the six months prior to the mass transition;
    - (-b-) exercised direct or indirect control at any time within the six months prior to a market participant having had its ERCOT SFA terminated or a similar agreement for an applicable independent organization terminated;
    - (-c-) exercised direct or indirect control within the prior six months of a market participant having exited an electricity or gas market with outstanding payment obligations that remain outstanding; or
    - (-d-) that have been barred, in any way, participation by commission order.
  - (II) If a relationship exists as described in subclause (I) of this clause, the applicant must include in the affidavit for each such relationship:
    - (-a-) the name of the person;
    - (-b-) the name of the REP that experienced a mass transition of its customers under §25.43 of this title or market participant whose SFA was terminated or exited a market with outstanding payment obligations;

- (-c-) details about the person's relationship with the REP or market participant;
      - (-d-) factual statements about the events that necessitated this response, including, if applicable, whether and, if so, how the REP that experienced a mass transition of its customers under §25.43 of this title settled all outstanding payment obligations;
      - (-e-) the person's current relationship or position with the applicant; and
      - (-f-) the extent of the person's apparent or actual authority to act in such a way that may be perceived as having direct or indirect control over the applicant.
- (f) **Financial requirements.** An Option 1 REP must maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.
  - (1) **Access to capital.** A REP must maintain the requirements of subparagraphs (A) or (B) of this paragraph on an ongoing basis.
    - (A) A REP may maintain an executed version of the commission approved standard form irrevocable guaranty agreement.
      - (i) The guarantor must be:
        - (I) One or more affiliates of the REP;
        - (II) A financial institution with an investment-grade credit rating; or
        - (III) A provider of wholesale power supply for the REP, or one of such power provider's affiliates, with whom the REP has executed a power purchase agreement.
      - (ii) The guarantor must have:
        - (I) An investment-grade credit rating; or
        - (II) Tangible net worth greater than or equal to \$100 million, a minimum current ratio (defined as current assets divided by

current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load.

- (B) A REP may maintain an irrevocable stand-by letter of credit with a face value as determined in clause (i) of this subparagraph and based on the number of electronic service identifiers (ESI IDs) the REP serves. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders' equity.

(i)

<b>Number of ESI IDs</b>	<b>Required Value of Letter of Credit</b>
< 20,000	\$500,000
≥ 20,000 and < 50,000	\$1,000,000
≥ 50,000 and < 300,000	\$1,500,000
≥ 300,000	\$3,000,000

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

limited to, dividend distributions, redemptions and repurchases of equity securities, and loans to shareholders or affiliates.

- (v) After a REP has continuously served load for 24 months, a prescribed amount of maintained shareholders' equity is no longer required.
- (2) **Customer deposits and prepayments.** A REP certified to collect customer deposits must comply with this paragraph and the requirements of §25.487 of this title (relating to Credit Requirements and Deposits). A REP certified to collect customer prepayments must comply with this paragraph and the requirements of §25.498 of this title (relating to Prepaid Service).
- (A) A REP must maintain customer deposits in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit. A REP must maintain customer prepayments in an escrow account or provide an irrevocable stand-by letter of credit.
    - (i) If a REP is certified to collect both customer deposits and prepayments then the same escrow account or irrevocable stand-by letter of credit must be used and maintained by the REP to protect customer deposits and prepayments. A REP certified to collect both customer deposits and prepayments may not use a segregated cash account to protect customer deposits and prepayments.
    - (ii) For customer deposits, the escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of the REP's outstanding customer deposits held at the close of each calendar month.
    - (iii) For customer prepayments, a REP must maintain, at minimum, protection for all customer prepayments that equals or exceeds \$50. The balance of an escrow account or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of customer prepayment funds equal to or exceeding \$50 held at the close of each calendar month.



