TEXAS REGISTER

Volume 36 Number 19 *May 13, 2011* *Pages 3061 – 3138*

Aaron Guzman
11th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0961-GA

Requestor:

The Honorable William A. Callegari

Chair, Committee on Government Efficiency and Reform

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Treatment of existing debt after consolidation of municipal utility districts pursuant to section 54.728, Water Code (RQ-0961-GA)

Briefs requested by May 26, 2011

RQ-0962-GA

Requestor:

The Honorable Jack A. McGaughey

District Attorney for Archer, Clay and Montague Counties

Post Office Box 55

Montague, Texas 76251-0055

Re: Appointment of counsel in criminal cases for non-indigent defendants (RQ-0962-GA)

Briefs requested by May 26, 2011

RQ-0963-GA

Request withdrawn

RQ-0964-GA

Requestor:

The Honorable Armando R. Villalobos

Cameron County and District Attorney

Post Office Box 2299

Brownsville, Texas 78522-2299

Re: Whether a municipal police department may distribute money from its forfeiture fund to a local Crime Stoppers organization (RQ-0964-GA)

Briefs requested by May 27, 2011

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201101639
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 3, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0855

The Honorable Joe Shannon, Jr.

Tarrant County Criminal District Attorney

Tim Curry Criminal Justice Center

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Whether Texas Health and Safety Code section 773.008(2) authorizes a court of record, independently of any other source of authority, to order emergency medical treatment of a local jail detainee (RQ-0915-GA)

S U M M A R Y

Texas Health and Safety Code section 773.008(2) does not, in and of itself, grant authority to courts of record to order emergency medical treatment of local jail detainees.

Opinion No. GA-0856

The Honorable Ricardo Ramos

Maverick County Attorney

208 Converse Street

Eagle Pass, Texas 78852

Re: Municipality's selection of a local newspaper for the purpose of publication of official notices (RQ-0919-GA)

S U M M A R Y

A paper used for the publication of a political subdivision's notices must satisfy the requirements of section 2051.044, Government Code. We cannot advise you that the City's proposal to use a paper that does not satisfy section 2051.044 would be lawful.

Beyond the express publication alternatives provided in section 2051.048, Government Code, and other particular notice statutes, the Legislature may provide additional publication methods.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201101644

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 3, 2011

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff for Retail Delivery Service), and §25.474, relating to Selection of Retail Electric Provider. The proposed amendments will increase the benefits and functionality of the advanced metering system (AMS) to customers by allowing many service requests for customers with AMS to be carried out on Saturdays and requiring transmission and distribution utilities (TDUs) to perform such service requests more quickly. In addition, the proposed amendments will make changes relating to prepaid service, including changes that require the REP to disclose to the customer that the customer will not receive a bill and may request a summary of usage and payment. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 38674 is assigned to this proceeding.

Therese Harris, Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications or foreseeable impact on the costs or revenues of state or local governments as a result of enforcing or administering the above-referenced sections.

Ms. Harris has also determined that for each year of the first five years that the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will substantially outweigh the probable economic cost to persons required to comply with the amendments. The amendments will take advantage of the functionality of AMS to provide better service to customers in several ways.

Significant benefits result from amending §25.214 of this title, as proposed in this notice. An AMS Operational Day is created which is defined as any day but Sunday or a holiday (Non-Business Day as defined in §25.214). AMS service requests to be processed during an AMS Operational Day include: Move-In, Move-Out, Reconnect for Non-Pay, and Switch transactions.

Same day Move-In and Move-Out would be standard service where there is a provisioned advanced meter with remote disconnect/reconnect capability, if the amendments are adopted. This increased flexibility reduces the risk that customers will be without service when they need it and increases savings by allowing the customer to schedule service much closer to the time they require it. Reconnect for Non-Pay will be available 24/7 and considered standard service where there is a provisioned advanced meter with remote disconnect/reconnect capability.

Customers with provisioned advanced meters with remote disconnect/reconnect capability would benefit from an expedited ability to switch from one retail electric provider (REP) to another. Customers wishing to switch to products with more favorable rates or better suited to their individual needs will now be able to schedule a same day switch. To facilitate a same day switch, §25.474 and §25.214 will be amended to require ERCOT to set the first available switch date to day zero from day three, and the right of rescission will be removed except where provided for by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. Part 429).

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. The amendments do not require REPs to set their business hours to match the expanded hours in the AMS operational day. There may be economic costs to persons who are required to comply with the amendments, but they will vary among persons, be very difficult for the commission to quantify, and be relatively small. The amendments will require REPs to change their contract documents and may require changes to their internal procedures. It is expected, however, that REPs will benefit from streamlined internal procedures with fewer customer initiated right of rescission requests to process and improved service to their customers. The commission believes that the benefits accruing from implementation of the proposed amendments will greatly outweigh the costs.

Ms. Harris has also determined that for each year of the first five years the amendments are in effect, a TDU may require a few additional office personnel or use additional contract services to cover the expanded AMS Operational Day. However, it is also anticipated that as deployment of advanced meters continues to progress on a widespread basis, fewer field personnel will be required since meter reading and service requests such as Move-In, Move-Out, Reconnect for Non-Pay, and switch requests will be accomplished remotely. There should be no effect on a local economy and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, July 7, 2011.

The request for a public hearing must be received within 31 days after publication.

Initial comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 38674.

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §25.214(d) is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 13, 2011, issue of the Texas Register.)

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers; §14.001, which gives the commission the general power to regulate and supervise the business of each public utility within its jurisdiction; and §32.101, which requires an electric utility to file its tariff with the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.004, 32.101, 36.003, and 39.101.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) - (c) (No change.)

(d) Pro-forma Retail Delivery Tariff. Tariff for Retail Delivery Service.

Figure: 16 TAC §25.214(d)

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.

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101611

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 12, 2011
For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.474

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers; §14.001, which gives the commission the general power to regulate and supervise the business of each public utility within its jurisdiction; and §32.101, which requires an electric utility to file its tariff with the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.004, 32.101, 36.003, and 39.101.

§25.474. Selection of Retail Electric Provider.

(a) - (c) (No change.)

(d) Enrollment via the Internet. For enrollments of applicants via the Internet, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.

(1) - (4) (No change.)

(5) Required authorization disclosures. Prior to requesting confirmation of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) - (H) (No change.)

~~[(I) in the case of a switch request, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and]~~

(I) [~~(J)~~] a statement that the applicant will receive a copy of the terms of service document via email or, upon request, via regular US mail, that will explain all the terms of the agreement; and [~~how to exercise the right of rescission, if applicable.~~]

(J) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title (relating to Prepaid Service), that the customer will not receive a bill and may request a summary of usage and payment.

(6) - (10) (No change.)

(11) After enrollment, the REP or aggregator shall send a confirmation, by email, of the applicant's request to select the REP. The confirmation email shall include[:]

~~[(A) in the case of a switch, a clear and conspicuous notice of the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service without penalty and offer the applicant the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice~~

~~shall be accessible to the applicant without need to open an attachment or link to any other document; and~~]

[~~(B)~~] the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.

(e) Written enrollment. For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the applicant in accordance with this subsection.

(1) - (4) (No change.)

(5) Required authorization disclosures. The LOA shall disclose the following information:

(A) - (H) (No change.)

[~~(I) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and~~]

(I) [~~(J)~~] a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement; and [~~how to exercise the right of rescission, if applicable.~~]

(J) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title, that the customer will not receive a bill and may request a summary of usage and payment.

(6) (No change.)

(7) The following LOA form meets the requirements of this subsection if modified as appropriate for the requirements of paragraph (5)(G) of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.
Figure: 16 TAC §25.474(e)(7)

(8) Before obtaining a signature from a customer, a REP shall:

(A) provide to the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label, Prepaid Disclosure Statement (PDS), if applicable, and any written materials accompanying the terms of service document; and

(B) (No change.)

(9) Upon obtaining the applicant's signature, a REP or aggregator shall immediately provide the applicant a legible copy of the signed LOA, and shall distribute or mail the terms of service document, Electricity Facts Label, PDS, if applicable, and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the applicant to the REP to obtain electric service shall allow the applicant to retain the terms of service document.

(10) (No change.)

(f) Enrollment via door-to-door sales. A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with the following requirements:

(1) (No change.)

(2) Required authorization disclosures. Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator shall comply with all of the authorization disclosure requirements in either subsections (e)(5) or (h)(1) - (4) [~~through (h)(4)~~] of this section and must also disclose that in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty.

(3) Verification of authorization for door-to-door enrollment. A REP, or an independent third party retained by the REP, shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph.

(A) Electronically record on audiotape, a wave sound file, or other recording device the entirety of an applicant's verification. The verification call shall comply with the requirements in subsection (h)(5) of this section [~~subsection~~].

(B) - (F) (No change.)

[~~(G) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP shall not submit a move-in or switch request until it has received the prepayment from the customer.~~]

(g) (No change.)

(h) Telephonic enrollment. For enrollments of applicants via telephone solicitation, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.

(1) - (3) (No change.)

(4) Required authorization disclosures. Prior to requesting verification of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) - (G) (No change.)

[~~(H) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and~~]

(H) [~~(I)~~] a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement; and [~~and how to exercise the right of rescission, if applicable.~~]

(I) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title, that the customer will not receive a bill and may request a summary of usage and payment.

(5) (No change.)

(i) (No change.)

(j) Right of rescission. A REP shall promptly provide the applicant with the terms of service document after the applicant has authorized the REP to provide service to the applicant and the authorization has been verified. For switch requests resulting from enrollment via door-to-door sales, the REP shall offer the applicant a right to rescind the terms of service without penalty or fee of any kind for a period of three federal business days after the applicant's receipt of the terms of service document as required by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. Part 429). The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three fed-

eral business days. Any REP receiving an untimely notice of rescission from the applicant shall inform the applicant that the applicant has a right to select another REP and may do so by contacting that REP. The REP shall also inform the applicant that the applicant will be responsible for charges from the REP for service provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.

(k) - (m) (No change.)

(n) Fees. A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless an [~~the~~] applicant without a Provisioned Advanced Meter requests an out-of-cycle meter read for the purpose of a self-selected switch. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The TDU shall not charge a fee for a review or adjustment described in subsection (q)(2) of this section. To the extent that the TDU assesses a REP a properly tariffed charge for connection of service, out-of-cycle meter read for self-selected switch requests, service order cancellations, or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP. A TDU shall not assess to a REP or an applicant any costs associated with a switch cancellation, including inadvertent gain fees, that results from the applicant's exercise of the three-day right of rescission. The TDU shall include such costs in the cost recovery mechanism described in subsection (p) of this section.

(o) Use of actual meter read for the purpose of a switch. For Provisioned Advanced Meters where a daily meter read is not available and all other meters:

(1) - (2) (No change.)

(p) - (r) (No change.)

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.

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101612
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 12, 2011
For further information, please call: (512) 936-7223

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.443

The Comptroller of Public Accounts proposes an amendment to §3.443, concerning diesel fuel tax exemption for water, fuel ethanol, biodiesel, renewable diesel, and biodiesel and renewable diesel mixtures. This amendment incorporates a change in agency policy regarding the percentage of the volume of water, fuel ethanol, biodiesel, and renewable diesel blended with petroleum diesel fuel that must be disclosed on an invoice, storage tank, and retail pump. The percentage of the volume of water, fuel ethanol, biodiesel, and renewable diesel blended with petroleum diesel fuel may be rounded to the nearest whole percent. Subsections (d), (e), and (g) are amended to replace "to the nearest tenth of one percent" with "to the nearest whole percent" and provide an example of rounding to the nearest whole percent.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by simplifying the invoicing of, and the payment of taxes for, these products. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The amendment implements Tax Code, §162.204.

§3.443. Diesel Fuel Tax Exemption for Water, Fuel Ethanol, Biodiesel, Renewable Diesel, and Biodiesel and Renewable Diesel Mixtures.

(a) - (c) (No change.)

(d) Invoice documentation.

(1) - (2) (No change.)

(3) A sales invoice must:

(A) identify a water-based diesel fuel, ethanol blended diesel fuel, biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend by a commonly accepted commercial or industry name for the product being sold. For example, B100 for biodiesel or B20 for a biodiesel blend containing 80% taxable petroleum diesel fuel and 20% biodiesel;

(B) list the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest whole percentage; for example 1.4% becomes 1.0% and 1.5% becomes 2.0% [~~tenth of one percent~~]) of the blended product that is water, fuel grade ethanol, biodiesel, or renewable diesel;

(C) list the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest whole [~~tenth of one~~] percent) of the blended product that is taxable petroleum based diesel fuel. Taxable diesel fuel includes emulsifiers and additives, but not water, fuel grade ethanol, biodiesel, or renewable diesel; and

(D) list the basis of calculating the tax (if a taxable sale) as either $0.20 for each gallon of taxable petroleum based diesel fuel in the blended product or a ratable tax rate based on the percent of taxable petroleum based diesel in the blended product. For example, the invoice for the sale of 100 gallons that is a blend of 20% biodiesel and 80% taxable diesel fuel may list: state diesel fuel tax of $0.20 per gallon on 80 gallons taxable diesel fuel and no state tax on 20 gallons

biodiesel, or state diesel fuel tax of $0.16 per gallon on 100 gallons of biodiesel blend.

(e) Notice required on storage tank and retail pump.

(1) (No change.)

(2) A notice must be posted in a conspicuous location on each storage tank located outside the bulk terminal/transfer system and retail pump from which a blend product is stored or sold from the time that the water, fuel grade ethanol, biodiesel, or renewable diesel is first blended with taxable petroleum based diesel fuel until the blended product is sold to the ultimate consumer. The notice must identify the blended product by the common industry or commercial name, and state the volume percentage (rounded to the nearest whole percentage [~~tenth of one percent~~]) of water, fuel grade ethanol, biodiesel, or renewable diesel that is blended with petroleum diesel fuel. For example, "B5 - 5.0% Biodiesel", similar wording, for a 5.0% biodiesel blend.

(f) (No change.)

(g) Certification. The refiner, producer, importer, blender, or reseller of biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend must provide on each transfer to a person who is not the ultimate consumer a delivery ticket, certificate, letter, or other written statement (e.g.; invoice, bill of sale, bill of lading, or product transfer document) that contains the name of the seller, the name of the purchaser, date of transfer and the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest whole percentage [~~tenth of one percent~~]) of the biodiesel or renewable diesel component of the blend. Certifications records required by this subsection must be maintained for four years.

(h) - (i) (No change.)

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.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101603
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 12, 2011
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.13

The Texas Department of Public Safety (the department) proposes amendments to §16.13, concerning Farm-Related Service Industry Waiver. Amendments to this section address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2009 review of the Texas' Commercial Driver License (CDL) program. These amendments further align Chapter 16 rules to previously existing statutory requirements governing CDL issuance processes where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect these amendments provide public benefit by aligning the current rule governing waiver requirements for the farm related service industry with the federal regulations governing commercial drivers and vehicles. Amendments ensure any conflicts between Texas Administrative Rules and federal regulations are negated.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposal may be submitted to Ron Coleman, Program Administrator, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to ron.coleman@txdps.state.tx.us within thirty (30) days of publication of this proposal in the *Texas Register.*

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to carry out this chapter and the federal act.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.13. Farm-Related Service Industry Waiver.

(a) - (b) (No change.)

(c) Restricted Texas CDLs for certain FRSI must be issued in accordance with 49 Code of Federal Regulations, Part 383, which provides the following:

(1) - (3) (No change.)

(4) An applicant for an FRSI CDL must have a good driving record and at least one year of driving experience in any type of vehicle. A driver who has not held any motor vehicle operator's license for at least one year will not be eligible for the FRSI CDL. Drivers who have between one and two years of driving experience must demonstrate the good driving record requirements for their entire driving history. Drivers with more than two years of driving experience must meet the good driving record requirements for the two-year period preceding their date of application for an FRSI CDL. A good driving record is defined as:

(A) - (B) (No change.)

(C) no convictions in any type of motor vehicle for driving under the influence of alcohol or drugs, leaving the scene of an accident, [~~or~~] committing any felony involving a motor vehicle, or operating a commercial motor vehicle with a suspended, revoked, cancelled, or otherwise disqualified license;

(D) no convictions whatsoever in any type of motor vehicle for serious traffic violations as defined by Texas Transportation Code, §522.003(25); [~~and~~]

(E) no convictions in any type of motor vehicle for accident-connected traffic law violations and no record of at-fault accidents; and[~~.~~]

(F) no committed offense under Texas Transportation Code, Chapter 524 or Chapter 724.

(5) - (20) (No change.)

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.

Filed with the Office of the Secretary of State on April 27, 2011.

TRD-201101577
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 12, 2011
For further information, please call: (512) 424-5848

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SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §16.105

The Texas Department of Public Safety (the department) proposes amendments to §16.105, concerning Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers. Amendments to this section address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2009 review of the Texas' Commercial Driver License (CDL) program. These amendments further align Chapter 16 rules to previously existing statutory requirements governing CDL issuance processes where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect these amendments provide public benefit by aligning the current rule governing commercial driver license penalties for violating out-of-service orders and railroad grade crossing violations with the federal regulations governing commercial drivers and vehicles. Amendments ensure any conflicts between Texas Administrative Rules and federal regulations are negated.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposal may be submitted to Ron Coleman, Program Administrator, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to ron.coleman@txdps.state.tx.us within thirty (30) days of publication of this proposal in the *Texas Register.*

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, authorizes the department to adopt rules necessary to carry out this chapter and the federal act.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.105. Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers.

In addition to the penalties provided for in the Texas Transportation Code, §522.071 and §522.072, the director of the Texas Department of Public Safety incorporates, by reference, the federal disqualification and penalty regulations pertaining to violation of out-of-service orders and railroad grade crossing violations, 49 CFR, Part 383, including all interpretations thereto, for commercial drivers and employers. [~~drivers and employers are subject to the penalties of 49 CFR, Part 383, which are hereby adopted by this department and are as follows:~~]

(1) General rule. Any person who violates Texas Transportation Code, §522.071(a)(5), §522.072 or the rules set forth in Subparts B and C of 49 CFR, Part 383, may be subject to civil or criminal penalties as provided for in this section or in 49 United States Code, §521(b) [~~521(b)~~].

(2) Driver violations. A driver who is convicted of violating an out-of-service order as defined by 49 CFR, §383.5 or Texas Transportation Code, §522.003(23) shall be subject to a civil or administrative penalty of not less than $2,500 for a first conviction, and not less than $5,000 for a second conviction, in addition to a disqualification action [~~as provided for by 49 CFR, Part 383 and this section~~].

(3) Employer violations. An employer who is convicted of a violation of 49 CFR, [~~Part~~] §383.37(c) or Texas Transportation Code, §522.072(a)(3) [~~,~~] shall be subject to a maximum civil or administrative penalty of not less than $2,750 and not more than $25,000. An employer who is convicted of a violation of 49 CFR, [~~Part~~] §383.37(d) or Texas Transportation Code, §522.072(b) shall be subject to a civil or administrative penalty of not more than $10,000.

(4) Penalties. Civil penalties for violations of the regulations adopted herein may be assessed by a court of competent jurisdiction or assessed as an administrative penalty under the provisions of Texas Transportation Code, Chapter 644.

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.

Filed with the Office of the Secretary of State on April 27, 2011.

TRD-201101578
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 12, 2011
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.42

The Texas Department of Transportation (department) proposes amendments to §9.42, concerning Administrative Qualifications.

EXPLANATION OF PROPOSED AMENDMENTS

Architectural, engineering, and surveying services are procured by the department in accordance with Government Code, Chapter 2254, Subchapter A, and Title 23, Code of Federal Regulations, §172.5.

The amendments clarify and refine the language to improve consistency in the interpretation and application of procedures for administrative qualifications. The amendments change the deadline for submission of information regarding administrative qualifications; extend the length of time that an audit report will remain valid by extending the interval from twenty-four to thirty months; and provide an option for those firms lacking an indirect cost rate audit to accept an indirect cost rate established by the department's Audit Office. These amendments reduce the administrative qualifications burden on firms with smaller contracts or those that have a smaller participation in larger contracts.

Section 9.42(b) is amended to change the deadline for submitting the administrative qualifications information to either prior to selection or after selection, but before contract execution. Currently, the deadline to submit the information is prior to the closing date of the letter of interest, which is early in the selection process. Requiring firms to submit the administrative qualifications information early in the process reduces the potential for delays in executing a contract should a firm lacking the administrative qualification information be on a selected team. However, by requiring this information early in the process, it places a burden on firms with smaller contracts, those that have a smaller participation in larger contracts, and firms that compete for contracting opportunities, but are not successful.

Section 9.42(c) is reorganized and changes are made to correct cross references and citations. The language from current subsection (c) is added under re-lettered subsection (c) concerning indirect cost rate. The language from current subsection (c)(1), concerning an adequate accounting system, is removed and the requirement is incorporated into amended subsection (c)(1). The demonstration of the adequacy of the accounting system is not performed through a separate audit, but is performed by the auditor conducting the indirect cost rate audit. The amendment is made to clarify that it is the auditor performing the indirect cost rate audit who will evaluate and confirm that the prime provider or subprovider has a job cost accounting system. Renumbered subsection (c)(3) is amended by extending the period during which an audit report remains valid from twenty-four months to thirty months. This change will reduce the administrative qualifications burden on providers by extending the time between required audits.

New paragraph (4) of §9.42(c) is subdivided into subparagraphs (A) and (B). The language in new subparagraph (A) is added to allow the department to contract with a prime provider or subprovider lacking an indirect cost rate audit if the firm has been in operation for less than one year or its portion of the contract is not more than $500,000 provided an indirect cost rate established by the Audit Office is accepted. The language in new subparagraph (B) is added to allow the department to contract with a firm lacking an indirect cost rate audit if the firm elects to accept an indirect cost rate established by the Audit Office. The preference is for a firm to have an indirect cost rate audit. However, this provides an option if there are circumstances preventing a firm from obtaining an indirect cost rate audit or obtaining the audit within a reasonable time frame.

New subsection (d) is created from former subsection (c)(3) and (4) and changed. The language from current subsection (c)(3) and (4) is deleted because the existing language is not clear concerning costs to be considered during negotiations. The costs to be considered during negotiations are to be associated with salary and non-salary costs for personnel and equipment proposed for use on the solicited contract. The language in renumbered paragraphs (1) and (2) is changed to clarify that these are actual salary rates for employees proposed for work on the contract and non-salary costs proposed for the contract.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in

effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a clearer understanding of the interpretation and application of procedures for administrative qualifications. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.42 may be submitted to Mark Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 13, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.42. Administrative Qualification.

(a) Exception. Administrative qualification is not necessary for non-engineering firms and provider services included in Group 6 - bridge inspection, Group 12 - materials inspection and testing, Group 14 - geotechnical services, Group 15 - surveying and mapping, or Group 16 - architecture as listed on the department's web site for precertification. Provider compensation for these services is typically based on units of service rates. The Audit Office and the Design Division may agree to grant exceptions for other provider services on a case by case basis. In determining whether to grant an exception, the Audit Office and the Design Division may consider the nature of the services to be provided, the method of payment to be used, the reasonableness and feasibility of requiring an audited indirect cost rate, and any other relevant factors. Any request for an exception must be received by the Audit Office prior to the due date of the letter of interest.

(b) Time to provide information. Each prime provider and subprovider should [~~must~~] submit the information described in this section before the final selection of the prime provider [~~no later than the LOI due date~~]. If the information is not furnished before the selection, it must be submitted after the selection and before contract execution. The administrative qualification submittal is a separate submittal from the precertification submittal, and is submitted to the Texas Department of Transportation, Audit Office, 125 E. 11th Street, Austin, Texas 78701-2483. Administrative qualification submittals will not be received by the Design Division.

[~~(c) Evaluation factors. The department will consider the following factors in determining administrative qualifications of prime providers or subproviders.~~]

[~~(1) Adequate accounting system. The prime provider or subproviders must demonstrate the existence of an adequate accounting system that meets the department's audit requirements, as evidenced by certification by an independent certified public accountant or governmental agency. The system must be adequate to support all billings made to the department and other clients.~~]

(c) [~~(2)~~] Indirect cost rate audit. The department will consider the factors described in this subsection in determining administrative qualifications of prime providers or subproviders. The prime provider or subprovider must submit an indirect cost rate audit for the time period specified in paragraph (3) [~~subparagraph (C)~~] of this subsection [~~paragraph~~] performed by an independent certified public accountant, an agency of the federal government, another state transportation agency, or a local transit agency except as provided in paragraph (4) [~~subparagraph (D)~~] of this subsection [~~paragraph~~]. If the audit is performed by an independent certified public accountant, the provider or subprovider must assure that the department will be given access to the audit work papers.

(1) [~~(A)~~] The audit report shall include statements that confirm the prime provider or subprovider has a job cost accounting system, the audit was performed in accordance with generally accepted government auditing standards, and the indirect cost rate was developed in accordance with the Federal Acquisition Regulations, 48 CFR Part 31.

(A) [~~(i)~~] AASHTO Uniform Audit and Accounting Guide is acceptable guidance for the audit of the indirect cost rate.

(B) [~~(ii)~~] Department requirements that differ from the AASHTO guide are contained in the Indirect Cost Rate Guidance available through the department's website.

(2) [~~(B)~~] The department may perform indirect cost rate audits of any prime provider or subprovider under contract to, or desiring to do business with, the department. These audits will be conducted consistent with the criteria outlined in this subsection.

(3) [~~(C)~~] The end of the fiscal period of the audit report must be within thirty [~~twenty four~~] months of the date the notice was posted.

(4) [~~(D)~~] The department may contract with a prime provider or allow utilization of a subprovider lacking an approved indirect cost rate audit if: [~~the prime provider or subprovider has been in operation, as currently organized, for less than one fiscal year or the estimated value of its portion of the contract is not more than \$500,000.~~]

(A) the prime provider or subprovider, as applicable, has been in operation, as currently organized, for less than one fiscal year or the estimated value of its portion of the contract is not more than $500,000, and the prime provider or subprovider accepts an indirect cost rate established by the Audit Office; or

(B) after selection the prime provider provides written certification to the Audit Office that the prime provider or subprovider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate established by the Audit Office.

