

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER G. OTHER ENFORCEMENT ACTIONS

1 TAC §12.100

The Texas Ethics Commission (The Commission) adopts a new rule in Texas Ethics Commission Rules in Chapter 12 (relating to Sworn Complaints). Specifically, the Commission adopts §12.100 to create a new subchapter regarding Informal Notice of Apparent Violation. This rule is adopted without changes to §12.100 of the proposed text as published in the June 19, 2026, issue of the *Texas Register* (51 TexReg 3957). The rule will not be republished.

The Commission did not receive any public comments on this rule.

The rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The adopted new rule affects Subchapter E of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-5800



CHAPTER 16. FACIAL COMPLIANCE REVIEWS AND AUDITS

1 TAC §§16.1, 16.3 - 16.9, 16.12

The Texas Ethics Commission (The Commission) adopts amendments to Texas Ethics Commission Rules in Chapter 16 (relating to Facial Compliance Reviews and Audits). Specifically, the Commission adopts amendments to §16.1 regarding

Definitions; §16.3 regarding Corrected or Amended Report Filed During a Facial Compliance Review, Late fines; §16.4 regarding Additional Documents and Information Submitted in Response to a Facial Compliance Review; §16.5 Commission Initiated Preliminary Review or Audit Resulting from a Facial Compliance Review; §16.6 Notice of Audit Report; §16.7 Supporting Documentation in Response to Audit, Timeliness; §16.8 Complete Audit Report; §16.9 Representation by Attorney; §16.12 Facial Review of Total Amount of Political Contributions Maintained.

These amended rules are adopted without changes to §§16.1, 16.3 - 16.9 and 16.12 of the proposed text as published in the June 19, 2026, issue of the *Texas Register* (51 TexReg 3958). The rules will not be republished.

The Commission did not receive any public comments on these amended rules.

The amended rules are adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The adopted amended rules affect Section 571.069 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (The Commission) adopts amendments to Texas Ethics Commission Rules in Chapter 18 (relating to General Rules Concerning Reports). Specifically, the Commission adopts amendments to §18.31 regarding Adjustments to Reporting Thresholds. These amended rules are adopted without changes to §18.31 of the proposed text as published in the June 19, 2026, issue of the *Texas Register* (51 TexReg 3960) and will not be republished.

The Commission did not receive any public comments on these amended rules.

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064.

The adopted amendments affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 20. REPORTING CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (The Commission) adopts amendments to Texas Ethics Commission Rules in Chapter 20 (relating to Reporting Contributions and Expenditures). Specifically, the Commission adopts amendments to §20.50 regarding Total Political Contributions Maintained; §20.211 regarding Reporting Pledges; §20.220 regarding Additional Disclosure for the Texas Comptroller of Public Accounts; §20.223 regarding Form and Contents of Special Pre-Election Report; §20.227 regarding Contents of Special Session Report; §20.235 regarding Contents of Annual Report; §20.343 regarding Contents of Dissolution Report; §20.577 regarding Reporting Schedule for a Candidate for State Chair; and §20.579 regarding Candidates for County Chair in Certain Counties. The Commission also adopts the amendment with changes to §20.213 regarding Reporting Loans.

These amended rules are adopted with changes to §20.213, this rule will be republished. Adopted without changes to §§20.50, 20.211, 20.220, 20.223, 20.227, 20.235, 20.343, 20.577 and 20.579 of the proposed text as published in the June 19, 2026, issue of the *Texas Register* (51 TexReg 3961). These rules will not be republished.

The Commission did not receive any public comments on these amended rules.

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.50

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amendments affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. REPORTING REQUIREMENTS

1 TAC §§20.211, 20.213, 20.220, 20.223, 20.227, 20.235

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amendments affect Title 15 of the Election Code.

§20.213. Reporting Loans.

(a) Each report must include:

(b) For each person making a loan or loans to the candidate for campaign purposes if the total amount loaned by the person during the reporting period is more than the threshold amount:

(1) the full name of the person or financial institution making the loan;

(2) the address of the person or financial institution making the loan;

(3) the amount of the loan;

(4) the date of the loan;

(5) the interest rate;

(6) the maturity date;

(7) the collateral for the loan, if any; and

(8) if the loan has guarantors:

(A) the full name of each guarantor;

(B) the address of each guarantor;

(C) the principal occupation of each guarantor;

(D) the name of the employer of each guarantor; and

(E) the amount guaranteed by each guarantor.