- (B) Any irrevocable stand-by letter of credit provided under this paragraph must be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection.
- (3) **Bankruptcy disclosure.** If a REP files a petition for bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, including being in default with the applicable independent organization or with a TDU:
- (A) The REP must notify the commission within three working days of this event and must file with the commission a summary of the nature of the event; and
- (B) The notification must be filed in the commission project number established for notices prescribed under this paragraph. If the REP has filed a petition for bankruptcy, then the REP must include in its filing the petition that initiated the bankruptcy.
- (4) **Financial documentation requirements.** The following must be provided, as applicable, by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection. Additionally, the applicant must provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.
- (A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the applicant provides must be the most recently released report by the credit reporting agency.
- (B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by:
- (i) audited financial statements of the guarantor for the most recently completed calendar or fiscal year and include the independent auditor's report and accompanying notes; or

- (ii) unaudited financial statements of the guarantor for the most recently completed quarter.
  - (I) Unaudited financial statements must include a signed, notarized affidavit from the guarantor, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.
  - (II) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.
  - (III) The requirement for financial statements may be satisfied by filing a copy of or providing an electronic link to the guarantor's most recent statement that contains unaudited financials filed with any agency of the federal government, including without limitation, the U.S. Securities and Exchange Commission.
- (C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.
  - (i) Audited financial statements must include the independent auditor's report and accompany notes.
  - (ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.
    - (I) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements if quarterly statements are not available.
    - (II) The requirement for financial statements may be satisfied by filing a copy of or providing an electronic link to the REP's most recent statement that contains unaudited

financials filed with any agency of the federal government, including without limitation, the U.S. Securities and Exchange Commission.

- (D) Segregated cash accounts must be documented by a current account statement.
- (i) The account statement must clearly identify:
    - (I) the name of the financial institution where the applicant has established the account;
    - (II) the account number; and
    - (III) the account name, which must clearly indicate the account is designated for containing only customer deposits.
  - (ii) The account must be maintained at a financial institution that is supervised or examined by the Office of the Comptroller of the Currency or a state banking department and is a:
    - (I) U.S. domestic bank; or
    - (II) a domestic office of a foreign bank with an investment-grade credit rating.
  - (iii) An executed agreement with a provider of credit that is not affiliated with the applicant or the applicant's corporate parent, that governs the control and management of the account must be provided. The agreement must identify that the account only holds customer deposits, and that the customer deposits are not the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.
- (E) Escrow accounts must be documented by a current account statement and the escrow account agreement.
- (i) The account statement must clearly identify:
    - (I) the name of the financial institution where the applicant has established the account; and
    - (II) the account number.

- (ii) The account must be maintained at a financial institution that is supervised or examined by the Office of the Comptroller of the Currency or a state banking department and is a:
    - (I) U.S. domestic bank; or
    - (II) a domestic office of a foreign bank with an investment-grade credit rating.
  - (iii) The escrow account agreement must provide that the account holds customer deposits and prepayments only, and that the customer deposits and prepayments will be held in trust by the escrow agent and will not be the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits and prepayments are applied to a final bill or to satisfy unpaid amounts.
- (F) Irrevocable stand-by letters of credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission. The original document of the irrevocable stand-by letter of credit must be provided in a manner established by the commission.
- (i) The irrevocable stand-by letter of credit must be maintained at a financial institution that is supervised or examined by the Office of the Comptroller of the Currency or a state banking department and is a:
    - (I) U.S. domestic bank; or
    - (II) a domestic office of a foreign bank with an investment-grade credit rating.
  - (ii) The irrevocable stand-by letter of credit must:
    - (I) be irrevocable for a period not less than twelve months;
    - (II) automatically renew, and only expire if prior notice is provided to the commission at least 90 days before the expiration;
    - (III) be payable to the commission;

- (IV) permit a draw to be made in part or in full;
  - (V) permit a draw to be made with the return of the original document or a photocopy;
  - (VI) permit a draw to be made, among other ways, through overnight mail;
  - (VII) permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit; and
  - (VIII) require commission staff approve all amendment requests to decrease the value of the irrevocable stand-by letter of credit prior the value of the irrevocable stand-by letter of credit decreasing. Amendments to decrease the value of the irrevocable stand-by letter of credit must be accompanied by a notarized affidavit signed by an executive officer of the REP and include , as applicable, the current number of ESI IDs the REP serves, the value of customer deposits and prepayments the REP is liable for.
- (G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission demands on behalf of the applicant.
- (i) The guarantor's obligation to satisfy the commission's demand for payment must be in an amount not less than \$1,500,000 and must be absolute, and the guarantor may not avoid its obligation for any reason.
  - (ii) The commission approved standard form irrevocable guaranty agreement must not have an expiration date. The irrevocable guaranty agreement may only be terminable after 90 days advance notice has been provided to the commission in a commission approved method. Until the 90 days advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain

completely and absolutely liable to the extent provided by the terms of the agreement.