(d) Additional information. The selected prime provider shall submit to the managing office for consideration in contract negotiations:

(1) [~~(3)~~] the actual salary rates for the proposed team members; and [~~Salary rates. The department will consider current salary rates, range of rates, or average rates by job classification.~~]

(2) [~~(4)~~] non-salary costs, generated internally, to be billed directly. [~~Direct costs. The department will consider costs such as copies, Computer Aided Design and Drafting (CADD), or other direct costs.~~]

(e) [~~(d)~~] Provision of administrative qualification information. The department's Audit Office will provide administrative qualification information to the managing office when notified by the Design Division upon selection approval of a provider for the contract, for use in negotiations as identified in §9.37 of this subchapter (relating to Selection).

(f) [~~(e)~~] Prohibited actions. Administrative qualification information obtained through this section will not be made available to the CST by the department's Audit Office prior to contract selection.

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.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101596
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 12, 2011
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.521 - 22.523

The Texas Higher Education Coordinating Board withdraws the proposed repeal to §§22.521 - 22.523 which appeared in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10412).

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101608

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: April 29, 2011

For further information, please call: (512) 427-6114

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19 TAC §22.521, §22.522

The Texas Higher Education Coordinating Board withdraws proposed new §22.521 and §22.522 which appeared in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10413).

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101609

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: April 29, 2011

For further information, please call: (512) 427-6114

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES

SUBCHAPTER H. ADULTERANTS

4 TAC §61.67

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts new §61.67, concerning General Provisions for the Use of Aflatoxin Binding Agents in Customer-Formula Feed, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 698). The rule will not be republished.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist (OTSC) has determined that adoption of this new rule will improve aflatoxin risk management, resulting in improved animal health and food safety with no anticipated additional regulatory cost to individuals and small or micro businesses. Use of binding agents in grain, oilseeds, processed grain and oilseed meals prohibited in this rule could damage export markets for U.S. corn producers, merchandisers, and shippers.

Comments received on the proposed new rule include Texas Corn Producers Board and their support to any and all approved practices and products that can assist our corn producers in gaining value for their corn when affected by aflatoxin and therefore decrease the economic losses while maintaining a safe food and feed supply; Hi Pro Feeds objecting to several provisions in the rule requesting a better definition of the recordkeeping and testing requirements.

The new rule is adopted under Texas Agriculture Code §141.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.053 and Subchapter A, §141.004 are affected by the adopted new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101606

Dr. Tim Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: May 19, 2011

Proposal publication date: February 11, 2011

For further information, please call: (979) 845-1121

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

The Public Utility Commission of Texas (commission) adopts the repeal of §25.498, relating to Prepaid Electric Service Using Customer-Premise Prepayment Devices, with no changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9605), and new §25.498, relating to Prepaid Service, with changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9605). The new rule addresses the requirements for a retail electric provider (REP) to offer a service option whose normal billing arrangement provides for payment before the rendition of service (prepaid service). The new rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 38675 is assigned to this proceeding.

The motivation behind this rulemaking proceeding is the extensive deployment of advanced meters that is underway in the areas that are subject to retail competition and the fact that many REPs are beginning to offer prepaid service that takes advantage of the capabilities of the advanced meters. The current §25.498 addresses prepaid service with an advanced meter or other equipment that provides access to near real-time consumption information and remote connection and disconnection of service (customer prepayment device or system or CPDS). The current rule was adopted without any direct experience of REPs offering and customers using prepaid service with advanced meters, and subsequent experience suggests that the rule can be improved.

The commission's objectives for the new rule are to establish a set of baseline protections for customers, while giving

REPs broad latitude in developing prepaid service options for customers. A prepaid service option is likely to be a new development for most customers that take advantage of it, and the commission believes that it is important to establish a baseline of customer protections because of the significant differences between the traditional (postpaid) model and the prepaid model. At the same time, the experience of the postpaid model is that different customers have different preferences, and the commission believes that experience with prepaid service under the new rule will also show that different customers prefer different options. Giving REPs broad latitude should result in a diversity of options, many of which are likely to be attractive to large numbers of customers. The prepaid model also has significant advantages for customers, particularly the substitution of a prepayment (which will have a cap of $75) for a deposit (which could be as high as several hundred dollars) and customers' ability to make payments at amounts and intervals they choose. The commission also believes that competition will spur REPs to offer terms that are more attractive to customers than the baseline protections afforded in the rule, as they design options intended to attract customers.

The commission received comments on the proposed new rule from AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively, Joint TDUs); dPi Energy, LLC (dPi); Main Street Energy LLC (Main Street); MXenergy Electric Inc. (MXenergy); Nations Power; Office of Public Utility Counsel (OPUC); Reliant Energy Retail Services, LLC (Reliant); the Retail Electric Provider Coalition (REP Coalition); State Representative Sylvester Turner; Tarrant County Department of Human Services (TCDHS); Texas Association of Community Action Agencies (TACAA); Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (TLSC/TXROSE); and Young Energy, LLC (Young). TLSC/TXROSE stated that its reply comments were joined and supported by State Representative Sylvester Turner, TCDHS, and Smart UR Citizens.

The REP Coalition was composed of Acacia Energy, LLC; Andeler Power; Andeler Retail; Apollo Power and Light, LLC; Alliance for Retail Markets (ARM); CPL Retail Energy, LP; ePsolutions, Inc; Fulcrum Retail Holdings LLC (Amigo Energy and Tara Energy); PenStar Power, LLC; Pocket Power; Texas Energy Association for Marketers (TEAM); TXU Energy Retail Company LLC; and WTU Retail Energy, LP. The participating members of ARM with respect to the REP Coalition's comments were Direct Energy, LP; Gexa Energy, LP; First Choice Power Special Purpose, LP; GDF SUEZ Energy Resources North America, Inc.; and Champion Energy Services, LLC. The participating members of TEAM with respect to the REP Coalition's comments were Accent Energy; Amigo Energy; Bounce Energy; Cirro Energy; Hudson Energy Services; Just Energy; StarTex Power; Stream Energy; Tara Energy; and TriEagle Energy. Acacia Energy, LLC; Andeler Power; Andeler Retail; Apollo Power and Light, LLC; ePsolutions, Inc; PenStar Power, LLC; and Pocket Power also filed joint comments as the REP Group. Finally, CPL Retail Energy, L.P.; Direct Energy, L.P.; First Choice Special Purpose, L.P.; WTU Retail Energy, L.P.; and ARM filed comments. The ARM filed comments, with the following participating members: Direct Energy LP; First Choice Power Special Purpose, LP; Gexa Energy, LP; and Champion Energy Services, LLC. These comments are referred to as the comments of ARM.

General Comments on Prepaid Electric Service

OPUC requested that the commission add a filter for prepaid products to the electric choice website, Power to Choose, to allow customers to sort by prepaid status. TLSC/TXROSE stated that the prepaid plans currently listed on Power to Choose are not clearly marked as such; many of the prepaid products are indistinguishable from variable postpaid products listed on the site. TLSC/TXROSE stated that a filter would allow customers the ability to search for prepaid products in the same manner as for "Renewable Content" and "Rate Type." OPUC stated that a filter would make shopping for a prepaid product faster and easier for customers; the REP Coalition agreed.

TLSC/TXROSE requested that the "Understand Your Choices" section of the Power to Choose site be amended to include information on prepaid products as soon as possible. TLSC/TXROSE stated that the commission has had a prepaid rule since at least 2007, and stated that there was a lack of prepaid product discussion or education and that a comparison between prepaid and postpaid service options was needed. OPUC recommended that the commission provide additional customer education on prepaid products and providers, such as customer fact sheets or a complaint scorecard on prepaid providers. OPUC offered to provide customers prepaid product education during its outreach efforts. The REP Coalition supported customer education on prepaid service by OPUC, but stated that the Prepaid Disclosure Statement (PDS) requirement outlined in proposed subsection (e) serves as a fact sheet. The REP Coalition stated that a separate customer complaint scorecard for prepaid is unnecessary, and stated that the information upon which the scorecard is based should not be further bifurcated by separating out prepaid service from the limited information accessible to the commission. The REP Coalition stated that education is a means to allay customer concerns or misunderstandings regarding prepaid service, and stated that increased education efforts could help reach customers not already familiar with prepaid service and allow them the opportunity to consider whether the service is the right choice for their energy needs.

TLSC/TXROSE requested marketing guidelines to ensure customers understand the product offered by a REP. Further, TLSC/TXROSE stated that all REPs should clearly identify prepaid services in all of their written materials and advertisements promoting these products.

TLSC/TXROSE requested that the commission establish guidelines for a prepaid product that would allow a customer to prepay a levelized amount for the customer's total monthly electric consumption and obtain service to the end of the billing cycle. After six months, the levelized payment could be converted to an average monthly payment plan with prepayments based on actual usage. TLSC/TXROSE also requested that the prepaid product provide firm service free of variable pricing, time of use, or demand response rates. TLSC/TXROSE stated that it is relatively difficult for customers to accurately estimate their monthly electric needs, and it could become even more difficult for customers to determine a budget for service expected to last the whole month under a variable prepaid plan. TLSC/TXROSE requested a prepayment plan that in concept could lead to a customer qualifying for credit and eventually a standard electric service.

Commission Response

The commission agrees with OPUC, the REP Coalition, and TLSC/TXROSE that a filter allowing customers to search for prepaid service options on Power to Choose would make shopping

for a prepaid service option faster and easier. The commission intends to add such a filter.

The commission agrees, in part, with OPUC and TLSC/TXROSE that there is a lack of customer education information available regarding prepaid service options. The commission will consider the best means of customer education. The commission does not, however, believe that a separate customer complaint scorecard for prepaid service is necessary. The commission agrees with the REP Coalition that customer education on prepaid service, rather than a bifurcated complaint scorecard, would better serve the competitive market.

The commission agrees with TLSC/TXROSE that all prepaid services should be clearly identified as such by the REP. The commission concludes that the electricity fact label (EFL) required by §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) and a prepaid service option filter on Power to Choose are sufficient. In response to TLSC/TXROSE's request for marketing guidelines, the commission is adopting subsection (f) to address marketing of prepaid services. Adopted subsection (f)(1) will require the REP to include certain fees and a statement regarding the ability of a customer to obtain important standardized information in any advertisement that includes a specific price or cost for prepaid service and is conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages, or any electronic media other than Internet websites. In addition, adopted subsection (f)(2) also includes a provision that the REP shall provide the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed in subsection (f)(1) in all advertisements and marketing that include a specific price or cost. The commission also adopts additional required disclosures during telephonic and in-person solicitations in adopted subsection (f)(3) and (4). Not providing the information required by subsection (f) could significantly mislead a potential customer about the costs and terms of the service.

In addition, the commission is adding a provision stating that the commission may adopt a form for the PDS. Adoption of a form for a PDS would standardize the presentation of the information and better enable a prospective customer to compare offers. The commission intends that the PDS will also be required in addition to the EFL and terms of service (TOS) on Power to Choose.

The commission disagrees with TLSC/TXROSE that the commission should establish a separate prepaid service option with levelized payments. The commission has previously adopted rules governing level and average payment plans under §25.480(h) of this title (relating to Bill Payments and Adjustments) for postpaid service, and the commission concludes that it should not impose a levelized payment option for prepaid service at this time, because prepaid service is a pay-as-you-go service and one that has not reached maturity. Similarly, the commission concludes that it should not require a REP offering prepaid service to offer a firm product free of variable pricing, time of use, or demand response rates. The commission established variable price products and indexed products as product types under §25.475; prepaid service is not an additional product type, but rather a payment option. Prepaid service is compatible with offering fixed, variable and indexed products.

Proposed Subsection (a)

ARM, MXenergy, the REP Coalition, and Reliant supported the proposed new rule's linkage of prepaid service to a customer with an advanced meter, because an advanced meter would enhance the value of prepaid service for the customer and provide the customer with timely, actual usage information. Nations Power stated that it was generally very supportive of this link; the REP currently provides prepaid service only to customers with advanced meters. The REP Coalition stated that prepaid service is a popular choice with consumers due to their familiarity with other prepaid products, such as telecommunication services, and the potential for increased control over their electricity consumption. TLSC/TXROSE stated that they remain fundamentally opposed to prepaid service in any form, but supported the elimination of estimated consumption usage by REPs as the basis for prepayment and disconnection (financial prepaid service). TLSC/TXROSE stated that the preamble of the proposed rule provided that REPs have abused the estimation processes and commented that therefore the most effective solution is to end these abuses and estimated consumption data altogether.

ARM stated that REPs should be prohibited from offering prepaid service that relies on the use of an estimated bill. ARM cited the history of prepaid service rulemaking proceedings in Texas, starting with Project Number 22255, in support of its position. The absence of provisions for prepaid service in §25.478 attests that the commission did not implement any "special" rules for prepaid service at the outset of the competitive retail electric market. By acting in this manner, ARM commented, the commission intended that the initial customer protection rules would apply to all retail electric products offered by REPs, unless stated otherwise. The current §25.498 took a major step in addressing a certain type of prepaid service, namely, service using a CPDS, and it underscored the fact that prepaid service without a CPDS is subject to the customer protection rules. ARM further cited §25.483(e)(7) (relating to Disconnection of Service), which it stated arguably precludes a REP from offering a non-CPDS prepaid product using estimated billing. ARM commented that there are a number of REPs offering prepaid service using an estimated billing model in the market today, and the proposed rule offers a welcome measure of certainty that non-CPDS prepaid products are explicitly prohibited in the Texas market.

Young and dPi disagreed with ARM's assertion that all REPs offering financial prepaid service violate rules regarding the use of billing estimates. Young stated that consumption data is not finalized until such time the data has been validated, edited, and estimated by ERCOT for settlement. Young stated that while its usage data is clearly estimated by using data generated from a proprietary billing estimation engine, many other REPs use a CPDS, which Young also perceived as providing estimates of consumption. Since the transmission and distribution utility (TDU) does not provide validated, edited, and estimated data to the CPDS, any usage data the device generates could be significantly different than the amount settled upon by ERCOT. Young stated that all REPs employ some estimates in providing prepaid service, with or without the use of a CPDS. dPi stated that it and other REPs providing financial prepaid service have done so in compliance with the commission's rules, although dPi acknowledged that the rules were designed for postpaid service and are therefore inappropriate for prepaid service. dPi argued that most financial prepaid products currently on the market are simply a form of a level or average payment plan. dPi cited §25.480, effective June 1, 2011, which allows a "REP to recalculate the average consumption or average bill and adjust the customer's required minimum payment as frequently as every

billing period." dPi stated that the very nature of levelized and average payment plans are dependent upon estimated billing and "true-ups," which the proposed rule fails to mention. dPi stated that REPs providing prepaid service under the proposed rule, where an estimated "current balance" triggers customer payment notices, disconnection notices, and disconnections, would actually increase "payments, disconnection notices, and disconnections based on estimated usage."

Young and dPi did support the linking of prepaid service to an advanced meter, but they stated that customers currently enrolled in financial prepaid products should be allowed to continue purchasing financial prepaid service until they can transition to prepaid service in compliance with §25.498. Young specifically disagreed with ARM regarding immediately eliminating the financial prepaid product option, claiming ARM's approach is punitive to consumers and would impair product diversity in the Texas market. Young stated that the ARM proposal would unjustly force any prepaid customer without an advanced meter into a traditional electric service that requires a deposit and payment for a full month of electricity at once. Young stated that customers currently receiving prepaid products without the use of advanced meters may be disadvantaged and lack the financial wherewithal to make the deposit payments required for postpaid electric service. Young and dPi stated that these customers would then be forced to wait until the TDUs have installed and provisioned advanced meters at the customer's homes and businesses to again access prepaid service. Deployment of advanced meters could be as late as 2013, depending on the customer's location. dPi stated that fewer customers would have the option of prepaid service through the use of regulatory rather than competitive methods if the rule is adopted as proposed, and customers will be stripped of their right to choose a product currently available in the market, in violation of PURA Chapter 39. Young and dPi stated that a competitive option should not be withheld from the market due to the lack of an advanced meter. dPi alternatively proposed an "advanced payment" product that would be available to a customer until an advanced meter is deployed at the customer's premises, at which time the customer would be converted to a prepaid product utilizing a CPDS. dPi further requested that §25.498 be expanded to apply to "advance payment" products.

TLSC/TXROSE requested that the commission add a statement to the rule that all customer protection rules are applicable unless specifically exempted by the rule.

OPUC supported the phase-out of financial prepaid service and supported actual usage being utilized by all REPs, although it contended that without the guarantee of full CPDS or advanced meter deployment, there is a risk customers might not be able to access affordable electricity. OPUC stated that upon the effective date of the new rule, customers without access to a CPDS would be required to pay a security deposit and any number of other charges, or be left without electric service. Therefore, OPUC recommended that current prepaid customers be allowed to sign a waiver acknowledging that they do not have a CPDS, are satisfied with their current prepaid service, and wish to continue with the service until their REP or TDU is able to provide a CPDS.

The REP Coalition and Reliant stated that the proposed rule should not limit larger, more sophisticated customers from negotiating a customized contract with a prepaid service element, as is relatively commonplace under §25.471(a)(3). For clarification, the REP Coalition and Reliant requested that the prohibition on other types of prepaid service be limited to residential and small commercial customers; OPUC agreed. The REP Coalition asked the commission to balance the encouragement of product differentiation in the competitive market with adequate customer protections.

TLSC/TXROSE stated that the proposed rule seems contrary to the commission's minimum customer protection rules, and therefore abridges the rights of customers in violation of PURA §17.004(e).

Commission Response

Financial prepaid service has served a demand by customers for a payment option that does not require a deposit. The commission therefore does not want to disrupt prepaid service provided to existing customers. The commission concludes that, after the October 1, 2011 compliance deadline for the new rule in adopted subsection (l), REPs should be allowed to continue to provide financial prepaid service to customers currently enrolled in a financial prepaid product, but should not be allowed to continue enrolling new financial prepaid service customers. In addition, beginning October 1, 2011, the commission finds that once a customer has a settlement provisioned meter, financial prepaid service to the customer should be prohibited, and the REP should rely on the actual usage data provided by the advanced meter rather than an estimate of usage. The commission adopts subsection (m) to address the transition of financial prepaid service customers. The commission is providing a transition period for a REP to comply with the rule when a customer receiving financial prepaid service receives an advanced meter. The REP will have the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter to transition the customer to a compliant service.

The commission agrees with OPUC, the REP Coalition, and Reliant that the rule should not limit large customers from negotiating contracts with a prepaid element. The commission therefore changes the rule to apply only to residential and small commercial customers.

The commission disagrees with TLSC/TXROSE that the proposed rule violates PURA §17.004(e). Prepaid service was not available at the time of enactment of PURA Chapter 17, and PURA §17.004(e) permits the commission to change its rules for prepaid service. Prepaid service is an optional service; customers continue to have the option of choosing postpaid service if they meet the requirements for that service.

Proposed Subsection (a)(2)

The REP Coalition and Reliant stated that §25.479(b) and (c)(1) (relating to Issuance and Format of Bills) are inapplicable to prepaid service, as is the majority of §25.479 since prepaid customers do not receive a bill. The REP Coalition and Reliant requested that §25.479 be inapplicable to prepaid service. The REP Coalition requested the addition of a new paragraph under §25.498(a) to address the obligation of REPs providing prepaid service to convey public service notices to customers as directed by the commission.

Commission Response

The commission agrees with the REP Coalition and Reliant that the majority of §25.479 is not applicable to prepaid service. The commission changes subsection (a)(2) to make §25.479 inapplicable to service provided under the rule and includes in subsection (c)(5) the requirement that a REP provide public service

notices to customers as directed by the commission. The commission also requires that common billing terms be used on the Summary of Usage and Payment in adopted subsection (h)(3) and (4).

Proposed Subsection (a)(3)

The REP Coalition and Reliant requested that §25.480(e)(3), relating to the underbilling of $50 or more, be added to the list of provisions that do not apply to prepaid service. The REP Coalition and Reliant stated that proposed subsection (h), relating to deferred payment plans under prepaid service, creates a potential conflict with §25.480(e)(3).

Commission Response

The commission agrees with Reliant and the REP Coalition that deferred payment plans under proposed subsection (i) create a conflict with certain provisions in §25.480(e). The commission changes subsection (a)(3) to exclude §25.480(e)(3) from applying to prepaid service provided under the rule, and addresses deferred payment plans for customers who have been underbilled in adopted subsection (i)(2).

Proposed Subsection (b)

Consistent with its earlier recommendation that §25.498 acknowledge alternative prepaid products, dPi asked the commission to define "advanced payment service." dPi proposed the definition as, "a payment option under which a customer is billed, and is obligated to pay, for electricity in advance of consumption based on estimated future consumption."

Commission Response

The commission disagrees with dPi's request to define "advanced payment service." The commission changes the definition of prepaid service in subsection (b) to clarify that prepaid service is a *payment option* offered by a REP for which the customer normally makes a payment for service before service is rendered. Therefore a definition of "advanced payment service" is unnecessary.

Proposed Subsection (b)(4)

The REP Coalition and Reliant stated that unless "minimum balance" is defined, it could be taken to mean net of discretionary fees or prior to the application of TDU and REP discretionary fees in determining whether a sufficient balance exists to initiate, maintain, or reconnect service. They stated that a clear definition of minimum balance is imperative to determine whether a customer will have electric service. The REP Coalition and Reliant requested that the commission revise the minimum balance definition to be as clear and precise as possible.

Commission Response

The commission agrees with Reliant and the REP Coalition that the term and definition should be as clear and precise as possible. The commission changes the term minimum balance to connection balance in adopting this rule. The connection balance, which is required to establish prepaid electric service or reconnect prepaid electric service following disconnection, shall not exceed $75. This balance will be reduced as a customer uses electricity and incurs charges for the service. The connection balance is not held as a deposit by the REP. References to minimum balance are herein referred to as a connection balance in the commission's responses.

Proposed Subsection (c)(5)

Young requested that the commission clarify subsection (c)(5) to permit normal United States mail as an acceptable form of communicating required information to customers; OPUC agreed. Young stated that many problems could arise from communicating important information such as a low minimum balance or service disconnections with customers exclusively through electronic means. Young's internal studies have found that many prepaid service customers switch cellular telephones frequently, limiting the ability of a REP to rely on text messages to relay information to customers.

Commission Response

The commission agrees with Young and OPUC that United States mail is an acceptable form of communicating some required information to customers. The commission disagrees that time-sensitive information such as current balances, service disconnection warnings, or payment confirmations should be communicated by U.S. mail. A REP cannot assure that a customer will receive time-sensitive information sent through postal service in the intended timeframe. The commission expands subsection (c)(5) to include United States Postal Service, but limits time-sensitive notifications to telephonic or electronic means of communication.

Proposed Subsection (c)(6)

The REP Coalition and Reliant requested that the initial sentence of subsection (c)(6) provide that payments are made "to the account" and not "for service." The phrase "for service" implies a post-paid environment in which service is rendered and a payment for that service is then made. They stated that, for prepaid electric service, it is more appropriate to state that a customer makes payments "to the account," that is, a payment is made for the purpose of increasing the prepaid account balance. The REP Coalition and Reliant also requested that the last sentence be amended to more precisely reflect the steps required when a payment is made at an in-person payment location. They stated that payment locations, such as those at grocery stores, may operate by batching transactions to REPs, meaning that the REP is not aware of the payment until the next batch is received. They stated that in order to provide a prompt response to a customer payment made at such a location, the REP must receive a phone call from the customer with a receipt number or confirmation code to validate the payment. The mechanism itself (the payment location) does not require this phone call, but it may be a necessary step in completing the transaction with the REP.

OPUC disagreed with the REP Coalition's and Reliant's statement that the customer should be responsible for notifying the REP when payment is made, and stated that the REP should be held responsible for customer payment confirmation and crediting payments. OPUC supported the proposed rule's language that provides that the customer may elect to have the REP confirm all payments.

MXenergy stated that the five-mile requirement for payment locations is onerous, and REP compliance with the provision is difficult at best. MXenergy stated that when a customer is signing up for prepaid service, it would be laborious and difficult to determine if the customer's premises is within five miles of a payment processing location. Payment locations are dynamic, with new locations being added or existing locations shutting down. Furthermore, a customer's normal daily travel routine may take the customer by convenient payment locations that are not within five miles of the customer's premises. MXenergy stated that transparent communication to the customer in the prepayment

disclosure statement is a much more reliable method of helping the prepaid customer understand payment options and locations.

OPUC requested that subsection (c)(6) be changed to prohibit a REP from charging a customer for making a payment.

Commission Response

The adopted rule does not refer to payments "for service;" therefore, Reliant's and the REP Coalition's comments on this phrase are moot. The commission agrees with Reliant and the REP Coalition that in order for a REP to promptly acknowledge a payment made to a third-party processor acting as an agent of the REP, the customer may need to confirm the transaction with the REP. A customer may need to confirm payment to establish a connection balance or to prevent the current balance from falling below the disconnection balance. The commission concludes that payment confirmation is better addressed in adopted subsection (j), disconnection of service, and changes subsection (j)(4) to permit a REP to require customer payment confirmation in order to establish a connection balance or establish a current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.

The commission agrees with OPUC, in part, that a customer should not be held responsible for payment confirmation and crediting payment. Unless the customer needs to establish a connection balance or current balance that exceeds the disconnection balance in a timely manner, the commission finds no reason for a REP to require customer payment confirmation. In these situations, due to the possibility that payment processing by a third-party processing agent may not be sufficiently timely, the customer may choose to confirm payment in order for the REP to credit the account as soon as possible. The customer's right to request payment confirmation under subsection (c)(7)(E) is not limited by adopted subsection (j)(4).

The commission agrees with MXenergy that the five-mile requirement for payment locations is onerous and unnecessary, and REP compliance would be difficult. The commission deletes this requirement.

The commission disagrees that a REP should be prohibited from charging a customer for making a payment, because a REP may incur costs in receiving and processing payments. Payment processing fees are further discussed below under subsection (c)(12).

Proposed Subsection (c)(7)(A)

The REP Coalition and Reliant requested that the parameters for calculating the current balance in proposed subsection (c)(7)(A) be moved to a new subsection (d), so all of the provisions related to calculating the current balance are consolidated into a standalone subsection. They recommended moving several other provisions to make the rule clearer and easier to understand.

The REP Coalition and Reliant stated that the current balance is the key concept around which day-to-day operation of the prepaid service product should revolve. The REP Coalition and Reliant stated that standardizing the current balance calculation among REPs would further minimize confusion in the operation of prepaid products. They also expressed the view that the rule should clarify the treatment of transactions that do not occur daily in calculating the current balance, such as energy assistance pledges, transfer of debt from another of the customer's account to the prepaid account, and reversal of credit for payments rejected by the customer's financial institution.