(c) the total amount of loans accepted during the period for the threshold amount and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for a loan reported under subsection (b) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. REPORTS BY A GENERAL-PURPOSE OR SPECIFIC-PURPOSE COMMITTEE

1 TAC §20.343

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amendments affect Title 15 of the Election Code.

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SUBCHAPTER I. REPORTS BY A CANDIDATE OR A COMMITTEE SUPPORTING OR OPPOSING A CANDIDATE FOR STATE OR COUNTY PARTY CHAIR

1 TAC §20.577, §20.579

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amendments affect Title 15 of the Election Code.

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION SUBCHAPTER F. ACCESS TO INFORMATION

7 TAC §3.112

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §3.112, concerning What Will the Department Charge for Providing Public Information. The adopted repeal implements a recommendation stemming from the Texas Regulatory Efficiency Office's collaborative process aimed at removing unnecessary language and improving rule readability. The repeal is adopted without changes to the proposed text as published in the September 11, 2026, issue of the *Texas Register* (51 TexReg 6257). The repealed rule will not be republished.

The adopted repeal is necessary because rule §3.112 is duplicative and the requirements for public information charges are already established by § 552.261 of the Texas Public Information Act (*Tex. Gov't Code* § 552.261).

The department received no comments regarding the adoption of this repeal.

The adopted repeal is authorized by Texas Finance Code §31.003, which provides that the Commission may adopt rules to implement and clarify Finance Code, Title 3, Subtitle A.

No statute is affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Finance Commission of Texas

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For further information, please call: (512) 475-1327



CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.105

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §5.105, concerning negotiated rulemaking procedures. The adopted repeal implements a recommendation stemming from the Texas Regulatory Efficiency Office's collaborative process aimed at removing unnecessary language and improving rule readability. The repeal is adopted without changes to the proposed text as published in the September 11, 2026, issue of the *Texas Register* (51 TexReg 6258). The repeal will not be republished.

The adopted repeal removes §5.105 in its entirety and will move its text into existing §9.85 through a corresponding pending adoption. As both rules address the same subject--negotiated rulemaking procedures for Finance Commission agencies--consolidating these rules removes redundancy and places all relevant requirements in one section.

The department received no comments regarding the adoption of this repeal.

The adopted repeal is authorized by Texas Finance Code §12.113, which provides that the Commission by rule shall adopt a policy to encourage the use of negotiated rulemaking procedures.

Texas Finance Code, §12.113 is affected by the adopted repealed rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §§9.11, 9.20, 9.30, 9.32, 9.34, 9.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to existing rules at 7 Texas Administrative Code (TAC), Part 1, Chapter 9, Subchapter B, §§9.11, 9.20, 9.30, 9.32, 9.34, and 9.37, regarding the Commission's procedures for contested case hearings, appeals, and rulemakings. The adopted rules implement recommendations from the Texas Regulatory Efficiency Office's recommendations aimed at removing unnecessary language and improving the rules' readability. The amended rules are adopted without changes to the proposed text as published in the September 11, 2026, issue of the *Texas*

Register (51 TexReg 6258). The amended rules will not be republished.

The adopted amendment to §9.11 requires the Department to provide a hyperlink to its rules rather than providing a physical copy of the rules. This change will remove an outdated practice that imposes unnecessary printing costs without improving respondent access.

The adopted amendments to §9.32 modernize the rule's language by retitling the section "Remote Hearings" (rather than "Telephone Hearings"), and extending the rule's applicability to hearings held by telephone, videoconference, or other electronic means. Additionally, the amended rule reduces- from 20 minutes to 10 minutes- the time after which the administrative law judge may consider a party to have failed to appear. The adopted amendments also add language to clarify when a person who connects to a remote hearing will be considered to have failed to appear. Lastly, the adopted rule replaces the term "sua sponte" with "on the judge's own motion." The adopted amendments to §9.34 reword and reorganize the section for increased readability, and set the deadlines for exceptions and briefs to be filed to 15 days, in alignment with the deadlines set out in the State Office of Administrative Hearings' rule at 1 TAC §155.507.