- (H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.
- (5) **Commission draw on financial instruments.** The commission may seek full or partial funds from a REP's financial resources in any of the following circumstances:
- (A) An applicable independent organization performs a mass transition of a REP's customers under §25.43 of this title ;
  - (B) The commission issues an order revoking a REP's certificate;
  - (C) ERCOT terminates a REP's SFA or the applicable organization terminates a similar agreement; or
  - (D) The commission's executive director finds that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols.
- (6) **Proceeds from financial instruments.**
- (A) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection may be used to satisfy the following obligations of a REP, in the following order of priority:
    - (i) first, to return of outstanding customer deposits and prepayments if not credited by or transferred to each customer's new REP of record or otherwise returned to each customer by the REP;
    - (ii) second, to assist in the payment of customer deposits to REPs that volunteer to provide service in a mass transition event under §25.43 of this title for low-income customers as identified by the Low-Income List Administrator under to §25.45 of this title (relating to Low-Income List Administrator);
    - (iii) third, if available, to assist in the payment of customer deposits to REPs that are designated to provide service in a mass transition event under §25.43 of this title for low-income customers as

identified by the Low-Income List Administrator under to §25.45 of this title (relating to Low-Income List Administrator);

- (iv) fourth, if available, to assist in the payment of residential customer deposits to REPs that volunteer to provide service in a mass transition event under §25.43 of this title ;
- (v) fifth, if available, to assist in the payment of residential customer deposits to REPs that are designated to provide service in a mass transition event under §25.43 of this title for customers;
- (vi) sixth, if available, for outstanding payments to the applicable independent organization;
- (vii) seventh, if available, for outstanding payments to a TDU; and
- (viii) eighth, if available, for administrative penalties assessed under Chapter 15 of PURA.

- (B) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection must, to the extent that the proceeds are not needed to satisfy an obligation set out in subparagraph (A) of this paragraph, be paid to the applicable entity identified as the Applicant on the irrevocable stand-by letter of credit or the Guarantor on the irrevocable guaranty agreement.

(g) **Persons prohibited from exercising control.** An Option 1 REP must maintain compliance with this subsection at all times. This subsection does not apply to an Option 2 or Option 3 REP.

- (1) In no instance may any of the following persons control the REP or be relied upon to meet the requirements of subsections (d) and (e) of this section:
  - (A) a person who was a principal of a REP that experienced a mass transition of the REP's customers under §25.43 of this title at any time within the six months prior to the mass transition;
  - (B) a person who was a principal of, at any time within the prior six months, a market participant whose ERCOT SFA or similar agreement for an independent organization other than ERCOT was terminated;

- (C) a person who was a principal of, at any time within the prior six months, a market participant that exited an electricity or gas market with outstanding payment obligations that remain outstanding; or
  - (D) a person who, by commission order, is prohibited from serving as a principal for any commission-regulated entity.
- (2) To the extent an independent organization or TDU is aware that a person who is otherwise barred from exercising direct or indirect control over a REP is acting in violation of this section or other commission substantive rules, the independent organization or TDU has an affirmative duty to report this information to the division of the commission charged with enforcement of the commission's substantive rules.
- (h) **Update or relinquishment of certification.** A REP must maintain and update the information required by subsections (d), (e), and (f) of this section, as applicable, on an ongoing basis.
- (1) A REP must electronically submit updated information in the manner established by the commission within five working days of any change to its contact information as identified in subsection (d)(1)(D) or this section.
  - (2) A REP must apply to amend its certification within ten working days of a material change to its certification. A REP may apply for the commission to approve a material change by filing an application to amend its certification before the material change is anticipated to occur. A material change includes:
    - (A) a change in ownership, control, corporate restructuring, or transfer of a REP certificate;
    - (B) a name change (including addition of assumed names);
    - (C) for Option 1 REPs, a change in service area;
    - (D) for Option 1 REPs, a change in technical or managerial qualifications, including:
      - (i) any information previously provided or attested to under the requirements of subsection (d) of this section,
      - (ii) personnel relied upon for experience, and