The REP Coalition and Reliant requested that the provision on calculating the current balance address both reductions and credits to the account. As written, proposed subsection (c)(7)(A)(I) requires the current balance to be reduced by "charges that are known." The REP Coalition and Reliant requested that this language be expanded to include "fees" to explicitly describe known costs that reduce a customer's current balance. They also stated that the use of estimates should be permitted in certain instances. The REP Coalition and Reliant proposed additional language allowing for the use of estimates in calculating the customer's current balance in the case of estimated data provided by the TDU, such as when there are communication errors in the advanced meter network or gaps in the 15-minute interval data and when data is not reflected in the Smart Meter Texas portal in a timely manner. The REP Coalition and Reliant stated that REPs must design products that are understandable to customers, and without the use of estimates in these limited circumstances, the customer could have a stagnant current balance for a series of days. In such a case, the current balance would be reduced in a lump sum by several days of usage, causing the customer confusion. The REP Coalition and Reliant requested that a REP be required to promptly reconcile any estimated charges and taxes once the actual data becomes available, and credit or debit the account as appropriate.

Commission Response

The commission agrees with Reliant and the REP Coalition that all provisions related to calculating the current balance should be consolidated into a separate subsection. In subsection (c)(6), the commission addresses credits to the customer's account, as well as reductions to include charges, fees, estimated taxes, and estimated TDU charges that have been incurred in serving the customer.

The commission concludes that there are certain instances when the use of estimated usage data should be permitted, in order to permit timely updates to the customer's current balance. The commission changes subsection (c)(11)(E) to allow the REP to utilize estimated usage charges in limited situations. The commission agrees with Reliant and the REP Coalition that any estimated charges and taxes should be reconciled once actual data becomes available to the REP. In subsection (c)(6)(B), the commission requires a REP to reconcile any estimated charges and taxes with actual charges and taxes within 72 hours after actual consumption data or a statement of charges is available from the TDU. In subsection (c)(6)(D), the commission requires a REP to true-up the account, if consumption is estimated according to subsection (c)(11)(E), within 72 hours after actual consumption data is available to the REP.

Proposed Subsection (c)(7)(B)

The REP Coalition and Reliant proposed replacing the term "provide" with "communicate to" in order to make the intention clear. For consistency, the REP Coalition and Reliant proposed this change also be made to subsection (c)(7)(C).

Commission Response

The commission agrees with Reliant and the REP Coalition that the term "communicate to" increases the clarity of the provision. The commission changes adopted subsection (c)(7)(C) to require that a REP communicate to the customer the current price

for electric service so that the provision is not read to be duplicative of §25.475, which states that pricing information shall be disclosed by a REP in an EFL. The commission concludes that the term "provide" should remain as proposed in adopted subsection (c)(7)(D).

Proposed Subsection (c)(7)(D) Reliant and the REP Coalition requested changes to more explicitly define the types of confirmation required for each payment method. They stated that it is appropriate to require the REP to provide a confirmation at the time of the transaction, although the rule should not limit this confirmation to a "code." The REP's obligation should be to provide a means of "confirmation," and the REP should be allowed the flexibility to comply by multiple means, including the provision of a confirmation code or a written confirmation. Furthermore, the REP Coalition and Reliant stated that a REP should not be required to provide a separate confirmation when the customer makes a payment at an authorized location. The REP does not receive payments made at these locations in real-time, and therefore the REP would not be able to generate a confirmation at the time of the transaction. Nevertheless, customers should receive a receipt from the authorized location to demonstrate payment has been made. The REP Coalition and Reliant also requested expanding the list of scenarios in which no confirmation or receipt is required beyond payment by check. The REP Coalition and Reliant requested that the same standard be applied to payment by mail or payment received from a non-authorized payment location.

MXenergy stated that the more specific the customization requirements adopted for prepaid service, the more costs the REP must incur to comply with those specifications. MXenergy preferred providing e-messaging of payment receipt to minimize the need for a customer to call for confirmation.

The REP Coalition and Reliant asked for verification that payment confirmation communications would be provided electronically, by text message, and recommended that the rule explicitly state that an election to receive payment confirmation communications by the customer is limited to electronic communications. The REP Coalition and Reliant stated that many customers may be understandably reluctant to have an account number included in a text message, as they consider it a security concern, and stated that "account number" and "ESI ID" should not be required in the electronic confirmation. Beyond the required payment amount and the date the payment was received, the REP Coalition and Reliant stated that REPs should be free to create confirmation messages that meet both the information needs and privacy/security concerns of their customers.

Commission Response

The commission agrees with Reliant and the REP Coalition, in part, that the rule should explicitly define the confirmation required for payment transactions. The commission concludes that the REP should provide the customer with a confirmation for a payment made by credit card, debit card, or electronic check. The REP should not be required to provide confirmation for a payment sent by mail or electronic bill pay, because these methods of payment provide their own receipt or confirmation. The commission disagrees with Reliant and the REP Coalition that the REP should be allowed flexibility in providing payment confirmation to the customer, because all confirmations should contain certain standard information. In order for the customer to confirm payment in accordance with adopted subsection (j)(4), the REP must provide a card, code, or other similar method by which the customer can establish a connection balance. This requirement extends to authorized payment locations because such locations are acting as agents of the REP.

The commission agrees, in part, with MXenergy that e-messaging is an appropriate method by which the REP may provide a payment receipt. However, such communications do not exempt the REP from providing the customer a confirmation code by which the customer can establish a connection balance in accordance with adopted subsection (j)(4).

The commission concludes that payment confirmations are time-sensitive notifications and should be communicated by telephone, mobile phone, or other electronic means in accordance with subsection (c)(5). Contrary to the position of Reliant and the REP Coalition, the commission concludes that an explicit statement of this requirement in the rule is necessary. The commission also disagrees that the customer's account number or ESI ID should not be provided with payment confirmation. The REP should include one of these identifiers to tie the receipt of payment to the appropriate customer account. However, the commission has changed paragraph (7)(E) by limiting the disclosure of the customer account to the last four digits of the account, in order to avoid privacy or security concerns when the customer requests electronic payment confirmation. The commission has changed the rule to conform to this discussion.

Proposed Subsection (c)(8)

MXenergy stated that the two-hour requirement is difficult to administer during non-business hours and fails to recognize the realities of the prepaid business model. MXenergy requested that the REP be required to inform the prepaid service customer in the prepaid disclosure statement that current balance information under subsection (c)(7)(A) either will be available to the customer continuously or will be provided, at the customer's request, during business hours as described in the REP's Terms of Service.

The REP Coalition requested that examples be added of how the current balance can be made available "continuously," such as through the Internet, a phone system, or in-home device. The REP Coalition also requested that the rule make clear that the obligation to communicate the current balance is triggered by the REP's receipt of the customer's request for a current balance. Otherwise, the REP Coalition stated that the provision could be interpreted to require the REP to respond within two hours of the time the customer submits a written request by US Postal Service. The REP Coalition further requested that the provision be amended to ensure that the REP describes in the terms of service and prepaid disclosure statement the means by which the customer may make the request.

Commission Response

The commission disagrees with MXenergy that the two-hour requirement is difficult to administer during non-business hours. If the REP is unable to provide the customer with a current balance within two hours of the request, the REP should instead make the current balance available continuously.

The commission agrees with the REP Coalition that a REP should be allowed to satisfy the requirement to make the current balance available continuously by using the Internet, a phone, or an in-home device. The commission changes subsection (c)(7)(B) to adopt the REP Coalition's request and clarifies that the REP's obligation is triggered by receipt of the customer's request.

Proposed Subsection (c)(9)

The REP Coalition understood this provision to mean that communication required by proposed subsection (c)(7)(D) must be in English or Spanish. Furthermore, the provision requires the REP in certain instances to provide customers with either a confirmation code or receipt confirming the customer's payment. The REP Coalition stated that the proposed rule, in their understanding, does not intend for either the confirmation code or receipt to be provided in English or Spanish at the customer's election. The REP Coalition stated that this interpretation was reasonable, because grocery stores and other authorized electric service payment locations typically provide a standard receipt and confirmation code, and those standard forms are not necessarily available in both English and Spanish. The REP Coalition requested that the provision be modified to refer specifically to the confirmation of payment *that the customer elects,* pursuant to proposed subsection (c)(7)(D). OPUC disagreed, and urged that all communications from the REP should be delivered in Spanish, or English, to ensure a customer is appropriately notified. In its view, the rule language is appropriate as drafted.

Commission Response

The commission agrees, in part, with OPUC that all communications are intended to be available in English or Spanish, at the customer's election. The commission agrees with Reliant and the REP Coalition that payment made at third-party payment locations would provide a standard receipt or confirmation. The commission finds that in order to properly communicate the intended information, the REP must provide on the PDS, which shall be available in Spanish, the process for confirming payments to establish a connection balance or a current balance in excess of the disconnection balance. Adopted subsection (c)(7)(E) requires that a REP provide a receipt showing the amount paid when the payment is made in person, including when the payment is made at a third-party payment location. The commission changes subsection (c)(9) so that a receipt pursuant to subsection (c)(7)(E) showing the amount paid when the payment is made in person need not be in the customer's selected language if the payment is made at a third-party payment location. To require otherwise could result in a substantial reduction in the third-party payment locations, to the detriment of customers using these locations.

Proposed Subsection (c)(10)

TCDHS, OPUC, and TLSC/TXROSE all raised concerns regarding the ability of low-income customers to obtain energy assistance while enrolled in a prepaid product. TCDHS stated that it does not provide assistance to clients who are enrolled in prepaid electric service, as it only assist clients whose bills are already in arrears. TCDHS's policy also requires the service the client receives assistance for to continue at a minimum for 30 days, as negotiated with the provider. Both of these conditions are not conducive to prepaid electric service. TLSC/TXROSE understood that prepaid electric customers were also unable to apply for and receive energy assistance from the Comprehensive Energy Assistance Program (CEAP), the largest distributor of federal energy assistance funds in Texas. Prior to allowing prepaid service to be offered to customers, TLSC/TXROSE stated that the commission should assure that low-income customers are able to access energy payment assistance through CEAP. Requiring the REP to cooperate with an energy assistance agency is not a viable solution to assure customers access to assistance programs. TLSC/TXROSE requested that until prepaid customers have equal access to billing assistance, REPs should be prohibited from enrolling any electric customers for prepaid service who are income-eligible for assistance.

The REP Coalition stated that the law does not appear to prohibit the provision of energy assistance to low-income customers enrolled in a prepaid service. A large majority of payment assistance is funded by CEAP, and as a matter of law, an agency receiving CEAP funding would not be permitted to discriminate in distributing those funds to customers on prepaid electric service. The REP Coalition commented that the Texas Department of Housing and Community Affair's (TDHCA's) rules regarding CEAP expressly provide that local assistance agencies receiving funds may "make advance payments" in lieu of paying a deposit required by an energy vendor. Prepaid service is designed to minimize deposits based on the provision of advance payments. OPUC opposed allowing REPs to require a minimum balance from energy assistance agencies, commenting that the agency and not the REP should set guidelines for how they may provide assistance. The REP Coalition stated that TLSC/TXROSE and OPUC failed to explain whether the law actually permitted prepaid electric customers to be denied energy assistance as a matter of course. The federal Low-Income Housing Energy Assistance Program (LIHEAP), which funds CEAP, prohibits states from excluding from the program any households that meet the stated income requirements. Assistance priority is given to the elderly, persons with disabilities, families with young children, households with the highest energy costs or needs in relation to income, and households with high energy consumption. The REP Coalition stated that a customer meeting these eligibility requirements should not be denied assistance based solely on the customer's choice of retail electric product. Furthermore, the REP Coalition stated that there are solutions that would not involve limiting retail electric choice for low-income customers.

The REP Coalition requested that, due to the uncertainty surrounding energy assistance payments, the commission consult with TDHCA regarding its policy on this significant issue. The REP Coalition stated that REPs believe they will be able to work with TDHCA to assist customers on prepaid service in compliance with the LIHEAP and CEAP regulations.

TACAA represented the network of 47 agencies that administer CEAP funds on behalf of TDHCA in the 254 counties in Texas. TACAA stated that CEAP funds must be used to pay energy bills and have not been used to prepay services. TACAA stated that the LIHEAP Act was approved over 30 years ago; prepaid service was not directly addressed because it was not envisioned at the time. Furthermore, CEAP funds may not be used for any type of fee or deposit. TACAA stated that if the funds are used for any reason other than energy, the cost will be disallowed by TDHCA and the CEAP administrator will be held liable for the disallowed cost. Funds can also be disallowed if a customer switches or terminates service and an unused portion of CEAP funds remains in the customer's REP account. TACAA's members are non-profit and public organizations who do not have available funds to support any disallowed costs. Currently, the U.S. Department of Health and Human Services is requiring LIHEAP providers in all states, including the CEAP providers in Texas, to develop plans to prevent fraud, waste, and abuse that will be implemented in 2012. TACAA sees prepay as a possible opportunity for fraud, waste, and abuse.

TACAA states that, at this point in time, CEAP providers will not use the federal LIHEAP funds for prepaid service, and assistance-eligible customers who are enrolled in prepaid products will be disqualified from receiving maximum allowable federal as-

sistance. TACAA recognized that prepaid service will continue to be a growing trend in the future, but emphasized that they have not been given federal guidance with respect to administering LIHEAP funds for prepaid service plans. TACAA feared that even with education on the impact of prepaid service on available assistance resources, their clientele may not understand, forget, or become confused. At a minimum, TACAA requested that the commission address concerns that they have regarding prepaid service and possible barriers they have for providing assistance. To prevent fraud, waste, and abuse, TACCA requested that the commission require vendor agreements be honored by all parties, that any payment refund be returned directly to the CEAP administrator with the refund clearly matched to a customer name and address, and addressing the disposition of assistance funds paid on behalf of a customer whose REP exits the market. TACAA also stated that they would need a customer's billing history to reflect 12 months of actual usage, rather than the energy a customer used because that is all the customer was able to personally afford.

TCDHS and OPUC were concerned that the energy assistance provider would not receive a refund for any assistance balance remaining if the client left the REP before the full assistance payment was expended. The REP Coalition stated that some of the trepidation regarding administering energy assistance funds to customers enrolled in prepaid products could be based on an interpretation of LIHEAP statutes requiring that all funds be provided to assist low-income customers in meeting their home energy needs. The REP Coalition stated that the concern regarding CEAP funds seems to be that such funds could not be guaranteed to be used for electricity if a customer canceled service before all assistance funds were utilized. Therefore, the REP Coalition stated that a REP receiving CEAP funds on behalf of a customer could agree to return the remaining balance of such funds to the assistance agency in the event the customer cancels service.

TLSC/TXROSE stated that industry comments led them to believe that some aspects of energy assistance under prepaid may negatively affect low-income customers even if assistance programs are available. TLSC/TXROSE recommended that prior to adopting a rule that allows prepaid service to be sold to low-income consumers, the commission should survey energy assistance programs and identify those that do and do not provide assistance to prepaid customers. The REPs should be required to identify energy assistance providers and their programs, indicating which programs qualify prepaid and postpaid customers for assistance. A REP should be required to provide this list to all residential customers.

Commission Response

The commission understands the concerns raised by OPUC, TCDHS, and TLSC/TXROSE regarding the ability of low-income customers to receive energy assistance while enrolled in prepaid service. However, the commission disagrees with TLSC/TXROSE's request that a customer who is income-eligible for assistance be prohibited from enrolling in prepaid service until there is equal access to billing assistance for prepaid service customers. Customers should have the right to choose prepaid service, except in cases where the customer's health condition makes such service inappropriate. Nevertheless, that choice should be an informed one, and the commission has therefore changed adopted subsection (e)(2)(G) to require that the REP disclose that some energy assistance agencies may not provide assistance to customers that use prepaid service. Specifically, the REP will be required to disclose in the PDS both the availability of energy assistance and that some assistance agencies may not provide assistance to a customer who chooses prepaid service. The commission has also required customer acknowledgement that some assistance providers may not provide assistance to customers that use prepaid service in subsection (d).

The commission agrees with the REP Coalition that customers should not be denied assistance based solely on their choice of retail electric product or payment option. When funds are available, the Lite-Up Texas program administered by the commission will identify eligible customers enrolled in prepaid service, and REPs will be obligated to provide discounts for these customers.

Consistent with the REP Coalition's recommendation to consult with TDHCA regarding prepaid service customer's eligibility to receive CEAP funds, commission staff met with TDHCA and TACAA to discuss their concerns regarding prepaid service and solicited late-filed comments from TACAA regarding energy assistance eligibility. In this rulemaking, the commission is taking the actions that are within its control to facilitate the disbursement of energy assistance funds to prepaid service customers. In addition, the commission remains interested in working with energy assistance agencies to facilitate the disbursement of energy assistance funds to prepaid, as well as postpaid, service customers.

Consistent with TACAA's request, the commission has changed adopted subsection (c)(7)(G) to require a REP to refund energy assistance payments directly to the energy assistance agency along with information regarding the specific account and customer on behalf of whom payment was made. Concerning TACAA's request that the commission require vendor agreements to be honored by all parties, PURA and commission rules require that a REP honor its agreement with an energy assistance agency concerning energy assistance funds provided to a customer because, among other things, failing to do so would constitute a fraudulent, unfair, misleading, deceptive, and/or anticompetitive practice under §25.107(j)(2) (relating to Certification of Retail Electric Providers (REPs)) that would harm residential customers. Concerning TACAA's request that the commission address the disposition of assistance funds paid on behalf of a customer whose REP exits the market, PURA and commission rules require that the REP refund the energy assistance funds to the energy assistance agency if required by the vendor agreement. Additionally, §25.107(f)(2)(A) provides protections for residential customer advance payments and, for a REP that is required to have a letter of credit, §25.107(f)(6)(A)(iii) provides for the commission to use proceeds from the letter of credit to satisfy advance payments of residential customers. The commission appreciates the responsiveness of TDHCA and TACAA to its request for input on this issue.

The commission disagrees with TLSC/TXROSE's request that the commission survey energy assistance programs and identify those that do and do not provide assistance to prepaid service customers, and require REPs to identify energy assistance providers and their programs, indicating which programs qualify prepaid and postpaid service customers for assistance. There are a large number of energy assistance programs in the state, and the status of each one can change at any time. As a result, implementation of this request would be burdensome and the information could become quickly outdated. The commission's existing rules appropriately address this issue. Section

25.475(h)(5)(A) requires that a REP's Your Rights as a Customer document inform the customer of the availability of energy assistance programs for residential customers. With this knowledge, a customer can then locate energy assistance agencies in the customer's community.

Proposed Subsection (c)(11)(C)

MXenergy, Nations Power, the REP Coalition, and Reliant supported the $75 minimum balance. MXenergy stated that allowing a REP to require a minimum balance is one of the most important improvements in prepaid service over the current §25.498. MXenergy stated that with a minimum balance provision, the customer will receive electricity for a minimum period before the customer must deposit more money in order for the service to continue being provided.

The REP Coalition and Reliant stated that the $75 minimum balance will not be sufficient for many small commercial customers, whose usage levels are generally much higher than those of residential customers and can vary widely, and that the REP should have flexibility to set an appropriate minimum balance for such customers. Similarly, MXenergy and Main Street stated that the proposed minimum balance does not take into consideration the alternative requirements commercial accounts place on prepaid service plans. MXenergy, the REP Coalition, and Reliant requested that the provision be modified to apply only to residential customers.

Nations Power stated that the minimum balance should be applicable only to the energy component of the bill, and does not apply to items such as move-in fees. While Nations Power understood the maximum is to protect consumers from onerous prepayments, it asked the commission to consider a more practical threshold, which would account for events such as extreme seasonal weather. During such an event, a $75 maximum would only purchase a week or so of power. Nations provided alternative solutions to the issue including seasonally adjusting the minimum balance to take into account possible extreme weather, providing a future inflationary component, or stating the maximum "minimum balance" in terms of estimated days of electricity purchased rather than a dollar amount.

Main Street stated that a $75 maximum prepayment would be problematic and inadequate in most situations. This could force the customer into weekly, or shorter, payment cycles. Main Street requested that the customer be given the freedom to have weekly, biweekly, or monthly payment increments with a managed true-up process and stated that the balance ceiling with such a payment plan is a difficult proposition.

The REP Coalition stated that some market policies and procedures developed for the postpaid electricity environment will continue to apply to prepaid service under the proposed rule, and as a result, customers may accrue a negative balance while on a prepaid service even with an advanced meter. The risk of a customer accruing a negative balance is caused by existing laws and regulations, including the PURA prohibition on disconnection due to extreme weather or on weekends, and the TDU tariff's disconnection timelines and prohibition on disconnection during or the day before a holiday. System issues with TDU advanced metering systems and the Smart Meter Texas portal could also lead to the customer accruing a negative balance. The REP Coalition stated that the proposed minimum balance of up to $75, combined with changes they proposed to allow estimated charges for usage not timely reflected in the Smart Meter Texas portal, may address the various regulatory and system issues for residential customers.

dPi, OPUC, and TLSC/TXROSE opposed the $75 minimum balance. dPi argued that the minimum balance amount should be closer to zero, or alternatively, that it be no more than one to three days of normal usage. dPi alternatively supported an initial enrollment requirement, not to exceed a specified amount, such as $150 and reduced by competitive forces, but stated that any minimum balance and all related triggers should be at or near a zero balance. OPUC requested requiring no minimum balance and argued that a minimum balance is the equivalent of a security deposit, which is clearly prohibited by the proposed rule in subsection (c)(11)(E). OPUC also stated that the minimum balance would raise a barrier to prepaid service for many customers.

TLSC/TXROSE stated that the proposed rule treats the minimum balance as a deposit, yet without any of the customer protections related to deposits. Furthermore, TLSC/TXROSE objected to a REP disconnecting and possibly charging a fee to a customer who could have as much as $75 in the account. The $75 minimum balance would be equal to more than 500 kilowatt-hours (kWh) of electricity based on the highest rate prepaid plan in the Oncor service territory, as of the November 29, 2010 Power to Choose listings. TLSC/TXROSE stated that 500 kWh is equal to more than a month of electric service for many low and moderate income customers. REPs also have short-term investment benefits from the use of prepaid funds and the minimum balance until they are billed by the utility. TLSC/TXROSE requested that electric service to a prepaid customer be continued until the customer has spent all funds provided to the REP for electricity usage and for the REP to identify the quantity of kWh the customer is purchasing at the time a prepayment is made. TLSC/TXROSE stated that if the commission does allow the REPs to collect a minimum balance, the amount should be no greater than the charges for the electric service used in a day. Additionally, they stated that the REP should be required to pay the customer interest on the balance and allow customers who cannot pay the full amount required for the minimum balance to make payments toward such balance without penalty. OPUC stated that if the commission does choose to allow REPs to charge a minimum balance, $30 would be a more appropriate sum.

Reliant stated that a minimum balance is distinct from a security deposit, because a minimum balance is available in the customer's account for the purchase of electricity and related services. A security deposit is not applied to the customer's account balance until the earlier of twelve months of satisfactory payments or the termination of the REP-customer relationship. In contrast, Reliant stated that the very purpose of a minimum balance is to ensure customers taking prepaid service have sufficient funds in their accounts to pay for the electricity they consumed.

The REP Coalition stated that the minimum balance allows REPs to offer and expand prepaid service as a viable and sustainable payment feature for retail electric products. The REP Coalition stated that many customers spend more than $75 a month and due to extreme weather patterns, usage can climb to 2000 kWh or more a month. A customer could deplete the entire minimum balance during an extreme weather or TDU system outage event. A minimum payment of up to $75 would serve as a reasonable buffer against regulatory risks for the REP and strengthen the competitive markets to the benefit of customers. The REP Coalition stated that the maximum minimum balance

that could be collected by a REP would be $75, and through the competitive market, REPs may offer the $30 minimum balance advocated by OPUC.

Commission Response

The commission agrees with MXenergy, Reliant, and the REP Coalition that the connection balance should apply only to residential customers, because the range of consumption of small commercial customers is much larger than the range of residential customers. The commission changes subsection (c)(11)(C) accordingly.

The commission agrees with Nations Power that the connection balance should not include items such as move-in fees, which are charged by TDUs. The REP has no control over the fees charged by the TDU for a new or reconnected customer, and should therefore be allowed to charge, in addition to the connection balance, any TDU fees to establish or reconnect service. The commission has therefore added adopted subsection (c)(14), which provides that, in addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service. A purpose of the connection balance is to evidence the customer's commitment to paying the REP for electric service and to recognize that the REP has non-recurring costs related to a new or reconnected customer. The reason for the cap on the connection balance is to ensure that it is not so high that it prevents a significant number of consumers from obtaining prepaid service. Because prepaid service using CPDS is a burgeoning market, it is not clear at what level market forces would set the connection balance once the market matures. As a result, the commission concludes that it is necessary to cap the connection balance. Allowing a REP to charge a new or reconnected customer REP fees in addition to the connection balance would allow the REP to circumvent the reason for the cap on the connection balance. Thus, the REP is prohibited from requiring a payment greater than $75 to initiate or reconnect service. Nevertheless, nothing prohibits a customer from electing to make a payment of more than $75 when seeking to initiate or reconnect service.

As part of the adopted rule, the commission has added the concept of a disconnection balance. The disconnection balance is the account balance, not to exceed $10 for a residential customer, below which the REP may initiate disconnection of the customer's service. The commission is setting the disconnection balance lower than the connection balance to recognize that non-recurring costs related to a new or reconnected customer do not apply to a customer who has previously paid the connection balance and the customer may have taken service from the REP for an extended period of time and incurred charges for the service. The disconnection balance, like the connection balance, mitigates the REP's risk that a customer will not pay all of the charges for the service that the customer received. The commission has set the cap on the disconnection balance at $10 to acknowledge a possible lag between the time a customer consumes energy and when the REP obtains the consumption data, while at the same time minimizing the corresponding risk that the customer will be disconnected with a positive current balance.

The commission clarifies that the REP is prohibited from requiring a payment greater than $75 to initiate or reconnect service. The commission disagrees with Main Street that the connection balance will force customers into unreasonably short payment cycles. Nothing prohibits a customer from electing to make a payment of more than $75. Prepaid service customers under §25.498 have the ability to manage the frequency and size of their payments.