The adopted amendments to §§9.20, 9.30, and 9.37 simply improve readability by replacing the Latin legal term "sua sponte" with "on the judge's own motion."

The department received no comments regarding the adoption of these amendments.

These amendments are adopted pursuant to §31.003(a)(5) of the Texas Finance Code, which provides authority for the Commission to adopt rules to facilitate the fair hearing and adjudication of matters before the Banking Commissioner and the Finance Commission.

No statute is affected by the adopted amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Finance Commission of Texas

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SUBCHAPTER D. RULEMAKING

7 TAC §9.85

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to an existing rule at 7 Texas Administrative Code (TAC), Part 1, Chapter 9, Subchapter D, §9.85, regarding negotiated rulemaking procedures. The adopted rule implements a recommendation stemming from the Texas Regulatory Efficiency Office's collaborative process aimed at removing unnecessary language and improving rule readability. The amended rule is

adopted without changes to the proposed text as published in the September 11, 2026, issue of the *Texas Register* (51 TexReg 6261). The amended rule will not be republished.

The adopted rule incorporates the language of former 7 TAC §5.105, the repeal of which is pending, into new subsection §9.85(f). As both rules address the same subject of negotiated rulemaking procedures for Finance Commission agencies, consolidating these rules removes redundancy and places all relevant requirements into one section.

The department received no comments regarding the adoption of this amendment.

The adopted rule is authorized by Texas Finance Code, §12.113, which provides that the Commission by rule shall adopt a policy to encourage the use of negotiated rulemaking procedures.

Texas Finance Code, §12.113 is affected by the adopted repealed rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts amendments to §83.3001 (relating to Definitions), §83.3002 (relating to Filing of New Application), §83.3003 (relating to Transfer of License; New License Application on Transfer of Ownership), §83.3006 (relating to Updating Application and Contact Information), §83.3007 (relating to Processing of Application), §83.3008 (relating to Relocation of Licensed Offices), §83.3009 (relating to License Inactivation or Voluntary Surrender), §83.3011 (relating to Applications and Notices as Public Records), §83.4002 (relating to License Term, Renewal, and Expiration), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), and §83.5004 (relating to Files and Records Required); and adopts the repeal of §83.3004 (relating to Change in Form or Proportionate Ownership), §83.3005 (relating to Amendments to Pending Application), and §83.4001 (relating to License Display) in 7 TAC Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

The commission adopts the amendments to §§83.3001, 83.3006, 83.3007, 83.3008, 83.4002, and 83.5004, and adopts

the repeal of §§83.3004, 83.3005, and 83.4001, without changes to the proposed text as published in the September 4, 2026, issue of the *Texas Register* (51 TexReg 5955). These rules will not be republished.

The commission adopts the amendments to §§83.3002, 83.3003, 83.3009, 83.3011, and 83.4003 with changes to the proposed text as published in the September 4, 2026, issue of the *Texas Register* (51 TexReg 5955). These rules will be republished.

Summary of Adopted Rule Changes

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses. In general, the purposes of the adopted rule changes to 7 Chapter 83, Subchapter B are to implement the OCCC's transition to the NMLS licensing system for credit access businesses, to remove rule text that is no longer necessary, and to make other technical corrections and updates related to licensing and recordkeeping. The adopted rule changes also incorporate recommendations from the Texas Regulatory Efficiency Office.

Adopted amendments and repeals in §83.3001 through §83.4003 implement the OCCC's transition to the NMLS system. The Nationwide Multistate Licensing System (NMLS) is an online platform used by state financial regulatory agencies to manage licenses, including license applications and renewals. NMLS was created in 2008. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 explains that the purposes of NMLS include increasing uniformity and reducing regulatory burden. SAFE Act, 12 USC §5101. Each state currently uses NMLS for licensing individual RMLOs, and states are increasingly using the system to license consumer finance companies. NMLS is managed by the Conference of State Bank Supervisors and is subject to ongoing modernization efforts and enhancements.