- (iii) changes, termination, or expiration of a contract to provide commodity risk management services; and
  - (E) for Option 1 REPs, a change in financial qualifications, including:
    - (i) the REP's certificated method for maintaining its access to capital requirement of subsection (f)(1) of this section, including terminations made to the irrevocable standby guaranty agreement or power purchase agreement;
    - (ii) the certificated method for protecting its customer deposits and prepayments, and
    - (iii) the approved account for protecting customer deposits and prepayments.
- (3) A REP that no longer serves customers may relinquish its REP certificate by filing an application for relinquishment on a form prescribed by the commission. A REP that does not serve customers for two consecutive years must relinquish its certificate. Prior to relinquishing its certificate, the REP must no longer serve any customers. At least 45 days prior to ceasing operations, a REP that intends to cease operations as a REP and is not seeking to relinquish its REP certificate must file a notice in the commission project number established under this paragraph to notify the commission of a REP ceasing operations. A REP must not cease operations as a REP without prior notice of at least 45 days to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations, and to other affected persons, including the applicable independent organization, TDUs, electric cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. If a REP improperly transfers customers without providing adequate notice, under §25.493 of this title (relating to Acquisition and Transfer of Customers from one Retail Electric Provider to Another) then the REP may be subject to enforcement proceedings even after relinquishment of its certificate. Within the application to relinquish its certificate a REP must include a statement explaining whether customers' deposits were refunded to the customers or transferred to an alternative REP. The statement must be supported by a signed, notarized affidavit from an executive officer of the REP.

- (i) **Reporting requirements.** An Option 1 REP must file with the commission an annual and a semi-annual report each year. Option 2 and Option 3 REPs do not have reporting obligations under this section.
- (1) The annual report is due on March 5, or
    - (A) 65 days after the end of the REP's fiscal year; or
    - (B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 65 days after the end of the guarantor's fiscal year.
  - (2) The semi-annual report is due on August 15, or
    - (A) 225 days after the end of the REP's fiscal year; or
    - (B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 225 days after the end of the guarantor's fiscal year.
  - (3) The annual and semi-annual report must include the following information.
    - (A) A signed, notarized affidavit from an executive officer affirming that the certificate holder is not in material violation of any of the requirements of its certificate under this section and that the information reported in the entire report is true and correct.
    - (B) Any changes in ownership, control, corporate restructuring, or transfer of a REP certificate.
    - (C) Any changes in management, experience, and persons relied on for certification in subsection (e) of this section including the person or third-party provider acting as the REP's risk manager.
    - (D) A list of all principals, provided via external storage for digital media, in Microsoft Excel format.
    - (E) A list of all executive management, provided via external storage for digital media, in Microsoft Excel format.

- (F) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided via external storage for digital media, in Microsoft Excel format.
- (G) A copy of a REP's current LSE contact information kept on file with ERCOT, including a copy of all Notices of Change of Information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed. To the extent the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, the REP should also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all notices of change of information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.
- (H) Demonstration of ongoing compliance with the financial requirements of subsection (f) of this section.
  - (i) This can include, but not be limited to:
    - (I) calculations demonstrating adequate tangible net worth and financial ratios,
    - (II) adequate shareholders' equity,
    - (III) a statement of the value of customer deposits and prepayments the REP is currently liable for, and
    - (IV) a current account statement demonstrating that the balance of the account in which customer deposits and prepayments are held 100% covers the value of customer deposits and prepayments the REP is liable for.
  - (ii) A REP must submit relevant documentation as required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f)(1) and (2) of this section.
  - (iii) Financial statements provided as part of the annual and semi-annual report must be as of the end of the most recent fiscal quarter.