The commission disagrees with OPUC and TLSC/TXROSE that the connection balance is a deposit, because the connection balance is available for the payment for service. The commission disagrees with TLSC/TXROSE's request to require a REP to identify how many kWh a customer is purchasing when making a prepayment. Because prepaid service is a payment option, products could have fixed, variable or indexed pricing and service is subject to various charges and fees, which make TLSC/TXROSE's request infeasible. The commission also disagrees that the REP should be required to pay interest on the customer's account balance. Amounts above the connection balance for a new or reconnected customer, and above the disconnection balance for other customers, are discretionary on the part of customers. In addition, unlike a security deposit, a connection balance for payment for service will be expended as payments for service and charges rather than held in a separate account that could generate interest. With the revised definition of minimum balance as the connection balance, there is no need for a customer to make payments towards a minimum balance that the REP could require the customer to maintain in their account.

Proposed Subsection (c)(11)(E)

The REP Coalition requested clarification that the prohibition against collecting deposits applies only to security deposits for electric service. Advanced meter deployment has given REPs the ability to begin providing innovative products, such as power monitors and demand response thermostats, which may require their own security deposits. The REP Coalition stated that these and other types of innovative products are being offered by REPs to customers who may freely choose whether to use the products in addition to their regular electric service. The proposed rule should not be interpreted to prohibit security deposits on these new products. OPUC opposed the collection of security deposits of any kind, including for in-home devices or other "new" products the REPs may choose to provide a customer. The REP may alternatively provide such devices to customers at no charge as a competitive market offering.

OPUC and TLSC/TXROSE proposed prohibiting any early termination penalties on prepaid customers. TLSC/TXROSE stated that all prepaid contracts, especially those with high rate or variable pricing, should be day-to-day contracts with no exceptions. OPUC stated that one of the perceived benefits of prepaid service is the ability to switch between REPs and electric products; the allowance of early termination fees would make prepaid service more comparable to a fixed-rate contract. The REP Coalition disagreed with TLSC/TXROSE's assertion that all prepaid contracts should be day-to-day. Prepaid service is not an additional product category; it is a feature a REP can offer with any retail electric product. The REP Coalition stated that product types are established in §25.475, which is not at issue in this rulemaking.

Commission Response

The commission agrees with the REP Coalition regarding security deposits for products other than electric service. A prohibition against security deposits for these products could greatly reduce the offering of these optional products, and customers are not required to purchase these products if they do not wish to pay a deposit. The commission changes adopted subsection

(c)(11)(D) to clarify that a REP shall not collect a security deposit for electric service.

The commission disagrees with OPUC and TLSC/TXROSE that REPs should not be allowed to collect early termination fees for prepaid service. Prepaid service is a payment option, and as such a REP can offer prepaid service with a term contract. A REP may choose to offer prepaid service as a month-to-month product without a termination fee, but can also offer a longer term product with the same type of termination penalties that apply with postpaid service.

Proposed Subsection (c)(11)(F)

Young supported deleting this provision in its entirety to allow customers continued access to financial prepaid service. Young stated that all REPs, with a CPDS or without, employ the use of estimates in providing prepaid service. Only data that has been validated, edited, and estimated at ERCOT is considered "actual" usage information. Rather than eliminating estimated usage, Young recommended tightening the rules surrounding true-ups so any estimates reflect actual settlement data in a timely manner.

Young proposed the addition of a new provision stating that the REP shall promptly reconcile estimated usage with actual consumption, and if the resulting true-up is a credit balance, provide a refund to customers within 21 days of final settlement of the account. Young stated that this provision should apply to all REPs providing prepaid service, either with an advanced meter or under the financial prepaid model. Young stated that REPs offering prepaid service with advanced meters must also true-up. The data available from an advanced meter has not yet been fully reviewed (validated, edited, and estimated) and changes may occur before ERCOT finally uses this data for settlement. Therefore, Young supported requiring REPs to periodically true-up estimates with actual consumption information and report various metrics in their quarterly performance measures. Young stated that strengthening the provisions governing financial prepaid service and requiring more robust reporting on true-ups could be an effective means for determining if REPs are in fact abusing their discretion when providing financial prepaid service to customers. If the commission rejects this proposal, Young offered alternative language that would allow charges based on estimates only if there is no available advanced meter at the premises.

The REP Coalition and Reliant requested that proposed subsection (c)(11)(F) be deleted, because REPs should have the option to estimate charges for usage not timely reflected in the Smart Meter Texas portal. REPs should also be allowed to rely on usage estimates uploaded into SMT by a TDU. The REP Coalition stated that the use of REP estimates should be limited to time periods when data from the TDU is not received or is delayed. The REP Coalition stated that allowing REPs to use estimated usage data in these restricted situations will result in a more usable and consistent service offering from the customer's perspective. The REP Coalition stated that in concept prepaid service utilizing CPDS greatly eliminates the estimation of usage data, but estimation cannot be completely eliminated. The total prohibition on charges based on estimated usage, especially if usage information is delayed longer than the "next day" time period envisioned by §25.130(g)(1)(E), could potentially result in sizable adjustments to the customer's current balance. The REP Coalition requested that all estimated charges be trued-up promptly when actual data is available, to determine if there are any differences between the estimates and actual data, with the current balance being updated accordingly.

MXenergy sought clarification on the utilization of estimated meter reads related to advanced meter system reads provided by the TDUs.

Commission Response

The commission agrees with Reliant and the REP Coalition that a REP should be allowed to utilize estimates provided by the TDU, as well as estimated charges, when usage data from the TDU is delayed, in order to permit timely updates to the customer's current balance. However, a REP should be allowed to estimate usage data only when the TDU does not provide actual usage or estimated data within the time frame prescribed by §25.130(g)(1)(E) and the REP is unable to obtain an on-demand usage read. The commission changes adopted subsection (c)(11)(E) accordingly. The commission addresses true-up requirements in adopted subsection (c)(6)(D). Financial prepaid service is a service that many customers have chosen, and the commission therefore concludes that customers enrolled in financial prepaid service on to the October 1, 2011 compliance date should be allowed to continue receiving the service until the TDU installs and provisions advanced meters at their premises. The commission addresses financial prepaid service above concerning subsection (a).

Proposed Subsection (c)(12)

The REP Coalition stated that the various prohibitions in the proposed rule should not inadvertently limit a customer's access to products and services offered by REPs in addition to electric service. Therefore, the REP Coalition requested inclusion of a statement that nothing in the rule applies to a REP's provision of products and services sold separately from prepaid electric service.

TLSC/TXROSE requested that the commission prohibit REPs from charging mark-ups and fees, such as payment processing or late fees, for prepaid service. TLSC/TXROSE stated that prepaid service is already more expensive than standard electric service even though the risk to the REP is lower. The cost of providing customer service is a cost of doing business and should be rolled into the rates of all customers taking service from a REP. OPUC stated that REPs are receiving the benefit of advanced payment prior to the provisioning of service and are reducing their financial risk; therefore, there is no need to collect additional fees or charges from the customer.

ARM requested that the commission reject OPUC's and TLSC/TXROSE's request that this rulemaking be used as an avenue to regulate and prohibit fees that are applicable to both postpaid and prepaid service. ARM cited PURA §39.001(c), which precludes the commission from issuing orders regulating the competitive pricing of retail electric service by REPs, except as authorized by statute. According to ARM, the commission's jurisdiction over retail pricing under customer choice extends only to two areas: the price to beat under PURA §39.202 and the POLR rate under PURA §39.106. ARM stated that neither of these PURA provisions permits the commission to regulate the pricing of competitive retail electric service. As a general rule, competitive forces should regulate and set the pricing for a service in a free market.

Both OPUC and TLSC/TXROSE stated that payment processing fees inflict an unforeseen and particular financial burden on customers. One of the benefits of prepaid service is the abil-

ity of a customer to pay what they are able to pay, when they are able to make payment. OPUC stated that if there is no limit to the amount charged to a customer for making payment, the overall rate per kWh could be raised substantially higher than as disclosed on the EFL. TLSC/TXROSE cited the $4.99 processing fee currently charged by a prepaid service REP. Many customers can only afford to make small payments to their account; $4.99 is a nearly 25% fee for a customer making the average $20 payment and profoundly raises the cost for service. If the commission allows payment processing fees, OPUC requested imposing a reasonable cap on such fees or modifying the EFL to include a single fee for making four payments per month.

ARM disagreed with OPUC and TLSC/TXROSE. Accepting and processing customer payments in a timely manner is a critical component of prepaid service. The ability to make more frequent and smaller payments than under a traditional postpaid product benefits customers of prepaid service because it helps them avoid accruing a large obligation. ARM stated that the REP incurs a fee, typically to a third-party vendor, for processing payments and in most cases is simply passing through the payment processing cost to the customer. Payment processing fees should be established by competitive rather than regulatory forces to the extent they do not conflict with the Texas Finance Code, which prohibits REPs from passing certain charges relating to credit cards onto their customers.

Reliant stated that the restrictions on fees, charges, and minimum balances advocated by OPUC and TLSC/TXROSE seem to assume that the goal of the prepaid rule is to design a single product offering, rather than set parameters for a wide variety of products in the competitive market. Reliant stated that the proposed rule will allow REPs to offer products with different attributes, thereby encouraging competition and REP innovation to deliver the products customers want. Reliant requested rejection of unwarranted restrictions on products offered in the competitive market.

Commission Response

The commission concludes that nothing in this section limits a REP from offering products or services separately from prepaid electric service, and therefore a change to the rule in this regard is unnecessary.

The commission disagrees with TLSC/TXROSE that all costs of providing customer service should be rolled into the rates of all customers taking service from a REP. A REP should have the freedom to assess customer service costs to the cost causer rather than spread the costs to all of its customers. In the competitive market, REPs have broad discretion in designing products for postpaid service, and the commission concludes that it should not unduly limit their discretion in connection with prepaid service. The commission believes that one of the objectives of introducing retail competition was to spur innovation, and giving REPs broad discretion in product design is consistent with this objective.

The commission disagrees with OPUC and TLSC/TXROSE that the REPs should be prohibited from charging payment processing fees. REPs incur fees from third-parties acting as payment processing agents and are allowed to pass through these charges, and REPs may incur costs to process payments even without payment processing agents. The commission agrees with ARM that payment processing fees should be established by competitive rather than regulatory forces.

Proposed Subsection (c)(12)(A)

The REP Coalition and Reliant stated that due to financial risks imposed on the REP when a customer transitions from prepaid to postpaid service, the REP should be allowed to request a security deposit in the case of such a transaction. The REP Coalition and Reliant stated that §25.478(c)(3) allows deposits to be collected from an existing customer only if the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. Furthermore, the REP Coalition and Reliant stated that the REP should be allowed to require the customer to establish satisfactory credit as though the customer were a new applicant; a prepaid service customer does not pay a bill and therefore postpaid service standards should not apply. OPUC agreed that a REP should be able to collect a security deposit when a customer transitions from prepaid to postpaid service.

The REP Coalition and Reliant requested the ability to combine the request for a deposit with a disconnection notice, with the customer being required to pay the deposit within ten days after the deposit request.

Commission Response

The commission agrees with OPUC, Reliant, and the REP Coalition that a REP should be allowed to collect a deposit when transitioning to postpaid service, and changes subsection (c)(12)(A) accordingly.

The commission amends subsection (c)(12)(A)(1) to allow a REP to require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit.

Proposed Subsection (c)(12)(B)

The REP Coalition and Reliant stated that the prohibition on a REP charging a customer a fee for the cancellation or discontinuance of service was in conflict with proposed subsection (c)(11)(E), which states that a REP may charge and collect early termination fees for contracts with a term of more than one month. The REP Coalition requested the amendment of the provision to reflect the exceptions for termination fees included in proposed subsection (c)(11)(E).

MXenergy stated that prepaid service customers should be able to receive the best price a REP can offer based on the entire cost of providing prepaid service, and in order for a REP to offer a term prepaid service product, the REP must price the service as if it was purchased for the entire term. MXenergy stated that when a customer ends the contract earlier than the agreed upon term, the REP may lose money depending on where the energy market price is at that point in time. Without an early termination fee for term contract prepaid service, this risk is socialized over the entire customer base. MXenergy stated that an early termination fee allows the REP to mitigate this risk and the cost of a customer not purchasing energy for the entire term of contracted service. MXenergy further stated that allowing early termination fees for prepaid service will provide a REP with a potential tool to help lower prepaid service costs, while not placing the REP in an undue risk position.

TLSC/TXROSE and OPUC opposed allowing REPs to charge a fee for an activity required by the commission's customer protection rules, such as sending a disconnection notice. TLSC/TXROSE requested that REPs be prohibited from adding their own disconnection fees to the disconnection fees charges by the TDUs.

Commission Response

The commission agrees with MXenergy, Reliant, and the REP Coalition that the prohibition on charging a fee for a customer canceling or discontinuing service could be seen as in conflict with adopted subsection (c)(11)(D). The commission deletes this provision from subsection (c)(12)(B). The commission changes subsection (c)(12)(C) for clarity, to prohibit a REP from charging a customer a fee for switching to another REP or otherwise canceling or discontinuing taking prepaid service for a reason other than non-payment, but to allow for the collection of an early termination fee for a term contract.

The commission disagrees with OPUC and TLSC/TXROSE that a REP should not be allowed to charge a disconnection fee, because a REP incurs costs to disconnect a customer.

Proposed Subsection (c)(12)(C)

TLSC/TXROSE and OPUC stated that the proposed rule does not address an unexpended balance left in a customer's prepaid account when the customer switches REPs or products. The proposed rule also does not include a timing requirement for the refund of such an unexpended balance. TLSC/TXROSE requested that if a customer switches REPs, the current REP should be required to refund the customer's minimum balance instantaneously and any remaining balance within 48 hours. The customer will need to access these funds in order to obtain service from another REP and meet the new REP's minimum balance, prepayment, or security deposit obligations.

TLSC/TXROSE also requested that the commission prohibit REPs from charging dormancy or inactivity fees for funds that appear to be abandoned. Certain circumstances could result in unexpended balances being left with the REP, such as if the customer is in the hospital or choosing to live without electricity while the customer saves enough to replenish the minimum balance. TLSC/TXROSE cited the new regulations on gift and credit cards established under the Credit Act of 2009 and requested that the rule be consistent with those regulations. TLSC/TXROSE requested requiring the REP to send notice to a customer once the account is inactive for two weeks, stating that the balance will be refunded in an additional two weeks if the customer does not take action.

Commission Response

The commission agrees, in part, with OPUC and TLSC/TXROSE that the rule should include a provision to refund to the customer any unexpended balance upon the discontinuance of service. The commission disagrees with TLSC/TXROSE that such a refund should be instantaneous or could happen within 48 hours. In order for the REP to properly refund the unexpended balance to the customer, the REP must use actual usage and charges, which must be obtained from the TDU. In addition, the ERCOT billing cycle for wholesale settlements exposes the REP to the possibility that its initial wholesale invoice relating to its retail customers may be modified, resulting in a different allocation of its charges to a particular customer. The commission changes subsection (c)(7)(G) to require the REP to refund the customer, or an energy assistance agency that made payment on the customer's behalf, any unexpended balance within 10 business days after the REP receives the final bill and meter read from the TDU.

The commission disagrees with TLSC/TXROSE that a REP should be prohibited from charging a "dormancy fee" or "inactivity fee." A REP could choose to prorate various TDU fees, such as an advanced metering fee, into a charge applied to the customer's account daily in the absence of a set billing cycle. Such a fee is not an inactivity fee, but rather a standard charge each customer must pay, regardless of usage. The customer incurs a cost by having an active meter even when choosing not to consume electricity.

Proposed Subsection (c)(13)

The REP Coalition stated that, based on their requested changes for an additional subsection (d), this provision should be deleted.

Commission Response

The commission disagrees with the REP Coalition that this provision should be included in the current balance calculations. Unlike most account credits and debits, the rule provides that the REP is obligated to provide customers notice that the customer will be charged for a prior debt in subsection (c)(13), and therefore it should remain separate from the current balance provision.

Proposed Subsection (d)

The REP Coalition and Reliant requested that the term "account balance" be replaced with the term "current balance," which they stated was more appropriate in the context of proposed subsection (d), and is also a term defined under proposed subsection (b).

OPUC requested that the following language be added to the end of the proposed subsection: "The REP shall also obtain a customer's acknowledgement that not all electric assistance agencies are able to provide assistance to customers that use prepaid service, and therefore if the customer relies on electric assistance agencies, they should verify that their electric assistance agency can assist customers on prepaid service." TLSC/TXROSE disagreed with OPUC, countering that OPUC's proposal fails to provide vulnerable customers sufficient protection. TLSC/TXROSE stated that REPs should fully inform customers that many assistance programs do not provide benefits to customers on prepaid service and prohibit customers who may require energy assistance from enrolling in prepaid products.

TLSC/TXROSE requested that REPs who offer some type of financing product in addition to prepaid electric service, such as a prepaid or reloadable credit card, clearly identify whether or not the financing product is a requirement for receiving service. TLSC/TXROSE also requested that the REP be required to disclose whether the financing product, due to the product's fees or other charges, results in a higher or lower realized rate for electric service than if the customer made payment with cash or check.

dPi requested that prior to enrolling a customer in an "advance payment" product, the REP be required to telephonically obtain and record all required verification information from the applicant similar to the requirements under 25.474(f), regarding customer enrollment via door-to-door sales. Additionally, in response to harms alleged by commission staff, dPi requested that the REP telephonically capture additional enrollment information provided to "advance payment" customers, to include:

(A) how and when payment may be made;

(B) how and when account statements will be provided to the customer;

(C) if consumption is estimated for any purpose and the type of information used to make such an estimate;

(D) statement and notice expectations, including timeframes for receipt and payment of statements and the circumstances under

which the customer may receive a disconnection notice, as well as the applicable disconnection timeframes;

(E) if a REP represents that a specific dollar amount applied to an "advance payment" option is anticipated to provide electric service for a specific time period, the REP shall disclose the price per kWh, the estimated kWh to be consumed during the specified time and dollar amount, and a statement as to whether the amount due for service during the time period will change, and if so, under what circumstances; and

(F) disclose how the "advance payment" account will be trued-up, including applicable timeframes, as well as payment and credit options applicable to any trued-up debt or credit balances.

Commission Response

The commission agrees with Reliant and the REP Coalition that the term "account balance" should be replaced with the term "current balance," and changes subsection (d) accordingly.

The commission agrees with OPUC that the customer should acknowledge the possible limitations to receiving energy assistance when enrolled in a prepaid product, and the commission changes subsection (d) accordingly. As stated above in relation to proposed subsection (c)(10), the commission disagrees with TLSC/TXROSE that customers who are eligible for energy assistance should be prohibited from enrolling in a prepaid product.

Concerning TLSC/TXROSE's comments about a financing product provided in conjunction with prepaid service, such as a prepaid or reloadable credit card, the commission concludes that it is unnecessary to address such a product. Whether a REP requires the use of such a product will necessarily be disclosed to a potential customer, because the REP is required to provide a disclosure of the acceptable payment methods. In addition, disclosure of fees for financial products are already addressed by statutes and regulations not administered by the commission.

Concerning dPi's proposals, the commission concludes that the rule provides sufficient customer protections for service subject to the rule, without adoptions of dPi's proposals.

Proposed Subsection (e)(1)

OPUC proposed further clarifying on the PDS that the customer's electric service may be disconnected with limited notice should the current balance fall below the specified minimum balance.

Commission Response

The commission agrees with OPUC that further disclosure regarding limited disconnection notice is appropriate, and changes subsection (e)(1) accordingly.

Proposed Subsection (e)(2)(A)

The REP Coalition and Reliant requested that subsection (e)(2)(A) parallel the definition of "minimum balance" in subsection (b)(4), which also addresses avoiding the disconnection of service.

Commission Response

As discussed above concerning proposed subsection (b)(4), the term minimum balance has been changed to connection balance, and will apply only to initiation and reconnection of service. Reliant and the REP Coalition's request is therefore moot.

Proposed Subsection (e)(2)(D)

The REP Coalition and Reliant requested clarification of a REP's duty regarding a critical care or chronic condition evaluation process. The REP Coalition and Reliant stated that, as written, the provision could be interpreted to require the REP to ask each applicant for prepaid service whether the definitions given under §25.497 (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers) are applicable to the applicant. Therefore, the REP Coalition and Reliant requested insertion of language to make clear that prepaid service is not available to customers designated as critical care and chronic care residential customers, rather than set up a separate evaluation process to determine if the customer otherwise meets the definition.

TLSC/TXROSE requested that this provision be expanded to disallow REPs from providing prepaid service to households that are eligible for energy assistance.

Commission Response

The commission changes adopted subsection (k) to prohibit a REP from knowingly providing prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title or enrolling an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer. Section §25.497 prescribes the process by which critical care and chronic condition residential customers are identified, and the commission does not intend to impose in this rule additional obligations on REPs with respect to this issue.

As stated above concerning proposed subsection (c)(10), the commission disagrees with TLSC/TXROSE that customers who are eligible for energy assistance should be prohibited from enrolling in prepaid service.

Proposed Subsection (e)(2)(F)

The REP Coalition requested that the PDS be modified to address the ability of a REP to place a customer incurring a negative current balance of $50 or more on a deferred payment plan. Furthermore, the REP Coalition requested language informing customers through the PDS that in addition to the deferred payment plan, the REP reserves the right to apply a switch-hold and retain such switch-hold until the deferred payment plan terms are satisfied.

Commission Response

The commission disagrees with the REP Coalition that a REP should have the right to place a customer who has incurred a negative current balance of $50 or more on a deferred payment plan and apply a switch-hold. The customer should have the right to decide whether to enter into a deferred payment plan.

Proposed Subsection (g)(1)

MXenergy stated that the SUP is only applicable to REPs that have installed advanced meters and related systems that allow customers, if they elect to have such devices installed, to receive direct communications to these devices inside their homes. MXenergy stated that since CPDS allows the customer to monitor consumption on a real-time basis, a monthly mailed SUP is equivalent to a monthly invoice, and therefore a monthly, no fee, paper copy of a SUP should not be required. MXenergy requested that the cost associated with receiving a paper SUP be detailed in the Terms of Service.

The REP Coalition and Reliant stated that much of the communication related to prepaid service is expected to be delivered using electronic methods, and accordingly, it would be inconsistent to establish the United States Postal Service as the default delivery method for a SUP. The REP Coalition and Reliant stated that since the proposed rule allows for a REP to select electronic delivery as the default choice for all other customer communications, the communication method chosen for SUP delivery should be left to the REP, customer, and competitive market as long as a durable record of the SUP is provided. Reliant requested that if the customer opts for a paper copy of the SUP, the REP be allowed to charge a reasonable fee for the SUP.

TLSC/TXROSE disagreed with MXenergy, the REP Coalition, and Reliant. Since the idea behind prepaid service is for the customer to monitor usage and avoid disconnection, the REP should notify a customer on a weekly basis of the account status. TLSC/TXROSE requested that a REP be prohibited from charging a fee to customers who are incapable of receiving an electronic report.

Commission Response

The commission clarifies that the SUP shall be provided upon the customer's request, and the REP is not required to provide a monthly mailed SUP unless the customer requests a summary each month. The commission agrees with Reliant that postal service should not be the default method of delivery, and the REP should be allowed to select electronic delivery as long as the means of delivery provides a downloadable and printable record. The commission agrees with MXenergy and Reliant that since REPs are allowed to communicate electronically for all other communications, the REP should be allowed to charge a fee for a paper copy of the SUP. The commission changes adopted subsection (h)(1) accordingly.

The commission disagrees with TLSC/TXROSE that the REP should be responsible for weekly account status notifications. The commission concludes that a REP's obligation to send low-balance warnings pursuant to subsection (c)(7)(D) is sufficient notification regarding account status.

Proposed Subsection (g)(2)(G)

The REP Coalition and Reliant stated that requiring a REP to indicate on the SUP whether the customer is receiving the LITE-UP discount is inconsistent with the nature of that program. They stated that a SUP will likely cover several months of usage, and a customer can roll on and off the LITE-UP monthly eligibility list. Moreover, funding of a discount for a particular month may not be available. Consequently, the rule should be modified to require a statement on the SUP indicating whether the customer is on the LITE-UP eligibility list at the time the summary is generated.

Commission Response

The commission agrees with Reliant and the REP Coalition, in part, that simply stating that a customer is receiving the LITE-UP discount is inconsistent with the variable nature of the program. The commission changes adopted subsection (h)(2)(H) to require the SUP to indicate if the customer received the LITE-UP discount during all or part of the summary period.

Proposed Subsection (g)(2)(H)

MXenergy, the REP Coalition, and Reliant requested that the commission clarify the content required in the SUP, specifically the summary level to be included. The REP Coalition and Reliant requested that the subsection explicitly confirm that the intent of the SUP is to provide a summary for a period of 12 months unless the customer asks for or has received service for a shorter period of time. MXenergy stated that 12 months of data, in daily interval form, would be excessive to the customer, as well as costly and time consuming for the REP. MXenergy requested including two months of data in the SUP.

Commission Response

The commission agrees with Reliant and the REP Coalition that unless a shorter time period is specifically requested by the customer, information provided by the SUP shall be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months. For clarity to the customer, the information should be provided by calendar months. The commission changes adopted subsection (h)(5) accordingly. The commission disagrees with MXenergy that two months of data would be an appropriate summary period. The SUP is not required to be in daily interval form, and the commission concludes that the 12-month interval is neither excessive nor burdensome.

Proposed Subsection (g)(3)

The REP Coalition and Reliant stated that the SUP fulfills the requirements set forth by §25.472 to provide payment and usage information, free of charge and within one business day of the request, to an energy assistance agency. The REP Coalition and Reliant therefore recommended that since the SUP is a concept unique to §25.498, this provision should be clarified to specify that the SUP fulfills the requirements of a request made pursuant to §25.472(b)(4).

TLSC/TXROSE stated that is was inappropriate for the REP Coalition to ask the commission to specify that providing a SUP to an energy assistance agency fulfills the REP's requirement to provide information to the energy assistance agency. TLSC/TXROSE stated that no such determination can be made without knowing the requirements of the energy assistance agency.

Commission Response

The information that a REP is obligated to provide to an energy assistance agency pursuant to §25.472(b)(4) is broader than the information contained in SUP, and the commission therefore disagrees with the REP Coalition and Reliant.

Proposed Subsection (h)

The REP Coalition and Reliant requested that the undefined term "deficit balance" in subsection (h), (h)(1) and (2) be replaced with the term "negative current balance." The term "current balance" is defined in subsection (b)(1) and adding the "negative" prefix would infer a current balance less than zero. The REP Coalition and Reliant stated that this would eliminate potential confusion that a "deficit balance" could mean a balance that is less than the minimum balance.