Under Texas Finance Code, §14.109, the OCCC is authorized to require use of NMLS for certain license and registration types, including credit access business licenses under Texas Finance Code, Chapter 393. The OCCC has begun a phased process of migrating license groups from ALECS (the OCCC's previous licensing platform) to NMLS. In 2026, a majority of licensed credit access businesses completed their transition to NMLS. The OCCC believes that moving to NMLS will improve the user experience of the licensing system and promote efficiency. This is particularly true for entities that hold licenses with the OCCC and with another state agency, because these entities will be able to manage multiple licenses through NMLS.

Adopted amendments to §83.3001 replace the term "principal party" with "key individual" to be consistent with the terminology in NMLS.

Adopted amendments to §83.3002 streamline license application requirements and refer to instructions that the OCCC has published through NMLS. Currently, §83.3002 contains a detailed list of license application items, with requirements that differ based on the applicant's entity type (e.g., partnership, corporation, limited liability company). In addition to ensuring consistency with NMLS, the amendments significantly simplify §83.3002, and ensure that an applicant can easily read and understand the rule. Since the proposal, additional changes have been made to §83.3002(b) and (c). First, a change has been made at §83.3002(b)(3) to simplify the text referring to a business operating plan. Second, a change has been made at §83.3002(b)(5) to simplify the rule by consolidating management

and ownership information into a single organizational chart (rather than listing both a management chart and organizational chart). Third, changes have been made at §83.3002(b)(12) and §83.3002(c)(4) to correct references to §83.3003 and add a missing period. An amendment at §83.3002(d) explains that the OCCC may require additional, clarifying, or supplemental information to determine that the applicant meets statutory licensing requirements. An amendment at §83.3002(e) explains that an applicant must immediately amend a pending application if any information changes requiring a materially different response, replacing language that will be removed from §83.3006(a), as explained later in this preamble.

Adopted amendments to §83.3003 streamline and simplify requirements for transfer of ownership and license transfer to ensure consistency with NMLS. In §83.3003(b)(3), amendments to the definition of "transfer of ownership" streamline the definition of "transfer of ownership" while maintaining references to changes in management or control of a business, and also maintaining current exclusions relating to changes in proportionate ownership and relocations of transactions. Going forward in NMLS, the OCCC anticipates that changes to the identities of a single company's owners will be handled through the advance change notice process, as explained later in this preamble in the discussion of adopted amendments to §83.3006. An amendment to §83.3003(c) explains that to transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. Since the proposal, a change has been made to §83.3003(e)(5)(C) to specify that a request for permission to operate must include an acknowledgment that upon approval, the transferor will immediately "request surrender or inactivation" of its license, ensuring consistency with the revised surrender process in §83.3009. Other amendments throughout §83.3003 ensure consistency with this revised transfer process. Since the proposal, changes have been made throughout §83.3003 to use the phrase "of this section" after each reference to another subsection of §83.3003, in order to comply with *Texas Register* guidelines.

The adoption repeals §83.3004, which currently requires licensees to notify the OCCC of changes to organizational form, mergers resulting in creation of a new or different surviving entity, and certain changes in proportionate ownership. Going forward in NMLS, the OCCC anticipates that these changes will be handled through the advance change notice process, as explained later in this preamble in the discussion of adopted amendments to §83.3006. Therefore, §83.3004 will no longer be necessary.

The adoption repeals §83.3005, which currently requires license applicants to provide supplemental information to the OCCC on request. Because of the adopted amendment at §83.3002(d) explaining the OCCC may require additional information, §83.3005 will no longer be necessary.