- (4) In addition to the information required in paragraph (3) of this subsection, the annual report must also include the following information.
    - (A) Any changes in a REP's contact information identified in subsection (d)(1)(D) of this section.
    - (B) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.
  - (5) Reporting under this subsection does not change the requirement for a REP to amend its certification to reflect the change in accordance with subsection (h) of this section.
- (j) **Protection of TDU financial integrity.**
- (1) A TDU must not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission substantive rules.
  - (2) A TDU must create a regulatory asset for bad debt expenses, net of collateral posted under paragraph (1) of this subsection and bad debt already included in its rates, resulting from a REP's default on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset will be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.
- (k) **Revocation of a REP certificate.** A certificate granted under this section may be revoked if the commission finds that a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization has occurred. The revocation of a REP's certificate requires the cessation of all REP activities in the state of Texas, in accordance with commission order. The commission may impose an

administrative penalty on a person for a violation of PURA, commission substantive rules, or protocols adopted by an independent organization. Significant violations include, but are not limited to:

- (1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;
- (2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;
- (3) Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;
- (4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;
- (5) Failure to maintain continuous and reliable electric service to a customer or customers pursuant to this section;
- (6) Failure to maintain financial resources in accordance with subsection (f) of this section;
- (7) The inability to meet financial obligations on a reasonable and timely basis;
- (8) Failure to timely remit payment for invoiced charges to an independent organization;
- (9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other protocols established by an applicable independent organization;
- (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
- (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (12) Termination of the REP's SFA with ERCOT or similar agreements with a applicable independent organization other than ERCOT;
- (13) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;

- (14) Failure to provide retail electric service to a customer or customers within 24 months of the certificate being granted by the commission or ceasing to provide retail electric service for a period of 24 months;
  - (15) Failure to serve as a POLR if required to do so by the commission;
  - (16) Failure to timely remit payment for invoiced charges to a TDU pursuant to §25.214, of this title (relating to Terms and Conditions of Retail Delivery service Provided by Investor Owned Transmission and Distribution Utilities);
  - (17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);
  - (18) Failure to comply with the terms of the REP's suspension;
  - (19) Failure to comply with §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and
  - (20) Other significant violations or a pattern of failures to meet the requirements of PURA, commissions rules or orders, or protocols adopted by the applicable independent organization.
- (l) **Suspension of a REP's ability to acquire new customers.** The commission or presiding officer may suspend a REP's ability to acquire new customers upon a showing of facts that reasonably support the occurrence of a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization, consistent with subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The commission may also impose administrative penalties and other conditions on a REP whose ability to acquire new customers has been suspended.
- (1) A proceeding for suspension of a REP's ability to acquire new customers under this subsection is initiated by the filing of a petition for suspension by commission staff.
    - (A) Commission staff will provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.55 of this title (relating to Notice in Other Proceedings).

- (B) The REP may submit a request for hearing on the petition for suspension within 20 days after the date the REP receives notice of the petition. A request for hearing received more than 20 days after the date the petition is received by the REP will be denied by the presiding officer.
  - (C) If the REP does not submit a request for hearing within 20 days after receiving notice of the petition for suspension, the presiding officer may administratively approve the petition for suspension under §22.35 of this title (relating to Informal Disposition). The commission delegates authority to the presiding officer to approve a petition for suspension under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title.
  - (D) If the presiding officer approves the petition for suspension, commission staff will direct ERCOT to stop processing move-in requests for the REP.
  - (E) At any time during the pendency of the proceeding, without limitation, the presiding officer may issue an emergency order directing ERCOT to stop processing move-in requests for the REP if the presiding officer determines such authorization to be in the public interest.
- (2) The presiding officer may lift the suspension under this subsection upon a demonstration of the following:
- (A) if applicable, the REP has resolved all violations underlying the suspension and fulfilled all conditions for reinstatement;
  - (B) the REP is in compliance with all technical, managerial, and financial requirements in this section; and
  - (C) commission staff recommends that the suspension be lifted.
- (3) A REP subject to suspension of acquiring new customers under this section must maintain compliance with this section and all other applicable commission substantive rules while suspended and must continue to serve existing customers consistent with PURA, commission substantive rules, and protocols adopted by the applicable independent organization.
- (4) Nothing in this subsection limits the commission's ability to revoke a REP's certificate or proceed with a draw on a REP's financial instruments. Commission

staff retains the discretion to seek to revoke the certificate of a REP subject to suspension, as appropriate.