As commented upon under proposed subsection (e)(2)(F), the REP Coalition requested the option of automatically placing a customer on a deferred payment plan if the customer incurs a negative current balance of $50. Furthermore, the REP could then apply a switch-hold under proposed subsection (h). The REP Coalition stated that more customers with prepaid service would otherwise be able to switch and never pay the amount owed to their current REPs as advanced meters, same-day switching, and robust no-deposit prepaid services become prevalent.

Commission Response

The commission agrees with Reliant and the REP Coalition that using the "negative" prefix with the defined term current balance adds clarity and changes adopted subsection (i) accordingly.

As discussed above concerning proposed subsection (e)(2)(F), the commission disagrees with the REP Coalition that a REP should have the unilateral right to place a customer who has incurred a negative current balance of $50 or more on a deferred payment plan and apply a switch-hold.

Proposed Subsection (h)(1)

MXenergy stated that recently approved §25.480(j) does not require REPs to offer a deferred payment plan if the customer has received service from the REP for less than three months and the customer lacks sufficient credit or a satisfactory payment history from a previous REP. MXenergy questioned why the proposed rule in this project includes a more stringent REP deferred payment plan requirement than adopted in §25.480(j) and why the deferred payment plan in existing §25.498(g) was revised.

Reliant stated that the commission recognized that deferred payment plans were not consistent with the concept of prepayment in Project Number 33814, Order Adopting New §25.498, at the July 31, 2007 Open Meeting. Reliant stated that deferred payment plans were only mandated in limited situations, such as when the prepaid balance is exhausted during an extreme weather emergency or when a customer has been underbilled by the REP; all other deferred payment plans offered by a REP are voluntary. Reliant requested that subsection (h)(1) be modified to allow that a REP "may" place a residential customer on a deferred payment plan rather than requiring that the REP "shall" do so. The REP Coalition and Reliant requested that the phrase "not considering the customer's minimum balance" be removed from the proposed subsection.

OPUC supported deferred payment plans only at the customer's request, and opposed switch-holds under any circumstances. TLSC/TXROSE stated that PURA §39.101(h) requires the REP to maintain a customer's electric service during extreme weather emergencies even if the customer's account balance is zero. TLSC/TXROSE stated that the phrasing of proposed subsection (h)(1) infers that a customer would have a deficit balance even if the customer maintains a minimum balance greater than the supposed deficit. In addition, TLSC/TXROSE stated that the proposed rule is ambiguous as to whether a REP can apply a switch-hold to a customer's account, which they did not support, when the deficit is completely covered by the minimum balance.

Commission Response

The commission finds that deferred payment plans under existing §25.498(g) do not reflect the changes made by the commission to prepaid service under the new §25.498 or to the requirements for deferred payment plans in §25.480. The commission disagrees with MXenergy's statements that the deferred payment plan provisions of the new rule are unjustified. The commission is changing the deferred payment plan provisions in existing §25.498(g) as part of its comprehensive changes to §25.498. A key difference between the existing rule and the new rule is that the new rule provides for a connection balance of up to $75 to establish prepaid service or reconnect prepaid electric service following disconnection, and a disconnection balance of up to $10 that a customer must maintain to avoid disconnection. In contrast, the existing rule allows a REP to disconnect service only if the customer's balance is below zero; and a customer taking postpaid service pays for the service after the service is provided. The commission believes that §25.498 should be generally consistent with §25.480 and should recognize that there is a possibility that customers may incur large negative balances during periods in which a REP cannot initiate disconnection of service. For this reason, the commission is requiring a REP to offer deferred payment plans in the new rule.

The commission concludes that a REP should be required to offer deferred payment plans only in certain situations, specifically where a customer's account reflects a negative current balance of $50 or more during an extreme weather emergency, in particular circumstances related to a state of disaster, and where a customer who has been underbilled by $50 or more for reasons other than theft of service. A REP is required to offer deferred payment plans to postpaid service customers in these situations, and should be required to do so for prepaid service customers as well. Consistent with Reliant's and the REP Coalition's request, the commission deletes "not considering the customer's minimum balance" in adopted subsection (i)(1)(A), because the minimum balance, adopted as the connection balance, is only required to enroll in or reconnect prepaid service.

The commission agrees with TLSC/TXROSE that a customer should not be viewed to have a deficit balance if the customer's account balance is $0 or greater. The commission changes the definition of minimum balance in subsection (b)(4) to connection balance to clarify that the customer need not maintain the minimum balance after establishment of service or reconnection of service, and uses the phrase "negative current balance" rather than "deficit balance." Concerning OPUC's comment about switch-holds, this issue is addressed below concerning proposed subsection (h)(5)(B).

Proposed Subsection (h)(2)

The REP Coalition and Reliant stated that subsection (h)(2) prohibits a REP from refusing a customer's request for a deferred payment plan if the customer incurs a deficit balance of $50 or more during a period in which disconnection was prohibited. The REP Coalition and Reliant requested that the mandate requiring a REP to offer a deferred payment plan be modified to apply only to residential customers and only when the $50 negative current balance is incurred during extreme weather or due to an underbilling. The provision should not be overly broad or expanded to address negative current balances incurred on weekends or holidays when disconnection is prohibited. Reliant agreed with the REP Coalition that subsection (h)(2) should be modified to apply only to residential customers consistent with PURA §39.101(h).

Commission Response

The commission agrees with Reliant and the REP Coalition that proposed subsection (h)(2) is overly broad, therefore the commission limits the obligation for a REP to offer a deferred payment plan in adopted subsection (i)(1) and (2). The commission deletes proposed subsection (h)(2).

Proposed Subsection (h)(4)

Nations Power stated that the deferred payment "model" recently adopted in §25.480(h)(4) is reflective of the traditional postpaid billing model where a customer pays back an installment payment on a monthly basis. This model requires an initial payment no greater than 50% of the amount due, with the remaining deferral to be paid in up to five equal monthly installments unless the customer agrees to fewer installment payments. Nations Power stated that with prepaid service using advanced meter technol-

ogy, there is no monthly billing, no monthly statements, and no payment due dates. Additionally, Nations Power stated that a five-month payback period is not practical for pay-as-you-go. The average prepaid service customer churn is far less than five months. Nations Power stated that the payment arrangement adopted in the current §25.498 works best in the prepaid market by allowing customers to pay their balances owed over several weeks rather than several months, and with 25% of the balance due at each payment.

Commission Response

The commission disagrees with Nations Power that a five-month payback period is not practical for prepaid service. Because prepaid service has no monthly billing cycle and no payment due date, the payment period for deferred payment plans should be defined rather than left to the REP's discretion. A prepaid service customer could theoretically make several small payments in a calendar month, and requiring a percentage of the balance due with each payment could substantially shorten the payback timeline compared to the traditional deferred payment plan model.

Proposed Subsection (h)(4)(B)

The REP Coalition and Reliant requested replacement of the undefined term "account balance" with "current balance" as defined in subsection (b)(1).

Commission Response

The commission agrees with Reliant and the REP Coalition that "account balance" is not the appropriate term, but concludes that "current balance" is not the appropriate term, either. The commission changes adopted subsection (i)(6)(B) to allow the REP to reduce the "deferred" balance.

Proposed Subsection (h)(5)(A)

The REP Coalition requested that proposed subsection (h)(5)(A) remove any implication that the customer may be able to change payment terms under the deferred payment plan. Specifically, the REP Coalition requested replacing the phrase "are not satisfied with" with "have any questions regarding the terms of."

Commission Response

The commission agrees with the REP Coalition that the language "are not satisfied with" implies that the customer may change the terms after electing to enroll in a deferred payment plan. The commission changes adopted subsection (i)(9)(A) to reflect the recommendation of the REP Coalition.

Proposed Subsection (h)(5)(B)

TLSC/TXROSE and OPUC opposed the switch-hold and argued that the commission's rationale for adopting a switch-hold in Project Number 36131 is not applicable to prepaid service. TLSC/TXROSE stated that the commission provided for REPs to use switch-holds in providing postpaid service because the commission expanded the number of customers for whom REPs were required to provide bill assistance. Under the new prepaid service rule, REPs will be required to offer deferred payment plans to the same group of customers as before the switch-hold was promulgated. TLSC/TXROSE requested that the commission prohibit REPs from applying switch-holds to prepaid customers under the new rule. Unlike for postpaid service, REPs are not required to offer deferred payment plans to an expanded number of customers and therefore their financial risk is not increased. TLSC/TXROSE and OPUC stated that prepaid service substantially reduces REP risk and REPs are less exposed to nonpayment from prepaid service customers than postpaid service customers.

The REP Coalition stated that in Project No. 36131, the commission's rationale for allowing switch-holds was because the REP extends additional credit to the customer through certain payment plans. The REP Coalition stated that, in theory, there should be no extensions of credit to customers on prepaid service, but argued that in practice there will still be situations where REPs will be required to extend credit to prepaid service customers. A REP could extend credit during extreme weather events and on weekends and holidays, or when TDU systems are down and disconnections cannot be timely worked. The REP Coalition stated that an extension of credit could also exist since disconnections and reconnections using advanced meters do not occur instantaneously. The REP Coalition stated that if a customer on prepaid service incurs a negative balance of $50 or more as addressed under the proposed rule, the REP clearly has extended credit to the customer and REPs should be allowed to apply switch-holds when credit is extended to customers.

Commission Response

The commission disagrees with TLSC/TXROSE that the switch-hold should not be available for a REP providing prepaid service. It is reasonable to allow a REP to place a switch-hold on a customer in a situation where the REP extends credit to the customer and is required by the rule to enter into a deferred payment plan. The commission finds that while the financial risk to a REP of providing prepaid service compared to postpaid service is decreased in most circumstances, during a disconnection moratorium, a prepaid service customer can accrue a negative current balance and the REP has no deposit to cover that balance. The customer could choose to switch REPs before making a payment, and the REP bears the risk of non-payment in such a situation. The deferred payment plan requires that a REP extend credit to the customer, and the REP faces additional risk that the customer will not repay the deferred balance. The switch-hold helps ensure the customer will pay the deferred balance before switching to another REP. Therefore, the switch-hold reduces the risk to the REP that the customer will not pay the deferred balance.

Proposed Subsection (h)(5)(G)

The REP Coalition requested that subsection (h)(5)(G) be modified to allow a customer's electric service to be disconnected if the customer's current balance is below the minimum balance, excluding the remaining deferred amount. The REP Coalition requested a new subsection (h)(6) allowing a REP to place a switch-hold on a customer's account while the customer is on a deferred payment plan, consistent with §25.480(j) as adopted in Project Number 36131.

Commission Response

The commission agrees with the REP Coalition that a REP should be allowed to disconnect a customer on a deferred payment plan if the customer fails to make payment towards the current balance at all. A customer should not be allowed to use a deferred payment plan as a means to avoid having to meet any applicable disconnection balance required by the REP. As a result, the commission changes adopted subsection (i)(9)(G) to allow a REP to disconnect a customer enrolled in a deferred payment plan whose current balance falls below the disconnection balance, excluding the remaining deferred amount.

Consistent with its discussion above regarding proposed subsection (h)(5)(B), the commission adds adopted subsection (i)(8) to allow a REP to apply a switch-hold while the customer is on a deferred payment plan.

Proposed Subsection (h)(5)

The REP Coalition stated that the proposed rule included two proposed subsections (h)(5) and recommended that the second proposed subsection (h)(5) be renumbered as (h)(7) to reflect their requests for a new subsection containing affirmative switch-hold language. Further, the REP Coalition requested language matching the same switch-hold removal provisions as §25.498(j)(8) as adopted in Project Number 36131.

MXenergy stated that proposed subsection (h)(5) is a redundant requirement, because the prepaid disclosure statement notifies a customer that the switch-hold will be removed when payment is received. MXenergy stated that the timing requirement of this provision is arduous and prone to be a point of failure for the REP providing prepaid service. MXenergy requested that the provision be changed to require the REP to submit a request to remove the switch-hold if the customer pays the deferred balance owed to the REP.

Commission Response

The commission disagrees with MXenergy that the PDS notification is sufficient customer notice that the deferred payment plan will be removed once the terms of the plan have been satisfied. This provision requires the REP to notify the customer that the terms of the plan have been satisfied and the switch-hold is being removed, rather than the customer inferring that the terms have been satisfied. It should not be a customer's responsibility to infer that the obligations have been met and assume that the REP has removed the switch-hold placed on their account.

Proposed Subsection (i)

The REP Coalition and Reliant stated that subsection (i) is redundant and the reiteration of the applicability of §25.483 to prepaid service, already addressed in subsection (a) of the proposed rule, does not add meaning or clarity to the rule. The REP Coalition and Reliant requested that subsection (i) be deleted to avoid potential confusion.

The REP Coalition requested replacing the term "authorized" throughout subsection (i) with the term "initiate" to more accurately describe what a REP does when it sends a request for disconnection to the TDU.

Commission Response

The commission disagrees with Reliant and the REP Coalition that proposed subsection (i) does not add meaning or clarity to the rule. Proposed subsection (i) addresses disconnecting service to a prepaid service customer, so it is appropriate to begin the subsection with a statement of the portions of §25.483 that apply.

The commission agrees with the REP Coalition that "initiate" is a more appropriate term to describe how a REP sends a request for disconnection, and changes the rule accordingly.

Proposed Subsection (i)(2)

TLSC/TXROSE stated that the disconnection warning timeline, which occurs at least three days and no more than seven days before the customer's current balance is estimated to drop below the minimum balance, is inconsistent with the notice and timing requirements for other residential customers under §25.480. TLSC/TXROSE stated that disconnection has always been related to nonpayment for service already provided to the customer, and the proposed rule allows the REP to disconnect when the customer owes no money to the REP for services provided. TLSC/TXROSE stated that the proposed rule improperly allows a REP to disconnect when the customer has a positive balance of up to $75 in the prepaid account. Furthermore, TLSC/TXROSE stated that in the proposed rule, the commission is allowing the timelines for notice and disconnection of electric service to be shortened, while postpaid service customers remain under the same timelines that were in effect prior to deregulation. Therefore, under the proposed §25.498, two different levels of customer protection are being established. TLSC/TXROSE stated that lowering the level of customer protection and accelerating the time table for disconnection of service violates PURA §39.101(f).

The REP Coalition disagreed with TLSC/TXROSE's assertion that the proposed rule is in violation of PURA §39.101 and stated that prepaid service did not exist in the regulated market in any form before December 31, 1999, so therefore the customer protection rules in place prior to competition in the Texas market were only adopted with the traditional postpaid model in mind. Furthermore, the REP Coalition stated that differences between the prepaid and postpaid models defy the application of the same customer protection rules in each and every instance. The REP Coalition cited as support the order adopting the current §25.498, in Project Number 33814, and asked for the TLSC/TXROSE argument to be rejected.

The REP Coalition requested that, since the customer has to have received a warning at least three days but not more than seven days before the disconnection of service, and disconnections can be delayed by up to three business days if the TDU cannot successfully communicate with the advanced metering system, the REP be allowed to initiate disconnection if a warning notice was provided to the customer during the previous seven days. The REP Coalition requested clarification of the phrase "prepaid balance is exhausted" and recommended the language, "current balance is below the customer's minimum balance" in allowing a REP to send a disconnection request to the TDU.

dPi stated that any minimum balance and all related disconnection triggers should be premised at or near a zero balance. dPi requested that a REP be allowed to initiate disconnection on a day-ahead basis if the disconnection trigger was estimated to fall on a holiday or weekend.

The REP Coalition and Reliant requested that a new provision be added to the rule to address treatment of disputes concerning prepaid electric service accounts, which they believe are not directly applicable to §25.485(e)(2). The REP Coalition and Reliant stated that since a REP is eligible to disconnect when a customer drops below the minimum balance, it would be beneficial for the rule to provide guidance on how that minimum balance should be calculated to determine whether the account is eligible for disconnection.

Commission Response

The commission disagrees with TLSC/TXROSE that the rule violates PURA §39.101(f)'s requirement that the commission ensure that at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999 is maintained in a restructured electric industry. The customer protection rules that existed on December 31, 1999 were for postpaid service. The prepaid service model

operates in fundamentally different ways than the postpaid service model, and therefore, the customer protection rules for prepaid service necessarily must be different in order for prepaid service to be a viable alternative to postpaid service, which will continue to be available to customers who can meet the requirements for that service.

The commission agrees in part with the REP Coalition that the REP should be allowed to disconnect if the customer has been warned in the last seven days. However, the customer should have at least one full day's warning that, based on estimated usage, the customer will be disconnected if the customer fails to make a payment, and the commission changes adopted subsection (c)(7)(D) and adopted subsection (j)(2) accordingly. In light of the definition of disconnection balance in adopted subsection (b)(4), the commission changes adopted subsection (j)(2) to allow a REP to initiate disconnection if the current balance falls below the customer's disconnection balance.

The commission disagrees with dPi that a REP should be allowed to initiate disconnection on a day-ahead basis if disconnection is estimated to fall on a holiday or weekend. This could inappropriately result in a customer being disconnected who had the ability and intention to timely make payment for service.

The commission disagrees with Reliant and the REP Coalition that §25.485(e)(2) should not be applicable to prepaid service, and finds that the provision can be interpreted in light of the manner in which the prepaid service model operates by interpreting "bill" to mean "current balance" for a prepaid service customer. As with a postpaid service customer, a prepaid service customer should be allowed not to pay a disputed charge while an informal complaint process is pending.

Proposed Subsection (i)(3)

Nations Power stated that the timelines in a pay-as-you go model with real-time meter reads are not conducive to a 45-day turnover for energy assistance pledge payments. Nations Power requested that the commission give consideration to shortening the amount of time that an energy assistance agency has to make a payment on behalf of a customer it is helping and to allow the REP to consider the credit worthiness of the entity providing assistance. TLSC/TXROSE stated that it is inappropriate for industry to ask the commission to change standard operating procedures without regard to the affect on energy assistance providers. TLSC/TXROSE further stated that amending a program, such as a government energy assistance program, is no simple matter and potentially harmful to both the program and vulnerable people the program intends to help.

OPUC requested a new provision requiring customers to acknowledge, upon enrollment in a prepaid electric product, the possible limitations of some energy assistance agencies to provide monetary assistance to low-income customers on a prepaid plan. Additionally, OPUC requested that the commission require REPs to refund any unexpended balances to energy assistance agencies that provided funds on behalf of a customer who leaves the REP or the REP's prepaid product.

Commission Response

The commission disagrees with Nations Power that the timelines of prepaid service should alter the energy assistance pledge payment timelines. The commission cannot require that energy assistance agencies alter their pledge payment timelines. In addition, these agencies have expressed concerns about providing assistance to prepaid service customers, and the commission does not want to take any action that would impair the agencies' ability to provide assistance. Furthermore, prepaid service can be provided in a manner that accommodates the established energy assistance pledge payment timelines.

With respect to OPUC's comments, as discussed above concerning proposed subsection (c)(10), adopted subsection (d) and adopted subsection (e)(2)(G) require the REP to disclose, and the customer to acknowledge that some electric assistance agencies may not provide assistance to customers who use prepaid service. In addition, adopted subsection (c)(7)(G) requires a REP to refund any unexpended balance prepaid by an assistance agency to such agency if the customer leaves the prepaid product.

Proposed Subsection (i)(3)(A)

TLSC/TXROSE stated that if a low-income prepaid service customer is able to secure an energy assistance payment pledge, the customer should not be forced to make sure the pledge is properly credited. TLSC/TXROSE stated that it is unprecedented that the customer, rather than the REP, would be responsible for assuring the proper crediting of payment. Under the proposed rule, an energy assistance payment could be pledged to a REP and the customer could still lose service because of the customer's inability to revalue the device. TLSC/TXROSE stated that this requirement places an onus on prepaid service customers that does not exist for postpaid service customers, and lowers the standard of service available in the deregulated market contrary to PURA §39.101(f).

Commission Response

The commission agrees with TLSC/TXROSE and changes the provision accordingly.

Proposed Subsection (i)(3)(B)

The REP Coalition requested clarification regarding the meaning of "satisfies a customer's minimum balance." The REP Coalition requested alternative language, "establishes a current balance for the customer that is at or above the customer's minimum balance," to make clear that the customer's service may be disconnected if the pledge from an energy assistance organization does not provide the customer a balance at or above the minimum balance requirement of the REP. Reliant requested the following alternative language: "establish a current balance for the customer that is above the customer's minimum balance."

TLSC/TXROSE disagreed with the REP Coalition and Reliant, stating that their requests are being made without any regard to the energy assistance agency and the low-income customer, or any verification that the standard will in fact work. TLSC/TXROSE stated that many bill payment assistance programs provide a small amount of assistance to a customer, and it is not unusual for a low-income individual to ask for assistance from several churches, non-profits, or others in order to pay an overdue bill.

Commission Response

The commission agrees with the REP Coalition that proposed subsection (i)(3)(B) should be clarified. The commission changes subsection (b) so that the customer must maintain a balance at or above the disconnection balance in order to avoid disconnection for non-payment, rather than maintain the minimum balance. The commission changes subsection (j)(3) to state that a REP shall not initiate disconnection if the commitment from an energy assistance agency (or energy assistance

agencies) establishes a current balance over the disconnection balance, or if the customer has been disconnected, shall initiate reconnection of service if the commitment establishes a current balance that is at or above the connection balance. A REP's rights to disconnect a customer if the customer's current balance falls below the disconnection balance and not reconnect service if the customer's balance is below the connection balance, are fundamental elements of the prepaid service model created by the rule. Therefore, the REP should have the right to disconnect if the energy assistance agency's pledge is insufficient to bring the customer's current balance above the disconnection balance and the right not to reconnect if the energy assistance agency's pledge is insufficient to raise the customer's current balance to the connection balance.

Proposed Subsection (i)(4)

The REP Coalition commented that proposed subsection (i)(4) recognizes that only the TDU reconnects a TDU installed meter, and the tariff allows the TDU up to 48 hours to perform reconnection of service in certain cases. The REP Coalition stated that timelines for disconnection and reconnection do not yet take full advantage of the advanced metering systems, and these systems should be used to facilitate the rapid reconnection of service regardless of when a TDU receives the request. The REP Coalition acknowledged these requests should not be undertaken in the proposed rule, but rather in the next update to the tariff. The Joint TDUs agreed that there is no need to consider these issues in this rulemaking, and understood that the timelines for processing a variety of advanced metering system (AMS) service requests will be taken up in Project Number 38674, *Amendments to Customer Protection Rules Relating to Advance Meters.*

Commission Response

The commission agrees with the Joint TDUs and the REP Coalition that timelines for AMS disconnection and reconnection are not at issue in this rulemaking and will be considered in Project Number 38674.

Proposed Subsection (j)

TLSC/TXROSE and TACAA supported prohibiting REPs from providing prepaid service to critical care and chronic care residential customers and requested mandatory disclosure that such customer class is ineligible to take prepaid service. TLSC/TXROSE stated that there was a lack of responsibility placed on the REP to provide information to prospective customers regarding this provision while marketing prepaid products. TACAA stated that they were concerned about the health and safety of the elderly and frail who enroll in prepaid service, but are not classified as critical care or chronic condition.

Consistent with their comments on proposed subsection (e)(2)(D), the REP Coalition and Reliant did not want to be held responsible for ascertaining the customer's eligibility for chronic condition or critical care status on an ad hoc basis. The REP Coalition and Reliant requested that subsection (j) be changed to state that a REP is prohibited from providing prepaid service to an applicant who states that the applicant is designated as a critical care or chronic care residential customer as defined in §25.497.

Nations Power, the REP Coalition, and Reliant requested clarity regarding customers who become critical care or chronic condition while they are enrolled in a prepaid product. Nations Power stated that the proposed rule does not provide a process for transitioning a customer granted critical care or chronic condition designation to a REP equipped to handle this type of customer, especially if the customer chooses not to cooperate with the REP. Nations Power, the REP Coalition, and Reliant requested a new provision that states that in the event a customer receives the critical care or chronic care designation while enrolled in a prepaid product, every effort shall be made on behalf of the customer to contact the customer and transition the customer to a new REP. In the event communications are not established, Nations Power requested the ability to do a priority switch, acting as the authorized agent for the customer, to the POLR. The REP Coalition disagreed with moving the customer to the POLR, arguing that POLR is primarily intended to provide a safety net for customers whose REP exits the market. POLR, the REP Coalition stated, is not a service for a REP to transfer a customer for whom the REP wants to terminate service. The REP Coalition and Reliant instead requested that the proposed rule be amended to allow a REP to transfer a customer, in a non-discriminatory manner, to a postpaid month-to-month plan offered by the REP without the authorization and verification requirements outlined in §25.474 and §25.475(e)(2).

Commission Response

As discussed above concerning subsection (e)(2)(D), the commission is changing adopted subsection (k) to prohibit a REP from knowingly providing prepaid service to a customer who is a critical care or chronic condition residential customer or enrolling an applicant who states that the applicant is a critical care or chronic condition residential customer. Section 25.497 prescribes the process by which critical care and chronic condition residential customers are identified, and the commission does not intend to impose in this rule additional obligations on REPs with respect to this issue. The commission disagrees with TLSC/TXROSE that REPs are not held responsible for informing prospective customers of this provision. Subsection (e)(2)(D) requires a REP to disclose in the PDS that prepaid service is not available to critical care or chronic condition residential customers. The commission appreciates TACAA's concern about the health and safety of the elderly and frail who enroll in prepaid service, but are not classified as critical care or chronic condition. The commission encourages energy assistance agencies to inform their clients about the protections afforded to persons designated as critical care or chronic condition residential customers, and encourage clients who are eligible for such designation to apply for designation.

The commission agrees with Nations Power, Reliant, and the REP Coalition that the rule should provide a process for transitioning a residential customer who becomes critical care or chronic condition while enrolled in prepaid service. Adopted subsection (k) requires a REP to diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The commission agrees with Reliant and the REP Coalition that in the case of an unresponsive critical care or chronic condition residential customer, the REP should be granted the ability to transfer the customer to a postpaid month-to-month product without customer authorization or verification. In order to protect a customer transferred to such a product, adopted subsection (k) requires that the product be a competitively offered one at a rate that is no higher than the applicable POLR rate.

The commission disagrees with Nations Power's request to allow the transfer of an unresponsive customer to the POLR. Sec-

tion 25.43 (relating to Provider of Last Resort (POLR)) does not provide for the transfer of critical care and chronic condition residential customers to POLRs. In addition, §25.43 allows, and is intended to encourage, REPs to volunteer to provide POLR service. On average, critical care and chronic condition residential customers have a much higher rate of nonpayment for electric service than other customers. As a result, allowing REPs to transfer critical care and chronic condition residential customers to POLRs would raise the cost of providing POLR service. This, in turn, would discourage REPs from volunteering to provide POLR service, which would consequently undermine a goal of §25.43.

Proposed Subsection (k)

The REP Coalition did not take a position with respect to prepaid service outside the proposed rule, but instead requested a nine-month implementation timeline for REPs offering prepaid service pursuant to §25.498 to comply with the new requirements. The REP Coalition stated that the six-month effective date in proposed subsection (k) would burden REPs during the summer months and leave fewer resources available to devote to implementation of the new rule. Summer months often require more resources from REPs due to increased customer shopping and high-bill inquiries.

ARM requested a nine-month compliance time frame for REPs' transition from the current §25.498 to the new rule, but stated that the phase-out and discontinuance of financial prepaid products should be immediate. ARM requested that the commission require REPs offering financial prepaid products to immediately notify their customers in writing about the impending discontinuance of their products and allow 60 days for them to switch to an alternative product or REP. ARM stated that such REPs would be given the option to transition customers to a compliant prepaid product, transition customers to a postpaid product, sell the customers pursuant to §25.493, or allow the customer to self-switch to another REP without penalty. ARM stated that it is highly unlikely that a REP would voluntarily choose to transition affected customers to the POLR given that it would jeopardize its REP certificate and limit future opportunities of certain individuals involved.

Young disagreed with ARM, predicting widespread confusion if financial prepaid service customers are stripped of their current product choice, then forced to select a new product and scrape together enough money for a deposit and full month of electricity. Young stated that these customers must then wait to further access prepaid service until the TDUs install and provision an advanced meter at a customers' premises, which could be as late as 2013.

MXenergy, Main Street, the REP Group, and Young supported the commission's intent to eliminate prepaid service without the use of an advanced meter or CPDS, but requested a transition period longer than six months to ensure an orderly transition and larger-scale advanced meter deployment.

dPi, OPUC, MXenergy, Main Street, Nations Power, the REP Group, and Young stated that advanced meters are not scheduled to be fully deployed until mid-to-late 2013. OPUC and MXenergy stated that the commission needs to balance customer protections established in the proposed rule against the availability of prepaid service for those without access to CPDS. dPi, OPUC, the REP Group, and Young requested that the proposed rule tie the transition period and financial prepaid service phase-out date to the TDU's advanced metering system deployment schedule. OPUC expressed concerns regarding the three percent of the residential electric customers currently obtaining prepaid service that may be left without a viable service provider or product should the proposed effective date be adopted. OPUC requested a waiver, or other acknowledgement, a customer could sign to continue under the customer's current prepaid service plan until the date the customer has access to a CPDS or advanced meter. Furthermore, OPUC stated that the effective date should be a function of the actual provisioning of CPDS, rather than an arbitrary timeline.

The REP Group requested a nine-month implementation timeline for REPs offering prepaid service under the proposed rule, and stated that prohibiting service outside of §25.498 after a six-month time period is an unnecessary restraint of customer choice. The REP Group stated that the compliance should be coupled with the installation of an operational advanced meter at the customer location prior to the elimination of any other product offering.

Consistent with their comments on proposed subsection (a), dPi and Young requested that a customer without CPDS or an advanced meter be allowed to continue financial prepaid service until such a device is available. Main Street stated that it makes more sense to require the REPs providing prepaid service to utilize the smart meters once they are available.

Although Nations Power supported CPDS-enabled prepaid service and the sunset of financial prepaid service, it questioned why the proposed rule does not follow more closely the TDU's advanced meter deployment schedule. Nations Power and Main Street cited the prohibitive cost, which must be therefore borne by the customers, of repeatedly installing and removing CPDS as the main obstacles for REPs attempting to offer prepaid service using CPDS without the use of an advanced meter. Main Street stated that REPs do not have the luxury of recovering the amortized cost of CPDS over a 10 to 15 year period as the TDUs are granted for their advanced meter systems.

Nations Power stated that, in order to accomplish a six-month effective date, customers wishing to enroll in a prepaid product who do not currently have advanced meters installed should be able to request on-demand advanced meter installation at their premises. The Joint TDUs opposed Nations Power's request. According to the Joint TDU's, deployment of advance metering systems involve far more than the advanced meter itself, and requires the TDU to install a communications infrastructure to provide the functionality that facilitates prepaid service. Furthermore, an integral part of an advanced metering communication network is other advanced meters that form a "mesh" network to communicate with cell relays and radio towers. An advanced meter installed ahead of the deployment schedule would be isolated and therefore would provide the customer no additional benefits.

The Joint TDUs requested that the effective date take into consideration Project Number 34610, *Implementation Project Relating to Advanced Metering,* and ensure that the necessary functionality associated with the proposed rule be available and sufficiently robust when needed. The Joint TDUs stated that there is a potential impact on their advanced metering systems from the REPs use of interval usage data and home area network functionality.

Commission Response

The commission agrees with ARM and the REP Coalition that a deadline for compliance with the new rule that falls in the sum-

mer is undesirable. During the summer, REPs would have fewer resources available to implement the requirements of the new rule. Customers experiencing any transition problems might be additionally burdened by increased electricity usage during the summer months. The commission therefore changes adopted subsection (l) to require compliance with the new rule by October, 1, 2011.

The commission agrees, in part, with dpi, Main Street, MXenergy, Nations Power, OPUC, the REP Group, and Young that the transition period should be tied to the availability of an advanced meter or REP owned CPDS at the customer's premises. The provision of prepaid service using the capability of a CPDS is superior to financial prepaid service. The use of a CPDS greatly reduces inaccuracies in the consumption data used to charge customers. Without the use of a CPDS, a REP offering (financial) prepaid service charges its customer based on estimated usage, which often requires subsequent, substantial true-up charges or credits to the customer. Nevertheless, a substantial number of customers currently take financial prepaid service, which indicates that it is a desired service in the absence of CPDS. As a result, the commission changes the rule to require the use of CPDS enabled prepaid service, but as discussed above concerning subsection (a), allows customers enrolled in a financial prepaid service on October 1, 2011 to continue service until an advanced meter is installed and provisioned to provide service to the customer. This change allows a REP to provide financial prepaid service to a current customer until an advanced meter can be used to provide service to the customer, but does not allow a REP to enroll new financial prepaid service customers after October 1, 2011. In addition, beginning October 1, 2011, the commission concludes that once a customer is served using CPDS, financial prepaid service to the customer should be prohibited, and the REP should rely on the actual usage data provided by the CPDS rather than an estimate of usage.

The commission agrees with the Joint TDUs that Nations Power's request for on-demand deployment of advanced meters would not provide additional customers access to CPDS-enabled prepaid service due to the complexities of the advanced meter communication network required in addition to the physical meter.

With respect to the Joint TDUs' comments related to Project Number 34610, *Implementation Project Relating to Advanced Metering,* the commission has taken that project into consideration in adopting the new rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In addition to the changes discussed above, the commission makes other changes to the rule to clarify its intent.

16 TAC §25.498

The repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §17.004, which directs the commission to establish and enforce retail customer protection standards, including protection from unfair, misleading, deceptive, or anticompetitive practices; the right to have bills presented in a clear, readable format and easy-to-understand language; and the right of low-income customers to have access to bill payment assistance programs designed to reduce uncollectible amounts; PURA §39.001, which adopts a policy that competition in the sale of electricity is consistent with the public interest and directs the commission to use competitive, rather than regulatory methods, to achieve this policy; and PURA §39.101, which requires customer safeguards, including the right to safe, reliable, and reasonably priced electricity; protection against service disconnections in extreme weather emergencies or in cases of medical emergency; bills presented in a clear format and in a language readily understandable by customers; accuracy of meter reading and billing; and other protections necessary to ensure high-quality service to customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001, and 39.101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Public Utility Commission of Texas
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16 TAC §25.498

The new rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §17.004, which directs the commission to establish and enforce retail customer protection standards, including protection from unfair, misleading, deceptive, or anticompetitive practices; the right to have bills presented in a clear, readable format and easy-to-understand language; and the right of low-income customers to have access to bill payment assistance programs designed to reduce uncollectible amounts; PURA §39.001, which adopts a policy that competition in the sale of electricity is consistent with the public interest and directs the commission to use competitive, rather than regulatory methods, to achieve this policy; and PURA §39.101, which requires customer safeguards, including the right to safe, reliable, and reasonably priced electricity; protection against service disconnections in extreme weather emergencies or in cases of medical emergency; bills presented in a clear format and in a language readily understandable by customers; accuracy of meter reading and billing; and other protections necessary to ensure high-quality service to customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001, and 39.101.

§25.498. Prepaid Service.

(a) Applicability. This section applies to retail electric providers (REPs) that offer a payment option in which a customer pays for retail service prior to the delivery of service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service to residential or small commercial customers unless it complies with this section. The

following provisions do not apply to prepaid service, unless otherwise expressly stated:

(1) §25.474(f)(3)(G) of this title (relating to Selection of Retail Electric Provider);

(2) §25.479 of this title (relating to Issuance and Format of Bills);

(3) §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and

(4) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1) - (6) of this title.

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) Connection balance--A current balance, not to exceed $75 for a residential customer, required to establish prepaid service or reconnect prepaid service following disconnection.

(2) Current balance--An account balance calculated consistent with subsection (c)(6) of this section.

(3) Customer prepayment device or system (CPDS)--A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption information from a TDU's advanced metering system (AMS). The CPDS may be owned by the REP, and installed by the TDU consistent with subsection (c)(2) - (4) of this section.

(4) Disconnection balance--An account balance, not to exceed $10 for a residential customer, below which the REP may initiate disconnection of the customer's service.

(5) Landlord--A landlord or property manager or other agent of a landlord.

(6) Postpaid service--A payment option offered by a REP for which the customer normally makes a payment for electric service after the service has been rendered.

(7) Prepaid service--A payment option offered by a REP for which the customer normally makes a payment for electric service before service is rendered.

(8) Prepaid disclosure statement (PDS)--A document described by subsection (e) of this section.

(9) Summary of usage and payment (SUP)--A document described by subsection (h) of this section.

(c) Requirements for prepaid service.

(1) A REP shall file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent shall include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), Terms of Service (TOS), and PDS for the service. Except as provided in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.

(2) A CPDS that relies on metering equipment other than the TDU meter shall conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

(4) A CPDS shall not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS shall be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU shall protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

(5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic communications. The means by which the REP will communicate required information to a customer shall be described in the TOS and the PDS.

(A) A REP shall communicate time-sensitive notifications required by paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile phone, or electronic means.

(B) A REP shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP shall provide these public service notices to its customers by electronic communication, or by other acceptable mass communication methods, as approved by the commission.

(6) A REP shall calculate the customer's current balance by crediting the account for payments received and reducing the account balance by known charges and fees that have been incurred, including charges based on estimated usage as allowed in paragraph (11)(E) of this subsection.

(A) The REP may also reduce the account balance by:

(i) estimated applicable taxes; and

(ii) estimated TDU charges that have been incurred in serving the customer and that, pursuant to the TOS, will be passed through to the customer.

(B) If the customer's balance reflects estimated charges and taxes authorized by subparagraph (A) of this paragraph, the REP shall promptly reconcile the estimated charges and taxes with actual charges and taxes, and credit or debit the balance accordingly within 72 hours after actual consumption data or a statement of charges from the TDU is available.

(C) A REP may reverse a payment for which there are insufficient funds available or that is otherwise rejected by a bank, credit card company, or other payor.

(D) If usage sent by the TDU is estimated or the REP estimates consumption according to paragraph (11)(E) of this subsection, the REP shall promptly reconcile the estimated consumption and associated charges with the actual consumption and associated charges within 72 hours after actual consumption data is available to the REP.

(7) A REP shall:

(A) on the request of the customer, provide the customer's current balance calculated pursuant to paragraph (6) of this subsection, including the date and time the current balance was calculated and the estimated time or days of paid electricity remaining; and

(B) make the current balance available to the customer either:

(i) continuously, via the internet, phone, or an in-home device; or

(ii) within two hours of the REP's receipt of a customer's balance request, by the means specified in the Terms of Service for making such a request.

(C) communicate to the customer the current price for electric service calculated as required by §25.475(g)(2)(A) - (E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);

(D) provide a warning to the customer at least one day and not more than seven days before the customer's current balance is estimated by the REP to drop to the disconnection balance;

(E) provide a confirmation code when the customer makes a payment by credit card, debit card, or electronic check. A REP is not required to provide a confirmation code or receipt for payment sent by mail or electronic bill payment system. The REP shall provide a receipt showing the amount paid for payment in person. At the customer's request, the REP shall confirm all payments by providing to the customer the last four digits of the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received;

(F) ensure that a CPDS controlled by the REP does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When the REP receives notice that a customer has chosen a new REP, the REP shall take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions; and

(G) refund to the customer or an energy assistance agency, as applicable, any unexpended balance from the account within ten business days after the REP receives the final bill and final meter read from the TDU.

(i) In the case of unexpended funds provided by an energy assistance agency, the REP shall refund the funds to the energy assistance agency and identify the applicable customer and the customer's address associated with each refund.

(ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP shall communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP shall refund the balance within ten business days.

(8) Nothing in this subsection limits a customer from obtaining a SUP.

(9) The communications provided under paragraph (7)(A) - (D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, shall be provided in English or Spanish, at the customer's election.

(10) A REP shall cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.

(11) A REP shall not:

(A) tie the duration of an electric service contract to the duration of a tenant's lease;

(B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

(C) require a connection balance in excess of $75 for a residential customer;

(D) require security deposits for electric service; or

(E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.

(12) A REP providing service shall not charge a customer any fee for:

(A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:

(i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or

(ii) bill the deposit to the customer.

(B) the removal of equipment; or

(C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.

(13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

(14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.

(d) Customer acknowledgement. As part of the enrollment process, a REP shall obtain the applicant's or customer's acknowledgement of the following statement: "The continuation of electric service depends on your prepaying for service on a timely basis and if your balance falls below (insert dollar amount of disconnection balance), your service may be disconnected with little notice. Some electric assistance agencies may not provide assistance to customers that use prepaid service." The REP shall obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title.

(e) Prepaid disclosure statement (PDS). A REP shall provide a PDS contemporaneously with the delivery of the contract documents to a customer pursuant to §25.474 of this title and as required by subsection (f) of this section. A REP must also provide a PDS contemporaneously with any advertisement or other marketing materials not addressed in subsection (f) of this section that include a specific price or cost for prepaid service. The commission may adopt a form for a PDS. The PDS shall be a separate document and shall be at a minimum written in 12-point font, and shall:

(1) provide the following statement: "The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.";

(2) inform the customer of the following:

(A) the connection balance that is required to initiate or reconnect electric service;

(B) the acceptable forms of payment, the hours that payment can be made, instructions on how to make payments, any requirement to verify payment and any fees associated with making a payment;

(C) when service may be disconnected and the disconnection balance;

(D) that prepaid service is not available to critical care or chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);

(E) the means by which the REP will communicate required information;

(F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;

(G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement "If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it."; and

(H) an itemization of any non-recurring REP fees and charges that the customer may be charged.

(3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.

(f) Marketing of prepaid services.

(1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages, and electronic media other than Internet websites. If the advertisement includes a specific price or cost, the advertisement shall include in a manner that is clear and conspicuous to the intended audience:

(A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;

(B) the following statement, if applicable: "Utility fees may also apply and may increase the total amount that you pay.";

(C) the maximum fee per payment transaction that may be imposed by the REP; and

(D) the following statement: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP)." If the REP's phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP shall provide the PDS and EFL to a person who requests standardized information for the product.

(2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through Internet websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. In addition to meeting the requirements of §25.474(d)(7) of this title, a REP shall include the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. For electronic communications, the PDS and EFL may be provided through a hyperlink.

(3) This paragraph applies to outbound telephonic solicitations initiated by the REP. A REP shall disclose the following:

(A) information required by paragraph (1)(A) - (C) of this subsection;

(B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;

(C) the means by which the REP will communicate required information; and

(D) the following statement: "You have the right to review standardized documents before you sign up for this product." The REP shall provide the PDS and EFL to a person who requests standardized information for the product.

(4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP shall provide the applicant or customer a reasonable opportunity to read the PDS.

(g) Landlord as customer of record. A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

(1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP shall provide to the TDU the name, service and mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

(2) The REP shall treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(h) Summary of usage and payment (SUP).

(1) A REP shall provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP shall be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the TOS and PDS provided to the customer. For purposes of the SUP, a billing cycle shall conform to a calendar month.

(2) A SUP shall include the following information:

(A) the certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;

(C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;

(D) the dates and amounts of payments made during the period covered by the summary;

(E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;

(F) an itemization of non-recurring charges, including returned check fees and reconnection fees;

(G) the average price for electric service for each calendar month included in the SUP. The average price for electric service shall reflect the total of all fixed and variable recurring charges, but not including state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and shall be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent; and

(H) if applicable, a statement that indicates the customer is receiving or has received during the usage summary period the LITE-UP Discount, pursuant to §25.454 of this title (relating to Rate Reduction Program).

(3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to identify the charge, and such term and its definition shall be easily located on the REP's website and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP shall not exceed the amount of the TDU charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's SUP.

(A) Advanced metering charge--A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge--A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor--A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty--A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge--A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement--A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee--A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment--A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax--Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) System Benefit Fund--A non-bypassable charge approved by the Public Utility Commission, not to exceed 65 cents per megawatt-hour, that funds the low-income discount, one-time bill payment assistance, customer education, commission administrative expenses, and low-income energy efficiency programs.

(K) TDU Delivery Charges--The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(L) Transmission Distribution Surcharges--One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.

(M) Transition Charge--A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(4) If the REP includes any of the following terms in its SUP, the term shall be applied in a manner consistent with the definitions, and such term and its definition shall be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge--A charge assessed during each billing cycle of service without regard to the customer's demand or energy consumption.

(B) Demand Charge--A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period during the billing cycle.

(C) Energy Charge--A charge based on the electric energy (kWh) consumed.

(5) Unless a shorter time period is specifically requested by the customer, information provided shall be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.

(6) In accordance with §25.472(b)(1)(D) of this title, a REP shall provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and shall not charge the agency for the SUP.

(i) Deferred payment plans. A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans shall be confirmed in writing by the REP to the customer.

(1) The REP shall place a residential customer on a deferred payment plan, at the customer's request:

(A) when the customer's current balance reflects a negative balance of $50 or more during an extreme weather emergency, as defined in §25.483(j)(1) of this title, if the customer makes the request within one business day after the weather emergency has ended; or

(B) during a state of disaster declared by the governor pursuant to Texas Government Code §418.014 if the customer is in an area covered by the declaration and the commission directs that deferred payment plans be offered.

(2) The REP shall offer a deferred payment plan to a residential customer who has been underbilled by $50 or more for reasons other than theft of service.

(3) The REP may offer a deferred payment plan to a customer who has expressed an inability to pay.

(4) The deferred payment plan shall include both the negative current balance and the connection balance.

(5) The customer has the right to satisfy the deferred payment plan before the prescribed time.

(6) The REP may require that:

(A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or

(B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deferred amount paid in installments. The REP shall inform the customer of the right to pay the remaining deferred balance by reducing the deferred balance by five equal monthly installments. However, the customer can agree to fewer or more frequent installments. The installments to repay the deferred balance shall be applied to the customer's account on a specified day of each month.

(7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP shall not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.

(8) The REP may apply a switch-hold while the customer is on a deferred payment plan.

(9) A copy of the deferred payment plan shall be provided to the customer.

(A) The plan shall include a statement, in clear and conspicuous type, that states, "If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."

(B) If a switch-hold will apply, the plan shall include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(C) If the customer and the REP's representative or agent meet in person, the representative shall read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.

(D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but shall not include a finance charge.

(E) The plan shall include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.

(F) The plan shall state the total amount to be paid under the plan.

(G) The plan shall state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount.

(10) The REP shall not charge the customer a fee for placing the customer on a deferred payment plan.

(11) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

(j) Disconnection of service. As provided by subsection (a)(4) of this section, §25.483(b)(2)(A) and (B), (d), (e)(1) - (6), and the definition of extreme weather in §25.483(j)(1) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.

(1) Prohibition on disconnection. A REP shall not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance on a weekend day or during any period during which the mechanisms used for payments specified in the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483 of this title, in the county in which the service is provided.

(2) Initiation of disconnection. A REP may initiate disconnection of service when the current balance falls below the disconnection balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(D) of this section; or when a customer fails to comply with a deferred payment plan, but only if the REP provided the customer a timely warning pursuant to subsection (i)(7) of this section. A REP may initiate disconnection if the customer's current balance falls below the disconnection balance due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.

(3) Pledge from electric assistance agencies. If a REP receives a pledge, letter of intent, purchase order, or other commitment from an energy assistance agency to make a payment for a customer, the REP shall immediately credit the customer's current balance with the amount of the pledge.

(A) The REP shall not initiate disconnection of service if the pledge from the energy assistance agency (or energy assistance agencies) establishes a current balance above the customer's disconnection balance or, if the customer has been disconnected, shall request reconnection of service if the pledge from the energy assistance agency establishes a current balance for the customer that is at or above the customer's connection balance required for reconnection.

(B) The REP may initiate disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's disconnection balance in the case of a currently energized customer, or the customer's connection balance if the customer has been disconnected for falling below the disconnection balance.

(4) Reconnection of service. Within one hour of a customer establishing a connection balance or any otherwise satisfactory correction of the reasons for disconnection, the REP shall request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service. The REP's payment mechanism may include a requirement that the customer verify the payment using a card, code, or other similar method in order to establish a connection balance or current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.

(k) Service to Critical Care Residential Customers and Chronic Condition Residential Customers. A REP shall not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP shall not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP shall diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP shall not charge the customer a fee for the transition, including an early termination or disconnection fee.

(2) If the customer is unresponsive, the REP shall transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(l)(2)(A) of this title (relating to Provider of Last Resort (POLR)). The REP shall provide the customer notice that the customer has been transferred to a new product and shall provide the customer the new product's Terms of Service and Electricity Facts Label.

(l) Compliance period. No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a "settlement provisioned meter," as that term is defined in Chapter 1 of the TDU's tariff for retail delivery service, or using a REP-controlled collar or meter shall comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter shall comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.

(m) Transition of Financial Prepaid Service Customers. A REP may continue to provide a financial prepaid service (i.e., one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a financial prepaid service shall be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer shall be notified by the REP that the customer's current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP shall provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the customer's current prepaid service. The customer shall be notified that the customer will be moved to a new prepaid service, and the REP shall transmit an EFL and PDS to the customer with the notification, if the customer does not choose another service or REP.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2011.

TRD-201101593
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.163

The Texas Department of Public Safety (the department) adopts amendments to §15.163, concerning Amnesty, Incentive and Indigency Programs. This section is adopted without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11558).

Adoption of amendments to §15.163 is necessary to remove the inclusion of future surcharges in the Amnesty and Indigency Programs. The department has determined that the inclusion of future surcharges in these programs would require extensive computer programming that would delay the current implementation strategy. Removal of future surcharges from the Amnesty and Indigency Programs allowed implementation of the Amnesty Program on January 17, 2011, and implementation of the Indigency Program is scheduled to begin in May 2011. Additional information regarding the department's Driver Responsibility Surcharge Program is available online at www.txsurchargeonline.com or by telephone at 1-877-207-3170.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §708.157(a), which authorizes the department to establish a periodic amnesty program for holders of a driver's license on which a surcharge has been assessed for certain offenses; and Texas Transportation Code, §708.157(c), which requires the department to establish an indigency program for holders of a driver's license on which a surcharge has been assessed for certain offenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201101572
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.35

The Texas Department of Public Safety (the department) adopts amendments to §35.35, concerning Standards of Service. This section is adopted without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1796).

The amendments are necessary to comply with statutory requirements of Texas Occupations Code, §1702.288(e).

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2011.

TRD-201101573
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.187

The Texas Department of Public Safety (the department) adopts new §35.187, concerning Renewal Applications. This section is adopted without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1797).

The new rule is intended to clarify and articulate the Private Security Board's current interpretation of the Texas Occupations Code, Chapter 1702's requirements relating to renewal applications and clarifies for renewal applicants and department staff the documents necessary for application. The rule also authorizes the submission of electronic fingerprints, the use of proof of identification issued by other states, and requires documentation of work authorization from non-resident alien applicants.

No comments were received regarding the adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201101574
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 17, 2011
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For further information, please call: (512) 424-5848

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SUBCHAPTER N. COMPANY LICENSE QUALIFICATIONS

37 TAC §35.222

The Texas Department of Public Safety (the department) adopts new §35.222, concerning Qualifications for Locksmith Company License. This section is adopted without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1798).

The new rule is intended to articulate the Private Security Board's guidelines relating to the experience requirements for licensure as a locksmith company, as authorized by Texas Occupations Code, §1702.115.

No comments were received regarding the adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201101575

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER U. LOCKSMITH

37 TAC §35.311

The Texas Department of Public Safety (the department) adopts amendments to §35.311, concerning Exemptions. This section is adopted without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1799).

The amendments to this rule are intended to clarify the scope of the statutory exemption for those involved in the repossession of property who perform locksmith services and who would otherwise be regulated under the Private Security Act. The need for such a rule was recognized by the Office of the Attorney General, in Attorney General Opinion No. GA-0275.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.85

The Texas Department of Transportation (department) adopts amendments to §1.85, concerning Department Advisory Committees. The amendments to §1.85 are adopted without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1650) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted rule creates a strategic research program advisory committee that gives advice and recommendations to the department on the selection of strategic research and the selection of appropriate research entities, including but not limited to, universities, research institutions, or consultants to carry out that research. The purpose of the rule is to ensure that the selection of research topics is done in an objective manner by obtaining input from the committee, which is made up of individuals with private sector finance or international experience or knowledge of the transportation field.

New §1.85(a)(6) creates the TxDOT Strategic Research Program Advisory Committee.

Section 1.85(a)(6)(A) describes the purpose of the committee, which is to advise and make recommendations to the department regarding the selection of strategic research topics relating to transportation challenges the department is likely to face over the next 30 years. This subparagraph also provides that the Texas Transportation Commission (commission) will appoint the members of the committee and describes the types of individuals who may sit on the committee. They are people from various industries with expertise or knowledge applicable to the transportation field.