**§25.109. Registration of Power Generation Companies and Self-Generators. (REPEAL)****§25.109. Registration by Power Generation Companies and Self-Generators.**

- (a) **Applicability.** This section contains the registration and renewal of registration requirements for a power generation company (PGC) as defined by §25.5 of this title (relating to Definitions) and a self-generator as defined in this section.
- (1) A person is subject to and must register under this section before the first day it generates electricity.
  - (2) A person that owns a qualifying facility (QF) and will sell electricity at wholesale or is an exempt wholesale generator (EWG) must register under this section as a PGC.
  - (3) A person already certified as a PGC or self-generator as of the effective date of this section must come into compliance with the requirements of this section no later than June 1, 2023.
    - (A) A PGC or self-generator must complete and file a commission approved form that demonstrates the PGC or self-generator is in compliance with this section on or before June 1, 2023.
    - (B) A PGC or self-generator who does not demonstrate compliance with this section on or before June 1, 2023, may be subject to revocation under subsection (i) of this section.
- (b) **Definitions.** In this section, the following definitions apply unless the context indicates otherwise.
- (1) Generating facility -- all generating units located at, or providing power to, the electricity-consuming equipment at an entire facility or location.
  - (2) Principal -- includes:
    - (A) A sole proprietor;
    - (B) A general partner;
    - (C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);

- (D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;
  - (E) A shareholder with more than 10% equity of the person, if a public company; or
  - (F) A person who has apparent or actual authority to exercise control over the person or exercises control over a principal otherwise described by this subsection.
- (3) Self-generator -- A QF that does not sell electricity at wholesale or provides electricity only to the purchaser of the facility's thermal output, or a person that:
- (A) is not a PGC;
  - (B) owns an electrical generating facility rated at one megawatt or more, but not more than the maximum megawatt consumption of the co-located load (using historical megawatt consumption data or expectations of megawatt consumption if the co-located load is new or an addition has been made to the existing co-located load); and whose primary purpose is to serve the co-located load, but can sell up to the lesser of 10% of its capacity rating or 10 megawatts of wholesale energy or ancillary services on any given day; and
  - (C) owns or is under common ownership with the co-located load.
- (c) **Initial registration information.** To register as a PGC or a self-generator a person must use the registration form prescribed by the commission. A person registering as a PGC or a self-generator must provide the following information.
- (1) The registrant's contact information, including the registrant's:
    - (A) physical and business mailing address;
    - (B) business telephone number;
    - (C) business e-mail address;
    - (D) primary and secondary emergency contact; and
  - (2) The name of the current regulatory contact, the contact's e-mail address and telephone number, and if the regulatory contact is an internal staff member of the registrant.
  - (3) For each generating facility operated by the registrant:

- (A) the name, address, county and power region of operation of each generating facility;
  - (B) whether the generating facility is an electric storage facility;
  - (C) the name of the transmission service providers interconnecting the generating facility; and
  - (D) the capacity rating for each generating unit following the rating method established in §25.91(f) of this title (relating to Generating Capacity Reports).
- (4) A description of the types of services provided by the registrant that relate to the generation of electricity.
- (5) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that none of the registrant's principals:
- (A) were principals of a commission-regulated person whose license was revoked by commission order within the prior six months of when they were a principal;
  - (B) were principals of any person registered with the Electric Reliability Council of Texas (ERCOT) whose standard form market participant agreement was terminated by ERCOT for misconduct within the prior six months of when they were a principal; or
  - (C) are otherwise prohibited by commission order from acting as a principal of a commission-regulated entity.
- (d) **Additional information required for PGC registration.** In addition to the information required under subsection (c) of this section, a person registering as a PGC must also submit the following information to the commission.
- (1) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that the registrant:
- (A) generates electricity that is intended to be sold at wholesale;
  - (B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use,

or a facility otherwise excluded from the definition of “electric utility” under §25.5 of this title (related to Definitions); and