Section 1.85(a)(6)(B) describes the duties of the TxDOT Strategic Research Program Advisory Committee, which are to advise and make recommendations to the department on the selection of strategic research topics and the selection of appropriate research entities, including, but not limited to, universities, research institutions, or consultants to carry out the research.

Section 1.85(a)(6)(C) authorizes the committee to appoint a liaison for specific research projects. If appointed, the liaison will periodically meet with the researchers hired for a particular project and report progress back to the committee.

Section 1.85(a)(6)(D) describes the manner of reporting by the committee to the department. The rule requires the committee to report its advice and recommendations to the executive director or the executive director's designee, as well as to report to the commission when requested to do so.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which authorizes the commission to create the advisory committees it considers necessary.

CROSS REFERENCE TO STATUTE

None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101597

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 19, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 463-8683

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CHAPTER 7. RAIL FACILITIES
SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

43 TAC §§7.80 - 7.88

The Texas Department of Transportation (department) adopts new §7.80, Purpose, §7.81, Definitions, §7.82, Program Standard, §7.83, System Safety Program Plan, §7.84, System Security Plan, §7.85, Reviews, §7.86, Accident Notification and Corrective Action Plans, §7.87, Deadlines, and §7.88, Admissibility; Use of Information, all concerning the department's safety oversight of rail fixed guideway systems, and all to be contained in a new 43 TAC Chapter 7, Subchapter E, Rail Fixed Guideway System State Safety Oversight Program. New §§7.80 - 7.88 are adopted without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 750) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

The department adopts new Subchapter E in conjunction with the adoption of amendments to §31.2, §31.3 and §31.48 and repeal of §§31.60 - 31.63, concerning the department's safety oversight of rail fixed guideway systems. The primary purpose of these actions is to move rules pertaining to the department's oversight of rail fixed guideway systems from 43 TAC Chapter 31, Public Transportation, to 43 TAC Chapter 7, Rail Facilities, in recognition that the department's Rail Division, established in December of 2009, has responsibility for the oversight program.

New Subchapter E retains the substance of Chapter 31, Subchapter F, while separating the subsections of §31.61, Rail Transit Agency Responsibilities, into new sections to improve clarity and readability. Nonsubstantive changes and additions using the language of Chapter 31, Subchapter F sections are made to improve clarity, correct internal citations, and conform to statutory requirements.

New §7.80, Purpose, carries forth the language from current 43 TAC §31.60, Purpose, without any changes.

New §7.81, Definitions, carries forth from current 43 TAC §31.3 definitions of terms used in the sections governing the department's oversight of rail transit agencies. The definition of "security" from current §31.3(68) is revised to conform to the definition found at 49 C.F.R. §659.5. A definition of "passenger," also taken from 49 C.F.R. §659.5, is added to improve the rules' clarity.

New §7.82, Program Standard, references and draws attention to the State Safety and Security Oversight Program Standard, which the department has developed and distributed in accordance with the Federal Transit Administration's rules at 49 C.F.R. §659.15.

New §7.83, System Safety Program Plan, carries forth the language from current §31.61(a), System safety program plan and current §31.61(e), Hazard management process.

New §7.84, System Security Plan, carries forth the language from current §31.61(b), System security plan.

New §7.85, Reviews, carries forth the language from current §31.61(c), Annual reviews, and current §31.61(d), Internal safety and security reviews.

New §7.86, Accident Notification and Corrective Action Plans, carries forth the language from current §31.61(f), Accident notification and current §31.61(g), Corrective action plans. The reference to the Director of the Public Transportation Division is replaced with a reference to the Director of the Rail Division.

New §7.87, Deadlines, carries forth the language from current §31.62, Deadlines, with corrections to the internal rule citations and changes intended to clarify that, as provided by the current §31.61(b)(1), a rail transit agency's system safety program plan and security program plan are two separate documents.

New §7.88, Admissibility; Use of Information, carries forth the language from current §31.63, Disclosure of Information, with changes intended to conform the rule to Transportation Code, §455.005(c) and (e). Specifically, the phrase, "an investigative or security report," is replaced with the phrase, "the data collected and the report of any investigation conducted by the department or contractor acting on behalf of the department, or any part of a system security plan or safety program plan that concerns security for the system." Additionally, the reference to "the department" is changed to "the state."

In new §§7.83 - 7.86, in carrying forth the language from current §31.61, the phrase, "[t]he rail transit agency" at the beginning of the rule sections or subsections is changed to "each rail transit agency," to clarify that each rail transit agency is subject to the rules.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which provides for the oversight of rail fixed guideway systems by the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101598
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 19, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER M. TRAFFIC SAFETY PROGRAM

43 TAC §§25.901 - 25.903, 25.906

The Texas Department of Transportation (department) adopts amendments to §25.901, Purpose, §25.902, Definitions, §25.903, Scope, and §25.906, Participation, all concerning the traffic safety program. The amendments to §§25.901 - 25.903 and §25.906 are adopted without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 755) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

In November 2007 the Texas Transportation Commission (commission) ordered the department to develop an internal compliance program (ICP) designed to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law and departmental policies. Since that date the commission has taken action to discourage fraudulent and illegal activity by certain persons who receive financial assistance from or contract with the department by requiring them to adopt and enforce ethics and compliance programs. Those requirements now apply to transportation corporations (43 TAC §15.92(c)), Regional Mobility Authorities (43 TAC §26.56), entities receiving funds from the department for toll facilities (43 TAC §27.53), and entities receiving funds from the department for public transportation (43 TAC §31.39).

The new provision expands the use of that concept to require an entity that receives Texas Traffic Safety Program Funds to have and enforce compliance with an internal ethics and compliance program. Texas Traffic Safety Program Funds are awarded under traffic safety program contracts and traffic safety program agreements. A traffic safety program contract is a contract between the department and another state agency for the procurement of goods or services for a traffic safety project. A traffic safety program agreement is a contract between the department and another state agency, a college, university, local government, public or private for-profit or nonprofit organization, or individual for the implementation of a traffic safety project.

The amendments to §§25.901 - 25.903 change "undesignated head" and associated references to "this subchapter" to conform to currently used language. No substantive change is made to the sections.

The amendments to §25.906, Participation, redesignate the current wording as subsection (a) and add a new subsection (b). Traffic safety staff who were formerly part of the department's district offices are now part of the Traffic Operations Division. Amendments to paragraphs (1) and (2) combine the language to reflect current department organization and the current practice for proposal submission to the department. Subsequent paragraphs are renumbered. New subsection (b) requires an entity to adopt and enforce an internal ethics and compliance program that satisfies the requirements of 43 TAC §10.51 (Internal Ethics and Compliance Program) in order to be eligible to receive traffic safety funds. The change is applicable only for grant agreements entered into after January 1, 2012.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101599
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 19, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 463-8683

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CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) adopts amendments to §31.2, Organization, §31.3, Definitions, and §31.48, Project Oversight, and the repeal of Subchapter F, Rail Fixed Guideway System State Safety Oversight Program, §§31.60 - 31.63, all concerning the department's safety oversight of rail fixed guideway systems. The amendments to §§31.2, §31.3, and §31.48 and the repeal of §§31.60 - 31.63 are adopted without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 758) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS

The department adopts the amendments to §31.2, §31.3, and §31.48 and repeal of §§31.60 - 31.63 in conjunction with its adopted new Subchapter E, Rail Fixed Guideway System State Safety Oversight Program, of 43 TAC Chapter 7. The primary purpose of these actions is to move rules pertaining to the department's oversight of rail fixed guideway systems from 43 TAC Chapter 31, Public Transportation, to 43 TAC Chapter 7, Rail Facilities, in recognition that the department's Rail Division, established in December of 2009, has responsibility for the oversight program.

Amendments to §31.2(4) remove the rail oversight function from the Public Transportation Division's responsibilities, as this function is now performed by the Rail Division. Subsequent paragraphs in §31.2 are renumbered.

Amendments to §31.3, Definitions, remove definitions of terms that are no longer used in Chapter 31 and redesignate the definitions appropriately.

Amendments to §31.48(b) remove paragraph (7) related to the Rail Transit Agency Report reporting requirement from the Public Transportation Division, as this function is now performed by the Rail Division. Subsequent paragraphs in §31.48 are renumbered.

Subchapter F, composed of §31.60, Purpose, §31.61, Rail Transit Agency Responsibilities, §31.62, Deadlines, and §31.63, Disclosure of Information, Rail Fixed Guideway System State Safety

Oversight Program, is repealed. The requirements of that subchapter are simultaneously adopted as new sections in 43 TAC Chapter 7. This reflects the shift of the responsibility for rail safety from the department's Public Transportation Division to the Rail Division.

COMMENTS

No comments on the proposed amendments and repeals were received.

SUBCHAPTER A. GENERAL

43 TAC §31.2, §31.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which provides for the oversight of rail fixed guideway systems by the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101600
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 19, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 463-8683

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SUBCHAPTER D. PROGRAM ADMINISTRATION

43 TAC §31.48

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which provides for the oversight of rail fixed guideway systems by the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101601
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 19, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 463-8683

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SUBCHAPTER F. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

43 TAC §§31.60 - 31.63

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which provides for the oversight of rail fixed guideway systems by the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2011.

TRD-201101602
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 19, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 463-8683

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.474(e)(7)

LETTER OF AUTHORIZATION

REP name and license number: _____

Applicant billing name: _____

Applicant billing address: _____

Applicant service address: _____

City, state, zip code: _____

ESI ID, if available: _____

If applicable, name of individual legally authorized to act for customer and relationship to applicant: _____

Telephone number of individual authorized to act for applicant: _____

____By initialing here, I acknowledge that I have read and understand the terms of service for the product for which I am enrolling.

____By initialing here, I acknowledge that I understand that the price I am agreeing to is ____cents per kWh, the term of service that I am agreeing to is _____, that I will be required to pay a deposit in the amount of $_____in order to enroll, that I prefer to receive information from my REP in English/Spanish (circle one), and that there is a penalty for early cancellation of _____as specified by the terms of service.

____By initialing here and signing below, I am authorizing (name of new REP) to become my new retail electric provider and to act as my agent to perform the necessary tasks to establish my electric service account with (name of new REP). This authorization to establish or switch my provider of electric service extends to the following locations (list each service address):

_____

_____

I have read and understand this Letter of Authorization and the terms of service that describe the service I will be receiving. I am at least eighteen years of age and legally authorized to select or change retail electric providers for the service address(s) listed above.

Signed: _____ Date:_____

~~**You have the right to review and, in the case of a switch request, rescind the terms of service within three federal business days, after receiving the terms of service, without penalty. You will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission before your electric service is switched to the REP.**~~

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 13, 2011, through April 27, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council website. The notice was published on the website on May 4, 2011. The public comment period for this project will close at 5:00 p.m. on June 3, 2011.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Brownsville; Location: The project is located on the Brownsville Ship Channel (BSC), on the north side of Ostos Road, immediately east of Rio Grande Shredding Company, in Brownsville, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Palmito Hill, Texas. Project Description: The applicant proposes to dredge an area along the BSC for a vessel berth for a commercial recycling facility and construct a dock/bulkhead with backfill. Approximately 4 acres would be filled behind the proposed bulkhead for the project, impacting 1.32 acres of seagrass, 2.05 acres of mangroves, and 0.63 acre of high marsh wetlands. Dredging in front of the bulkhead would deepen 9.06 acres of open water and 0.02 acre of seagrass area to a depth of -44 feet MLT. Approximately 500,000 cubic yards of material would be dredged and placed either onsite or in a previously authorized Dredged Material Placement Area (DMPA) within the Port of Brownsville. Dredging would be by both mechanical and hydraulic methods. Uplands on the site would be cleared of brush to allow development of the site. CMP Project No.: 11-0349-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00253 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201101641
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 3, 2011

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Comptroller of Public Accounts

Notice of Intent to Amend Contract

Pursuant to Chapter 403 and Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the following notice of intent to amend and renew a major consulting services contract with Hewitt Associates, LLC, as follows:

The contract with Hewitt Associates, LLC, is amended, extended and renewed for not-to-exceed $300,000.00 per year. The new term of the contract is from August 27, 2008, through August 31, 2012.

The original notice of request for proposals was published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3670) (RFP #185a).

The contractor provides consulting and technical advice and assistance to the Comptroller and the Texas Prepaid Higher Education Tuition Board in the ongoing administration of the Texas Prepaid Tuition Program (TTF I), the Texas Tuition Promise Fund (formerly known as the Texas Tomorrow Fund II), and the Texas College Savings and Lonestar 529 Plans.

TRD-201101610
William Clay Harris
General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 29, 2011

♦ ♦ ♦

Notice of Request for Applications

Pursuant to Chapters 403, 447 and 2305, Texas Government Code; and the State Energy Plan (SEP) and related legal authority and regulations, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces this Request for Applications (RFA #AF-G1-2011) and Notice of Funding Availability up to $1,679,757.63 in grant funding and invites applications from eligible interested public entities for grant funds to transition vehicle fleets to alternative fuels and hybrid-electric vehicles; convert existing vehicles to alternative fuels and/or provide necessary refueling capabilities for the Alternative Fuel Initiatives Grant Program of the State Energy Conservation Office (SECO). Eligible entities must be a city, county or public school and applications must include twenty percent (20%) match of total project costs. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made

under the terms of the RFA, Grantee will be expected to begin performance of the grant agreement on or about June 17, 2011, or as soon thereafter as practical.

Contact: For general questions about these instructions or the application form, please submit your question in writing to William Clay Harris, Assistant General Counsel, Contracts, via facsimile to: (512) 463-3669. The RFA will be published after 10:00 am Central Time (CT) on Friday, May 13, 2011 and posted on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, May 13, 2011. The application and sample grant agreement will be posted on the following website shortly thereafter at: http://www.seco.cpa.state.tx.us/funding/.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address (Issuing Office), not later than 2:00 p.m. (CT) on Friday, May 20, 2011. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to the attention of Mr. Harris and must be signed by an official of the entity. On or about Thursday, May 26, 2011, or as soon thereafter as practical, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered to the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on Friday, June 3, 2011. Late Applications will not be accepted under any circumstances; Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the criteria outlined in the grant application and instructions for this RFA. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to execute a grant agreement on the basis of this notice or the distribution of any RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFA.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - May 13, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - May 20, 2011, 2:00 p.m. CT; Official Responses to Questions posted - May 26, 2011, or as soon thereafter as practical; Applications Due - June 3, 2011 2:00 p.m. CT; Grant Agreement Execution - June 17, 2011, or as soon thereafter as practical; Commencement of Project - June 17, 2011, or as soon thereafter as practical.

TRD-201101648
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 4, 2011

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Notice of Request for Applications

Pursuant to Chapters 403, 447 and 2305, Texas Government Code; and the State Energy Plan (SEP) and related legal authority and regulations, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces this Request for Applications (RFA #ISD-G3-2011) and Notice of Funding Availability up to $933,000 in grant funding and invites applications from eligible interested Independent School Districts (ISDs) for grant funds for the ISD Grants Program of the State Energy Conservation Office (SECO). Eligible entities must be an Independent School District (ISD) and applications must include twenty percent (20%) match of total project costs. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of the RFA, Grantee will be expected to begin performance of the grant agreement on or about July 6, 2011, or as soon thereafter as practical.

Contact: For general questions about these instructions or the application form, please submit your question in writing to William Clay Harris, Assistant General Counsel, Contracts, via facsimile to: (512) 463-3669. The RFA will be published after 10:00 am Central Time (CT) on Friday, May 13, 2011 and posted on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, May 13, 2011. The application and sample grant agreement will be posted on the following website shortly thereafter at: http://www.seco.cpa.state.tx.us/funding/.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address (Issuing Office), not later than 2:00 p.m. (CT) on Friday, May 20, 2011. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to the attention of Mr. Harris and must be signed by an official of the entity. On or about Friday, May 27, 2011, or as soon thereafter as practical, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered to the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on Monday, June 6, 2011. Late Applications will not be accepted under any circumstances; Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the criteria outlined in the grant application and instructions for this RFA. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to execute a grant agreement on the basis of this notice or the distribution of any RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFA.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - May 13, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - May 20, 2011, 2:00 p.m. CT; Official Responses to Questions posted - May 27, 2011, or as soon thereafter as practical; Applications Due - June 6, 2011 2:00 p.m. CT; Grant Agreement Execution - July 6, 2011, or as soon thereafter as practical; Commencement of Project - July 6, 2011, or as soon thereafter as practical.

TRD-201101649
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 4, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/09/11 - 05/15/11 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/09/11 - 05/15/11 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 05/01/11 - 05/31/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 05/01/11 - 05/31/11 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-201101640
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 3, 2011

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Texas Education Agency

Notice of Correction: Request for Applications Concerning the Connections 2 Grant Program

The Texas Education Agency (TEA) published request for applications (RFA) #701-11-104 concerning the Connections 2 grant program in the February 18, 2011, issue of the *Texas Register* (36 TexReg 1167).

The TEA is no longer requesting competitive grant applications under RFA #701-11-104. Funds, as authorized by the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind 2001, Title II, Part D, are no longer available for this grant.

Further Information. For clarifying information about the RFA, contact Kathleen Ferguson, Division of Instructional Materials and Educational Technology, TEA, (512) 463-9400.

TRD-201101645
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 4, 2011

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Request for Evidence-Based Alcohol Awareness Programs

Description. The Texas Education Agency (TEA) is notifying organizations that evidence-based alcohol awareness programs may be submitted for review. An evidence-based alcohol awareness program is defined by the Texas Education Code (TEC), §28.002(r), as a program, practice, or strategy that has been proven to effectively prevent or delay alcohol use among students, as determined by evaluations that use valid and reliable measures, and published in peer-reviewed journals. The TEC, §28.002(r), requires the TEA to compile a list of evidence-based alcohol awareness programs. School districts are required to choose a program from the list to use in the district's middle school, junior high school, and high school health curriculum. The list of evidence-based alcohol awareness programs will be made available for school districts and open-enrollment charter schools for the 2011-2012 school year.

Selection Criteria. Organizations will be responsible for submitting materials they wish to have considered for inclusion on the 2011-2012 list of evidence-based alcohol awareness programs. Submitted programs must demonstrate that they meet the state criteria for research-based programs. Evidence-based alcohol awareness programs will be evaluated on the following criteria: theory, hypothesis, and operational relevance; evidence of review in peer-reviewed journals; approach to reducing risk behaviors; reinforcement of interventions over time; use of culturally appropriate and age-appropriate strategies; use of interactive approaches to personalize information and engage students; health goals and related behavioral outcomes; flexibility of implementation model; and quality of teacher resources and professional development. The criteria used to select programs for the 2011-2012 school year are available through the TEA Curriculum Division at (512) 463-9581.

Programs must be submitted to Phyllis Simpson, Texas Education Agency, Room 3-121, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Thursday, June 30, 2011, to be considered for inclusion on the 2011-2012 List of Alcohol Awareness Programs.

TRD-201101646
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 4, 2011

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 2011.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545, and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075

provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: A&T, INCORPORATED dba Gas N Stuff; DOCKET NUMBER: 2011-0291-PST-E; IDENTIFIER: RN101844421; LOCATION: Red Oak, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(b)(2) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground metal components of an underground storage tank (UST) system which is designed or used to convey, contain, or store regulated substances; 30 TAC §334.50(b)(1)(A) and (2)(A) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $12,880; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Allauddin Noorali Momin dba 6-M Grocery; DOCKET NUMBER: 2011-0090-PST-E; IDENTIFIER: RN101183937; LOCATION: Manchaca, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2010-2047-UTL-E; IDENTIFIER: RN104393194; LOCATION: Cypress, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $1,337; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Ascend Performance Materials LLC; DOCKET NUMBER: 2010-1828-AIR-E; IDENTIFIER: RN100238682; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: New Source Review Permit (NSRP) Numbers 38336, PSDTX910, and Number 11, Special Conditions Number 1, 30 TAC §101.20(3) and §116.115(c), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions during Incident Number 142163; Federal Operating Permit Number O2320, Special Terms and Conditions Number 8, NSRP Numbers 8372 and PSD-TX-307A, Special Conditions Number 1, 30 TAC §§101.20(3), 116.115(c), and 122.143(4), and THSC, §382.085(b), by failing to comply with the combined 2.79 tons per year sulfuric acid mist emission rate for incinerator scrubbers 337H1 and 337H2; PENALTY: $33,200; Supplemental Environmental Project offset amount of $13,280 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Clean School Buses; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3420; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Badger Rotary Drilling, LLC dba Badger Oilfield Construction; DOCKET NUMBER: 2011-0317-MLM-E; IDENTIFIER: RN106051758; LOCATION: Breckenridge, Stephens County; TYPE OF FACILITY: oilfield service company; RULE VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to comply with the general prohibition of outdoor burning; 30 TAC §33.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,230; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Holland; DOCKET NUMBER: 2010-1448-MWD-E; IDENTIFIER: RN102075983; LOCATION: Holland, Bell County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010897001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $5,880; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Kingsville; DOCKET NUMBER: 2011-0123-MWD-E; IDENTIFIER: RN101612976; LOCATION: Kleberg County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC, §26.121 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010696001, Permit Conditions 2.g., by failing to prevent an unauthorized discharge; TWC, §26.039(b) and TPDES Permit Number WQ0010696001 Monitoring and Reporting Requirements 7.b.i, by failing to submit noncompliance notifications to the TCEQ regional office within 24 hours of unauthorized discharges; PENALTY: $10,600; Supplemental Environmental Project offset amount of $10,600 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: COMPASS DEVELOPMENT AND CONSTRUCTION, INCORPORATED; DOCKET NUMBER: 2010-2076-WQ-E; IDENTIFIER: RN105938690; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of sediment; PENALTY: $800; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Dang Cong Huynh; DOCKET NUMBER: 2011-0178-PST-E; IDENTIFIER: RN101378099; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the UST system; 30 TAC §334.10(b)(1)(B), by failing to maintain copies of all required records pertaining to the UST system and to make them immediately available for inspection upon request by agency personnel; PENALTY: $8,644; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2011-0281-AIR-E; IDENTIFIER: RN100219955; LOCATION:

Hansford County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2569, Special Terms and Conditions (STC) Number 2.F., by failing to submit an initial notification for Incident Number 146887 not later than 24 hours after the discovery of an emissions event that occurred on October 30, 2010; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2569, STC Number 8., and New Source Review Permit Number 73394, Special Conditions Number 1., by failing to prevent unauthorized emissions during an event that occurred on October 30, 2010; PENALTY: $10,179; Supplemental Environmental Project offset amount of $5,089 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Enbridge Pipelines (Texas Gathering) L.P.; DOCKET NUMBER: 2011-0245-AIR-E; IDENTIFIER: RN105170930; LOCATION: Briscoe, Hemphill County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O-2973, Oil and Gas General Operating Permit Number 514, Site-wide requirements (b)(2), by failing to report all instances of deviations on a deviation report; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: EVERBRITE ENTERPRISES, INCORPORATED dba Don's Short Stop; DOCKET NUMBER: 2011-0115-PST-E; IDENTIFIER: RN102356110; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(13) COMPANY: Fort Worth Transportation Authority; DOCKET NUMBER: 2011-0146-PST-E; IDENTIFIER: RN102029121; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: FOUR STAR, INCORPORATED dba E-Z Stop Groc & Gas; DOCKET NUMBER: 2011-0049-PST-E; IDENTIFIER: RN101499457; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the underground storage tank system; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(15) COMPANY: HoustonAustin Investments, LLC dba Courtesy Shell 4; DOCKET NUMBER: 2011-0111-PST-E; IDENTIFIER: RN102238615; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Invista S.a.r.l.; DOCKET NUMBER: 2010-2078-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: nylon production; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit O-01996, General Terms and Conditions, and Special Terms and Conditions Number 13 and New Source Review Permit Number 1303, Special Condition Number 1; and also by exceeding the volatile organic compound maximum allowable emission rate at the Number 1 Vent Stack, Unit ID PE-20; PENALTY: $14,800; Supplemental Environmental Project offset amount of $5,920 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: J & C Salvage; DOCKET NUMBER: 2011-0591-WQ-E; IDENTIFIER: RN105999379; LOCATION: Denison, Grayson County; TYPE OF FACILITY: salvage; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: J.O. Haney, Jr., Patricia A. Haney, and Fazzone Construction Company, Incorporated; DOCKET NUMBER: 2011-0067-EAQ-E; IDENTIFIER: RN106020720; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Josh & Josh Incorporated dba TL Food Store; DOCKET NUMBER: 2011-0242-PST-E; IDENTIFIER: RN104459466; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail fuel sales; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank at the facility for releases at a frequency of at least once every month (not to exceed 35 days); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 403-4012; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Jubilee Homes II, Ltd.; DOCKET NUMBER: 2011-0590-WQ-E; IDENTIFIER: RN106093685; LOCATION: Killeen, Bell County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Lanxess Corporation; DOCKET NUMBER: 2011-0038-AIR-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: synthetic rubber production; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c)

and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit Number O-2281, General Terms and Conditions and Special Terms and Conditions Number 11, and New Source Review Permit Numbers 22508 and PSDTX874, Special Conditions Number 6, by failing to maintain a minimum of 95% volatile organic compound removal efficiency for the wastewater steam stripper; 30 TAC §113.100 and §122.143(4), 40 Code of Federal Regulations §63.11(b)(6)(ii), THSC, §382.085(b), and Federal Operating Permit Number O-01391, General Terms and Conditions and Special Terms and Conditions Number 1, by failing to maintain a minimum heat content of 300 British thermal units per standard cubic foot for Flare 1; PENALTY: $8,260; Supplemental Environmental Project offset amount of $3,304 applied to City of Orange Municipal Building Energy Efficiency Project; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Lower Colorado River Authority; DOCKET NUMBER: 2011-0170-MWD-E; IDENTIFIER: RN102077989; LOCATION: Travis County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121, 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013594001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharges of wastewater; TWC, §5.702 and 30 TAC §§21.4, 101.24, and 290.51(a)(3), by failing to pay air inspection fees, consolidated water quality fees, public health service fees, and associated late fees for Fiscal Year 2011; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(23) COMPANY: LYONDELL CHEMICAL COMPANY; DOCKET NUMBER: 2010-1575-IHW-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County; TYPE OF FACILITY: organic chemical manufacturer; RULE VIOLATED: 30 TAC §335.221(a)(6), 40 Code of Federal Regulations §266.102(e)(2)(ii)(A) and §266.104(b)(1) and Hazardous Waste Permit Number 50288, Permit Provision V.I.3.b., by failing to follow permit operating conditions of a Burner and Industrial Furnace unit while hazardous waste was fed to the unit; PENALTY: $0; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 422-8968; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Northampton Municipal Utility District; DOCKET NUMBER: 2011-0026-MWD-E; IDENTIFIER: RN102845989; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010910001 Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010910001 Monitoring and Reporting Requirements Number 1 and Operational Requirements Number 2, by failing to submit a complete discharge monitoring report for the monitoring period ending June 30, 2010; PENALTY: $36,465; Supplemental Environmental Project offset amount of $36,465 applied to Bayou Land Conservancy fka Legacy Land Trust Spring Creek Greenway Project; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Okland Construction Company Incorporated; DOCKET NUMBER: 2011-0592-WQ-E; IDENTIFIER: RN106007537; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: Patriot Resources, Incorporated (Haag 1201 Tank Battery); DOCKET NUMBER: 2010-1968-AIR-E; IDENTIFIER: RN106023914; LOCATION: Midland, Midland County; TYPE OF FACILITY: oil and gas production site; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; 30 TAC §122.130(b) and THSC, §382.054 and §382.085(b), by failing to apply for a Federal Operating Permit; PENALTY: $60,375; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(27) COMPANY: Russell Andrepont dba Russells Texaco; DOCKET NUMBER: 2011-0148-PST-E; IDENTIFIER: RN102957503; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $2,865; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: SALIMA ROHEEN, INCORPORATED dba Willies Mart 3; DOCKET NUMBER: 2011-0153-PST-E; IDENTIFIER: RN102382835; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,950; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: San Antonio Water System; DOCKET NUMBER: 2010-2084-MWD-E; IDENTIFIER: RN103119020; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010137033 and WQ0010137008, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of municipal wastewater into water in the state; PENALTY: $22,500; Supplemental Environmental Project offset amount of $22,500 applied to Texas State University River Systems Institute-Continuous Water Quality Monitoring Network; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: TRINITY SO PTN, L.P. dba Trinity Springs Oaks Mobile Home Park; DOCKET NUMBER: 2011-0289-UTL-E; IDENTIFIER: RN101236917; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $194; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Waste Control Specialists LLC; DOCKET NUMBER: 2010-1632-IWD-E; IDENTIFIER: RN101702439; LOCATION: Andrews County; TYPE OF FACILITY: byproduct material disposal facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004857000, Other Requirements Number 16, by failing to comply with permit effluent limits; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

TRD-201101642
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 3, 2011

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Draft April 2011 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2011 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft April 2011 WQMP update may be found on the commission's Web site located at *http://www.tceq.texas.gov/nav/eq/eq_wqmp.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 13, 2011. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *nvignali@tceq.texas.gov.*

TRD-201101637
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 3, 2011

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40256

Application. MedWaste Joint Venture, LLC, 3713 Agnes Street, Corpus Christi, Texas 78405, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40256, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, MedWaste Joint Venture, LLC Corpus Christi Facility will be located approximately 1.3 miles west of Crosstown Expressway (286) and 1.1 miles south of IH37, 78405, in Nueces County. The Applicant is requesting authorization to store, process, and transfer municipal solid waste which includes medical waste. The registration application is available for viewing and copying at the La Retama Central Library at 805 Comanche Street in Corpus Christi and may be viewed online at http://alternativemedwaste.com/registration-application/. The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our website at www.tceq.state.tx.us. Further information may also be obtained from MedWaste Joint Venture, LLC Corpus Christi Facility at the address stated above or by calling Jeff Kuglen at (210) 325-1368.

TRD-201101659

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 4, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 13, 2011.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 13, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Almeda Med Center, Inc. dba Anatolian Trading, Inc. dba Medical Center Shell; DOCKET NUMBER: 2010-0733-PST-E; TCEQ ID NUMBER: RN101382745; LOCATION: 2802 Old Spanish Trail, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store; RULES VIOLATED: 30 TAC §334.8(c)(4)(C), by failing to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form to the agency within 30 days of ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the UST system; PENALTY: $15,076; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: EBAA Iron, Inc.; DOCKET NUMBER: 2004-0505-WQ-E; TCEQ ID NUMBER: RN102518495; LOCATION: 5.5 miles east of Albany, Texas on State Highway 6, Albany, Shackelford County; TYPE OF FACILITY: iron pipe component manufacturing facility; RULES VIOLATED: TWC, §26.014, Texas Health and Safety Code (THSC), §361.032, 30 TAC §305.125(1), Texas Pollution Discharge Elimination System (TPDES) Permit Number TXR05K279, Part III, Section B.(a), and 40 Code of Federal Regulations (CFR) §122.41(i), by failing to allow employees of the commission to conduct an unrestricted inspection of the facility for the purpose of investigating conditions relating to rules and regulations of the commission and TPDES Permit Number TXR05K279; PENALTY: $1,050; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: George Naddour dba Classic Station Shopping Center and Sonia Naddour dba Classic Station Shopping Center; DOCKET NUMBER: 2010-0715-PWS-E; TCEQ ID NUMBER: RN101200368; LOCATION: 921 Farm-to-Market Road 1960 West, Houston, Harris County; TYPE OF FACILITY: shopping center with a public water system; RULES VIOLATED: THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and failing to provide public notification of the failure to sample for the following months: May - December 2008; and January, February, and April - June 2009; and TWC, §5.702 and 30 TAC §290.51(b), by failing to pay all annual Public Health Services fees for 2008 - 2009, including any associated late fees and penalties for TCEQ Financial Administration Account Number 91012164; PENALTY: $5,867; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Mark P. Choate; DOCKET NUMBER: 2010-0526-LII-E; TCEQ ID NUMBER: RN103747309; LOCATION: 4728 Dozier Road, Carrollton, Dallas County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §334.35(d)(2) and (3), by failing to obtain all permits and inspections required to install an irrigation system; PENALTY: $18,105; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Central Office, P.O. Box 13087, Austin, Texas 78711-3087.

(5) COMPANY: Murvaul Water Supply Corporation; DOCKET NUMBER: 2010-1054-PWS-E; TCEQ ID NUMBER: RN101458214; LOCATION: County Road (CR) 1823 off of Farm-to-Market Road 1970, Panola County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(a)(1), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; and 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gpm per connection in the event of the loss of normal power supply; PENALTY: $605; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 363; DOCKET NUMBER: 2010-0615-PST-E; TCEQ ID NUMBER: RN102039039; LOCATION: 333 Lutchner Drive, Orange, Orange County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §26.121(a)(1), by failing to prevent an unauthorized discharge of gasoline and diesel fuel into or adjacent to water in the state; PENALTY: $5,200; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201101636
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 3, 2011

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Edwin Davis; DOCKET NUMBER: 2010-1327-PST-E; TCEQ ID NUMBER: RN101833325; LOCATION: 10103 Tidwell Road, Houston, Harris County; TYPE OF FACILITY: two inactive underground storage tanks (USTs) and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.54(b)(1) and (2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $3,850; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Felipe Posada dba Key Road Subdivision Water Supply; DOCKET NUMBER: 2010-1586-PWS-E; TCEQ ID NUMBER: RN104814447; LOCATION: 4091 Key Road, Bloomington, Victoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A), Texas Health and Safety Code (THSC), §341.033(d), and TCEQ DO Docket Number 2006-1698-PWS-E, Ordering Provision Number 2.a.iv., by failing to collect routine distribution water samples for coliform analysis and failing to provide public notification of the failure to collect routine samples; 30 TAC §290.46(e)(4)(A), THSC, §341.033(a) and TCEQ DO Docket Number 2006-1698-PWS-E, Ordering Provision Number 2.b., by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class "D" or higher license; 30 TAC §290.46(f), (3)(A)(ii)(III), (iii), (iv), and (vi) and TCEQ DO Docket Number 2006-1698-PWS-E, Ordering Provision Number 2.a.i., by failing to maintain a record of water works operation and maintenance activities; 30 TAC §290.121(a) and TCEQ DO Docket Number 2006-1698-PWS-E, Ordering Provision Number 2.a.iii, by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.110(c)(4)(A) and TCEQ DO Docket Number 2006-1698-PWS-E, Ordering Provision Number 2.a.ii., by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees, including late fees, for TCEQ Financial Administration (FA) Account Number 92350055 for Fiscal Year 2010; PENALTY: $88,933; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Jose Eduardo Coronado; DOCKET NUMBER: 2010-1819-LII-E; TCEQ ID NUMBER: RN106013295; LOCATION: 23118 Woodbine Meadows, Hockley, Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to obtain an irrigator license prior to installing an irrigation system; and 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: $996; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Krebs Utilities, Inc. dba Estates Water Corporation; DOCKET NUMBER: 2010-1752-UTL-E; TCEQ ID NUMBER: RN101196897; LOCATION: 2144 Lakeside Drive, Crosby, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §13.1395(b)(2) and 30 TAC §290.39(o)(1) and §291.162(a) and (j), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $436; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Krebs Utilities, Inc. dba Roving Meadows Water System; DOCKET NUMBER: 2010-1835-UTL-E; TCEQ ID NUMBER: RN101268977; LOCATION: 4006 Farm-to-Market (FM) 1942 Road A., Crosby, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §13.1395(b)(2), 30 TAC §290.39(o)(1) and §291.162(a) and (j), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $508; STAFF ATTORNEY: Peipey Tang,

Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Michael Lamendola dba Windsor Custom Homes; DOCKET NUMBER: 2010-0942-WQ-E; TCEQ ID NUMBER: RN105656466; LOCATION: 8315 Lime Creek Road, Travis County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR), §122.26, by failing to obtain authorization to discharge storm water associated with construction activities; and TWC, §26.121, by failing to prevent the unauthorized discharge of sediment adjacent to water in the state; PENALTY: $7,700; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(7) COMPANY: Richard J. Duda; DOCKET NUMBER: 2010-1023-PWS-E; TCEQ ID NUMBER: RN105632529; LOCATION: intersection of FM Road 986 and Four Post Lane, Kaufman County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and failing to provide public notice of the exceedence; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample and failing to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine distribution coliform samples during the months following a total coliform-positive sample and failing to provide public notice of the failure to sample; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and failing to provide public notification of the failure to sample; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 91290050; PENALTY: $3,542; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: The Anglers Lodge, LLC; DOCKET NUMBER: 2010-1232-PWS-E; TCEQ ID NUMBER: RN101243277; LOCATION: Highway 90 West approximately seven miles west of Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine monitoring samples for coliform analysis for the months of February 2008, March 2008, and June 2008 through April 2010, failing to post public notification for failure to collect routine monitoring samples for the months of February 2008, March 2008, and June 2008 through February 2010; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees for TCEQ Financial Administration Account Number 92330012 for Fiscal Year 2010; PENALTY: $15,052; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: Vu-Bui, LLC dba Mai Chi Market; DOCKET NUMBER: 2010-1622-PST-E; TCEQ ID NUMBER: RN10256702; LOCATION: 1016 Alabama, Houston, Harris County; TYPE OF FACILITY: inactive UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2), by failing to provide proper corrosion protection for the UST system; PENALTY: $2,600; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Yetta Hustead dba High Five Bar & Grill; DOCKET NUMBER: 2010-1633-PWS-E; TCEQ ID NUMBER: RN101221240; LOCATION: 6484 County Road 659, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(d)(1)(C)(ii), by failing to measure the free chlorine residual within the distribution system using a test kit that employs the diethyl-p-phenylendiamine (DPD) colorimetric method; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfection residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(K), by failing to provide the well with a casing vent that has an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, and is elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of at least 220 gallons; 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system at all times; 30 TAC §290.121(a) and (b), by failing to provide an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to provide a plant operations manual for operator review and reference; 30 TAC §290.43(e), by failing to ensure that the building that encloses the pressure maintenance facilities remains locked when unattended; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: $1,953; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201101634
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 3, 2011

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an

executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DOs is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 2011.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: STR VENTURES, Inc. dba Ella Food Mart; DOCKET NUMBER: 2010-0911-PST-E; TCEQ ID NUMBER: RN105185946; LOCATION: 903 West Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied or affixed to either the top of the fill tube or to a non-removeable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substance into the tank when the liquid reaches a preset level no higher than 95% capacity level for the tank; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free from liquid or debris; and 30 TAC §115.246(6) and Texas Health and Safety Code, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: $23,730; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201101635
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 3, 2011

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Notice of Water Quality Applications

The following notice was issued on April 22, 2011 through April 29, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

GREENVILLE ELECTRIC UTILITY SYSTEM which operates Greenville Steam Plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004557000, which authorizes the discharge of once through cooling water at a daily average flow not to exceed 111,000,000 gallons per day via Outfall 001. The facility is located approximately 500 yards east of the intersection of State Highway 69 and Farm-to-Market Road 1569, on the west shore of Greenville Reservoir No. 4, approximately 1.8 miles north of the City of Greenville, Hunt County, Texas 75401.

THE CITY OF AUSTIN which operates the City of Austin Municipal Separate Storm Sewer System (MS4) has applied for a renewal of TPDES Permit No. WQ0004705000 to authorize storm water point source discharges to surface water in the state from the City of Austin MS4. The MS4 is located within the corporate boundary (except agricultural lands) of the City of Austin, located in Travis, Hays, and Williamson Counties, Texas, 78610, 78612, 78613, 78617, 78640, 78641, 78645, 78652, 78653, 78660, 78664, 78681, 78701-78705, 78712, 78717, 78719, 78721-78739, 78741, 78742, 78744-78754, and 78756-78759.

OILTANKING HOUSTON LP which operates Oiltanking Houston Terminal, a for hire hydrocarbon and chemical product storage and transfer facility, has applied for a major amendment to TPDES Permit No. WQ0004898000 to authorize the discharge of (a) treated boiler blowdown, treated contact storm water from secondary containment areas for oil tanks, and treated non-contact storm water runoff on an intermittent and flow variable basis via proposed Outfall 002 and (b) contact storm water from secondary containment areas for oil tanks and non-contact storm water runoff on an intermittent and flow variable basis via existing Outfall 003. The facility is located at 15602A Jacintoport Boulevard, approximately 1,500 feet east of the intersection of Jacintoport Boulevard with South Sheldon Road, within the City of Channelview, Harris County, Texas 77015. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF MULESHOE has applied for a major amendment to TCEQ Permit No. WQ0010049001 to authorize an increase in the combined daily average flow from Outfalls 001 and 002 from 580,000 gallons per day to 640,000 gallons per day. The draft permit will authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 205,000 gallons per day via surface irrigation of 78 acres of a golf course via Outfall 001 and a daily average flow not to exceed 435,000 gallons per day via surface irrigation of 240 acres of non-public access agricultural land via Outfall 002. The current permit authorizes the disposal of treated domestic wastewater at a combined daily average flow not to exceed 580,000 gallons per day. The current permit authorizes the discharge of 145,000 gallons per day via surface irrigation of 78 acres of golf course via Outfall 001 and a daily average flow not to exceed 435,000 gallons per day via surface irrigation of 240 acres of non-public access agricultural land via Outfall 002. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and southern disposal site are located approximately 1.5 miles south of the intersection of State Highway 214 and U.S. Highway 84 in Bailey County, Texas 79347. The northern effluent disposal site consists of an agricultural land application site and a golf course land application site which are located approximately 1 mile northeast of the intersection of State Highway 214 and U.S. Highway 84 in Bailey County, Texas 79347.

CITY OF MUENSTER has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010341001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 341,000 gallons per day. The facility is located 800 feet south of the intersection of South Hickory Street and East Eddy Street in the City of Muenster, just north of Brushy Elm Creek in Cooke County, Texas 76252.

CITY OF FRANKSTON has applied for a renewal of TPDES Permit No. WQ0010441001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 12658 Farm-to-Market Road 19, south of the City of Frankston, immediately north of Caddo Creek, and approximately 1,000 feet south and 1,500 feet east of the intersection of State Highway 175 in Anderson County, Texas 75763.

CITY OF MABANK has applied for a renewal of TPDES Permit No. WQ0010579003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 2200 West Main, approximately 1.75 miles west of the intersection of Farm-to-Market Roads 85 and 90, and approximately 3.5 miles southwest of the City of Mabank, in Gun Barrel City, in Henderson County, Texas 75156.

CITY OF WELLS has applied for a renewal of TPDES Permit No. WQ0011196001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 900 feet north of U.S. Highway 69 on the west side of Red Bayou, east of the City of Wells in Cherokee County, Texas 75976.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0011249001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located at 9268 Viterbo Road, about 1,000 feet northeast of West Port Arthur Road and immediately west of Viterbo Road in Jefferson County, Texas 77627.

BEECHWOOD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0011423001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the west shoreline of Toledo Bend Reservoir, approximately 5 miles east of the intersection of State Highway 87 and Farm-to-Market Road 3315 in Sabine County, Texas 75948.

ANGELINA AND NECHES RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011620001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 370,000 gallons per day. The facility is located at 734 Edgewood Circle, approximately 0.6 mile northeast of U.S. Highway 69, approximately 1.5 miles northwest of the City of Lufkin, and 1.9 miles southeast of the intersection of U.S. Highway 69 and Farm-to-Market Road 2021 in Angelina County, Texas 75904.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 26 has applied for a renewal of TPDES Permit No. WQ0012073001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day and add an interim phase for a daily average flow not to exceed 625,000 gallons per day. The facility is located at 1403 Lazy Springs Drive, within the corporate limits of Missouri City, approximately 0.4 mile east of the intersection of Farm-to-Market Road 2234 and Court Road in Fort Bend County, Texas 77459.

CITY OF TIOGA has applied for a renewal of TPDES Permit No. WQ0013199001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located 875 feet west of US Highway 377, approximately 0.6 mile south of the intersection of Farm-to-Market Road 121 and US Highway 377 and adjacent to the Missouri Pacific Railroad in Grayson County, Texas 76271.

TOWN OF OAK RIDGE has applied for a renewal of TPDES Permit No. WQ0013514001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 37,500 gallons per day. The facility is located approximately 1,700 feet south of U.S. Highway 82 and approximately 9,800 feet west of Farm-to-Market Road 678 in Cooke County, Texas 76240.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO 21 has applied for a renewal of TPDES Permit No. WQ0014222001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 13717 Highway 6, approximately 2 miles southeast of the intersection of State Highway 6 and Farm-to-Market Road 521 in Brazoria County, Texas 77583.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our website at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201101658
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 4, 2011

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 28, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Albemarle Corporation; SOAH Docket No. 582-11-0249; TCEQ Docket No. 2009-1515-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforce-

ment action against Albemarle Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201101660
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 4, 2011

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective June 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for Physicians and Certain Other Practitioners and Chemical Dependency Treatment Facilities.

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $4,400 for federal fiscal year (FFY) 2011, with approximately $2,924 in federal funds and $1,476 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $13,964, with approximately $8,130 in federal funds and $5,834 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201101604
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 29, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective July 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for:

Physicians and Certain Other Practitioners,

Durable Medical Equipment, and

Hearing and Audiometric Evaluations

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $1,066,646 for federal fiscal year (FFY) 2011, with approximately $708,894 in federal funds and $357,753 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $4,234,431, with approximately $2,465,286 in federal funds and $1,769,145 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201101605
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 29, 2011

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Community Living Assistance and Support Services (CLASS) waiver program, under the authority of §1915(c) of the Social Security Act. The CLASS waiver program is currently approved for the five-year period beginning September 1, 2009, and ending August 31, 2014. The proposed effective date for the amendment is September 1, 2010.

The CLASS waiver program provides individualized home and community-based services and supports to individuals living on their own home or their families' homes and who meet the requirements for admission to an intermediate care facility for individuals with intellectual disabilities. Individuals also must meet financial eligibility requirements. Services include case management, adaptive aids and medical supplies, habilitation, minor home modifications, nursing services, occupational therapy, physical therapy, speech therapy, specialized therapies, behavioral support services, respite, and transition assistance.

As a result of a legislative request, HHSC identified a cost savings plan to reduce intermediate care facility for persons with intellectual disabilities rates by one percent in September 2010 and by another two percent in February 2011. The individual cost limit for an individual in the CLASS waiver is a percentage of the rate that would be paid for that individual's care in an intermediate care facility for persons with intellectual disabilities. As such, the three percent rate reductions for intermediate care facilities for persons with intellectual disabilities lowered the CLASS waiver individual cost limit by three percent. To ensure no individuals lose their CLASS eligibility as a result of this reduction, the CLASS individual cost limit will be adjusted. This amendment will set the cost ceiling at 200 percent of the institutional average as of August 31, 2010. There will not be a negative impact to the individuals served in the waiver by making this change.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2010, through August 31, 2014. This amendment maintains cost neutrality for waiver years 2010 through 2014.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin,

Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201101661
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: May 4, 2011

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Texas Lottery Commission

Instant Game Number 1321 "Veterans Cash"

The Texas Lottery Commission previously filed for publication Instant Game Number 1321, "Veterans Cash". The document was published in the April 8, 2011, issue of the *Texas Register* (36 TexReg 2264). Sections 2.3.A and 2.3.B are revised, as set forth below, clarifying that a Prize Pack must be claimed at one of the Texas Lottery's Claim Centers or by mail, but cannot be claimed at a Texas Lottery Retailer location. Section 2.3.C, regarding claiming prizes by mail, remains unchanged, as published on April 8, 2011, but is included below for ease of reference. No other sections are affected by this revision.

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of $2.00, $5.00, $10.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Instant Game prize of PRIZE PACK, $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-201101647
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 4, 2011

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Instant Game Number 1333 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1333 is "BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1333 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1333.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, STACK OF BILLS SYMBOL, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $1,000, $3,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1333 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
STACK OF BILLS SYMBOL	MONEY
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $1,000, $3,000 or $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1333), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1333-0000001-001.

K. Pack - A pack of "BREAK THE BANK" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 1333 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any YOUR NUMBERS play symbols to any of the 3 LUCKY NUMBERS play symbols, the player wins the prize for that number. If the player reveals a "stack of bills" symbol, the player wins the prize instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The "MONEY" (auto win) play symbol will never appear more than once on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of $1,000, $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 1333. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1333 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,481,760	10.20
$4	876,960	17.24
$6	241,920	62.50
$8	60,480	250.00
$10	151,200	100.00
$12	181,440	83.33
$20	90,720	166.67
$50	56,070	269.66
$200	10,521	1,437.13
$1,000	315	48,000.00
$3,000	77	196,363.64
$30,000	10	1,512,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1333 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1333, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101650
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 4, 2011

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Instant Game Number 1341 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1341 is "LOTERIA® TEXAS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1341 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1341.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1341 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1341), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1341-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1341 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. No duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning ticket and present it at

one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1341. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1341 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	2,040,000	7.35
$4	480,000	31.25
$7	420,000	35.71
$10	270,000	55.56
$17	240,000	62.50
$20	240,000	62.50
$30	25,000	600.00
$33	12,500	1,200.00
$50	11,875	1,263.16
$80	10,000	1,500.00
$300	7,500	2,000.00
$3,000	223	67,264.57
$33,000	30	500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1341 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1341, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101657
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 4, 2011

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 28, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39353.

The requested amendment is to expand the service area footprint to include the municipality of Farmers Branch, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39353.

TRD-201101629
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2011

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 3, 2011, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Aeon Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 39377.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant's requested SPCOA geographic area is comprised of the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than May 20, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39377.

TRD-201101662
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2011

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 27, 2011, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Taylor County, Texas.

Docket Style and Number: Joint Application of Taylor Telephone Cooperative, Inc. and Southwestern Bell Telephone Company d/b/a AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change in Taylor County. Docket Number 39352.

The Application: The minor boundary amendment is being filed to realign the boundary between the Buffalo Gap exchange of Taylor Telephone Cooperative, Inc., and the Abilene exchange of AT&T Texas. The amendment will transfer a portion of AT&T Texas' serving area to the Buffalo Gap exchange of Taylor Telephone. AT&T Texas has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 23, 2011, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39352.

TRD-201101628
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2011

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on May 2, 2011, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend its Certificate of Convenience and Necessity Boundaries between the Sabina Exchange and Verizon Southwest Boerne Exchange. Docket Number 39372.

The Application: The minor boundary amendment is being filed to realign the boundary between the Sabina exchange of GVTC and the Boerne exchange of Verizon. The amendment will transfer a portion of Verizon's serving area in the Boerne exchange to GVTC's Sabina exchange. Verizon has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 23, 2011, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39372.

TRD-201101643
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2011

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 28, 2011, for an amendment to certificated service area for a service area exception within Irion County, Texas.

Docket Style and Number: Application of Southwest Texas Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Irion County. Docket Number 39355.

The Application: Southwest Texas Electric Cooperative, Inc. (SWTEC) filed an application for a service area boundary exception to allow SWTEC to provide service to a specific customer located within the certificated service area of Concho Valley Electric Cooperative, Inc. (CVEC). CVEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 23, 2011 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39355.

TRD-201101630
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2011

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 29, 2011, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of ten thousand-blocks in the San Antonio rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for San Antonio Rate Center, Docket Number 39370.

The Application: AT&T Texas requested ten thousand-blocks of numbers on behalf of its customer, Bexar County, in the San Antonio rate center. AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than May 20, 2011. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39370.

TRD-201101631
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2011

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 29, 2011, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand-block in the Waco rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for Waco Rate Center, Docket Number 39371.

The Application: AT&T Texas requested one thousand-block of numbers on behalf of its customer, NLASCO, Inc., in the Waco rate center. AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than May 20, 2011. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39371.

TRD-201101632
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2011

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The University of Texas System

Award of Consultant Contract Notification

The University of Texas Health Science Center at Houston ("University"), in accordance with the provisions of Texas Government Code, Chapter 2254, §2254.030, entered into a contract for consulting services (the "Contract") with Deloitte Consulting LLP ("Consultant") as more particularly described in the Invitation for Offer IFO 744-1108 Consultant Services - TOTS (the "Invitation"), published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11131).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide University with a comprehensive feasibility and risk analysis and develop a strategic plan for an Integrated Early Childhood Information Exchange System.

Name and Address of Consultant:

Deloitte Consulting LLP

4922 Sells Drive

Hermitage, Tennessee 37076

Total Value of the Contract:

$1,692,840.00

Contract Dates:

The Contract was executed by Consultant on April 18, 2011, and by University on April 20, 2011, and dated effective April 25, 2011.

Due Dates for Contract Products:

The comprehensive feasibility and risk analysis and development of the strategic plan for an Integrated Early Childhood Information Exchange System shall be completed and delivered to University no later than January 21, 2012.

The term of the Contract shall terminate on January 21, 2012.

TRD-201101607
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: April 29, 2011

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*