- (C) does not have a certified service area.
  - (2) The name of the registrant’s corporate parent.
  - (3) A list of the registrant’s and corporate parent’s affiliates identified by name that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric cooperative or municipally owned utility in Texas.
  - (4) The applicable project and item number that the registrant has filed its initial Emergency Operations Plan in as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).
  - (5) As applicable, copies of the registrant’s Federal Energy Regulatory Commission registration as a QF or an EWG.
- (e) **Additional information required for self-generator registration.** In addition to the information required under subsection (c) of this section, a person registering as a self-generator must also submit an affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting:
- (1) that the registrant’s generating facilities will not be capable of producing more energy than the co-located load’s maximum consumption;
  - (2) the registrant will not sell more than the lesser of 10% of its capacity rating or 10 megawatts of wholesale energy or ancillary services on any given day; and
  - (3) the registrant owns or is under common ownership with the co-located load.
- (f) **Update or relinquishment of registration.** A PGC or self-generator may update or relinquish its registration.
- (1) A PGC must complete the commission form to amend its registration within 30 days of a change to any information reported in response to subsections (c)(2) through (c)(4) and (d)(2) of this section.
  - (2) A self-generator must complete the commission form to amend its registration within in 30 days of a change to any of the information reported in response to subsection (c)(2)-(4) of this section. If a self-generator’s generating facilities ever

produce more energy than the maximum potential load consumption level of the co-located load, or provides more than the lesser of 10% of its capacity rating or 10 megawatts at wholesale on any given day, then the self-generator must file an update to change its registration from a self-generator to a PGC.

- (3) A PGC and self-generator must update, in a manner established by the commission, its contact information listed in subsection (c)(1) of this section within 30 days of a change.
- (g) **Review of registration of PGC or self-generator.** Commission staff will review the submitted or updated registration form for sufficiency and submit a written recommendation to the presiding officer within 30 days from the date the registration was filed.
- (1) If commission staff recommends the registration form be found insufficient, commission staff will notify the presiding officer in writing of the deficiencies as part of its recommendation. If the presiding officer finds the registration form to be insufficient, it will notify the registrant in writing of the finding and the specific deficiencies. The registrant will have 20 days from the issuance of the notice to cure the deficiencies. Commission staff will have 15 days to review the supplemental information submitted by the registrant and notify the presiding officer if any deficiencies remain. If the presiding officer determines that the deficiencies have not been cured within 20 days of the issuance of the notice, the presiding officer will reject the registration request without prejudice and notify the registrant of the rejection.
  - (2) Upon finding the registration sufficient, the presiding officer will approve the registration and issue a registration number to the PGC or self-generator.
- (h) **Renewal of registration.** A PGC or self-generator must renew its registration on or before February 28 of every other calendar year by submitting the information required by subsection (c) and, as applicable, (d) and (e) of this section by submitting a statement that the PGC or self-generator's registration information on file with the commission is current and correct.

- (1) A PGC or self-generator whose commission registration number is an even number must submit its registration renewal on all even number years.
  - (2) A PGC or self-generator whose commission registration number is an odd number must submit its registration renewal on all odd number years.
- (i) **Revocation of registration and administrative penalty.** Registration of a PGC under this section is subject to revocation for a significant violation of statute or commission rules. The commission may impose an administrative penalty on a person for a violation of PURA, commission rules, or rules adopted by an independent organization, including:
- (1) failure to comply with the reliability standards and operational criteria duly established by the independent organization certified under PURA §39.151 for the ERCOT power region;
  - (2) failure to observe any scheduling, operating, planning, reliability, or settlement policy, rule, guideline, or procedure established by ERCOT;
  - (3) providing false or misleading information to the commission, commission staff, or ERCOT;
  - (4) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;
  - (5) a pattern of failure to meet the requirements of statute, this section, or other commission rules, regulations or orders;
  - (6) suspension or revocation of a registration, certification, or license by any state or federal authority;
  - (7) failure to operate within the applicable legal parameters established by PURA §39.351; and
  - (8) failure to timely respond to commission or commission staff inquiries or customer complaints.

**§25.485. Customer Access and Complaint Handling.**

- (a) **Applicability.** This section contains a customer's entitlement to reasonable access to a retail electric provider's (REP) or aggregator's representatives and identifies a customer's ability make a complaint against a REP or aggregator. REPs and aggregators are subject to processes of this section to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.
- (b) **Customer access.**
- (1) A retail electric provider (REP) or aggregator must ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's bills, terminate competitive service, and transact any other pertinent business.
  - (2) Telephone access must be toll-free and must afford customers a prompt answer during normal business hours.
  - (3) A REP must provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.
  - (4) A REP or aggregator must employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, pursuant to rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).
- (c) **Complaint handling.** A residential or small commercial customer has the right to make an informal or formal complaint to the commission in accordance with §22.242 of this title (relating to Complaints), and a terms of service agreement cannot impair this right. A REP or aggregator must not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer from filing an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.

- (d) **Complaints to REPs or aggregators.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a REP or aggregator. The REP or aggregator must promptly investigate and advise the complainant of the results within 15 days. A customer who is dissatisfied with the REP's or aggregator's review must be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator must result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator must orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.
- (e) **Complaints to the commission.**
- (1) **Informal complaints.** If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator must advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: [customer@puc.texas.gov](mailto:customer@puc.texas.gov), Internet website address: [www.puc.texas.gov](http://www.puc.texas.gov), TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.
- (A) **Requirements applicable to informal complaints.**
- (i) A complaint must include sufficient information to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information should be included in the complaint:



- (I)() The account holder's name, billing and service addresses, and telephone number;
  - (II)() The name of the REP or aggregator;
  - (III)() The customer account number or electric service identifier (ESI-ID);
  - (IV)() An explanation of the facts relevant to the complaint;
  - (V)() The complainant's requested resolution; and
  - (VI)() Any documentation that supports the complaint, including copies of bills or terms of service documents.
- (ii)() All REPs and aggregators must provide the commission an email address to receive notification of customer complaints from the commission.
  - (iii)() The REP or aggregator must investigate all informal complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the REP or aggregator.
  - (iv)() The commission must review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.
- (B) **Prohibited activities during pendency of informal complaint.** While an informal complaint process is pending:
- (i)() The REP or aggregator must not initiate collection activities, including disconnection of service or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.
  - (ii)() A customer must pay any undisputed portion of the bill and the REP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice.
- (C) **Informal complaint record retention.** The REP or aggregator must keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record must show the

name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

- (2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

**§25.495. Unauthorized Change of Retail Electric Provider.**

- (a) **Process for resolving unauthorized change of retail electric provider (REP).** If a REP is serving a customer without proper authorization pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) must follow the procedures set forth in this subsection.
- (1) Either the original REP or switching REP must notify the registration agent of the unauthorized change of REP as promptly as possible, using the process approved by the registration agent.
  - (2) As promptly as possible following receipt of notice by the REP, the registration agent must facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.
  - (3) The affected REPs, the registration agent, and the TDU must take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible. The original REP is not required to obtain an additional authorization from the customer pursuant to §25.474 of this title in order to effectuate the provision of this section.
  - (4) The affected REPs, the registration agent, and the TDU must take all actions necessary to bill correctly all charges, so that the end result is that:
    - (A) the REP that served the customer without proper authorization must pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;
    - (B) the original REP has the right to bill the customer pursuant to §25.480 of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service from either:
      - (i) the date the customer is returned to the original REP; or
      - (ii) any prior date chosen by the original REP for which the original REP had the authorization to serve the customer.
    - (C) the REP that served the customer without proper authorization must refund all charges paid by the customer for the time period for which the original REP ultimately bills the customer within five business days after the

customer is returned to the original REP, or REP of choice in the case of a move-in;

- (D) the customer will pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;
  - (E) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and
  - (F) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.
- (5) The original REP must provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change;
  - (6) The affected REPs must communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.
  - (7) In a circumstance where paragraph (4) of this subsection is not applicable or its requirements cannot be effectuated, the market participants involved must work together in good faith to rectify the unauthorized switch or move-in in a manner that affords the customer and market participants involved a level of protection comparable to that required in this subsection.

(b) **Customer complaints, record retention and enforcement.**

- (1) A customer may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.
- (2) Upon receipt of a customer complaint, a REP must:
  - (A) respond to the commission within 15 calendar days after receiving the complaint and in the response to the complaint provide to the commission all documentation relied upon by the REP and related to the:

- (i) authorization and verification to switch the customer's service; and
  - (ii) corrective actions taken to date, if any.
- (B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 29TH DAY OF SEPTEMBER 2022 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA GONZALES**