Adopted amendments to §83.3006 consolidate and simplify the types of required notifications that a licensee must provide to the OCCC when a change occurs. In §83.3006(a), the amendments list advance change notices. NMLS uses the term "advance change notice" to refer to notifications that must be provided on or before the date of the change, in accordance with an agency's written instructions. As explained in the adopted amendments to §83.3006(a), this includes changes to the legal name of the entity, the legal status of the entity, names of key individuals, branch location addresses, and other listed items. In

§83.3006(b), amendments list notifications that are required not later than 30 days after the licensee has knowledge of the information. These items include bankruptcies of the licensee or its direct owners, because a bankruptcy is a significant event that may impact the financial responsibilities of a licensee and its ability to address compliance issues. These items also include notifications of data breaches affecting at least 250 Texas residents. Data security is a crucial issue. The OCCC's 2027-2031 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." Recent data breaches affecting financial institutions highlight the urgent need for vigilance in this industry. The notification amendments will help ensure that the OCCC can monitor this crucial issue.

Adopted amendments to §83.3007 revise license application processing requirements to be consistent with NMLS and with the statute at Texas Finance Code, §393.607. An amendment at §83.3007(d) explains that a license application may be considered withdrawn if a complete application has not been filed within 30 days after a notice of deficiency has been sent to the applicant, consistent with how license applications are processed in NMLS. Amendments at §83.3007(d) specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §393.607(b). An amendment removes current §83.3007(f), regarding disposition of fees, because this language unnecessarily duplicates language in §83.3010 (regarding Fees). Amendments to §83.3007(f) clarify the 30-day target period to process a license application and the 30-day target period to set a requested hearing on an application denial, in accordance with Texas Finance Code, §393.607(c)-(d).

Adopted amendments to §83.3008 revise requirements for notice of relocation of licensed offices. The adoption removes current §83.3008(a), because the requirement to notify the OCCC of a branch office relocation is being moved to §83.3006(a) as an advance change notice, as discussed earlier in this preamble.

Adopted amendments to §83.3009 revise requirements for license surrender. The amendments explain that a licensee may surrender a license by providing the information required by the OCCC's written instruction, in accordance with Texas Finance Code, §393.617, and that a surrender is effective when the OCCC approves the surrender. Since the proposal, a change has been made to the last sentence of §83.3009(c) to specify that an approved surrender will result in cancellation of the license.

Adopted amendments to §83.3011 remove a sentence about the return of original documents filed with a license application. This sentence is no longer necessary because the OCCC no longer accepts original paper documents with a license application. Since the proposal, a change has been made to correct the name of the Texas State Library and Archives Commission in §83.3011.

The adoption repeals §83.4001, which describes the requirement to display a license. This section is unnecessary because it duplicates the statutory license display requirement at Texas Finance Code, §393.610. Going forward, licensees may comply with the statutory license display requirement by printing out company license information from NMLS.

Adopted amendments to §83.4002 revise requirements for license renewal. An amendment at §83.4002(b) explains that a licensee must maintain an active account in NMLS (or a designated successor system) in order to maintain and renew a license, and that renewal may be unavailable to a licensee that fails to maintain an active account. An amendment at §83.4002(d) specifies that the OCCC may send notice of delinquency of an annual assessment fee electronically through NMLS or by email to the primary company contact, removing current language that refers to a "master file" address under the OCCC's current system.

Adopted amendments to §83.4003 would revise criminal history review requirements to explain that the OCCC will obtain criminal history record information through NMLS and to use the term "key individual." Since the proposal, a change has been made to replace the term "principal parties" with "key individuals" in §83.4003(a).

Adopted amendments to §83.5004 update recordkeeping requirements for credit access businesses. Currently, provisions throughout §83.5004 refer to both paper and electronic recordkeeping systems. Amendments throughout §83.5004 simplify and rearrange this language to refer to electronic recordkeeping systems before referring to paper systems, based on licensees' increasing use of electronic systems rather than paper systems. Amendments at §83.5004(5) merge provisions related to websites and advertising, and include common language for the retention period, in order to make these provisions more concise and easier to understand. Additional amendments to §83.5004 relate to data security recordkeeping. An amendment at §83.5004(10)(A) specifies that licensees must maintain written policies and procedures for an information security program to protect consumers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. Another amendment at §83.5004(10)(B) specifies that if a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4. An amendment at §83.5004(11) specifies that licensees must maintain data breach notifications to consumers and to the Office of the Attorney General under Texas Business & Commerce Code, §521.053. As discussed earlier in this preamble, data security is a crucial issue. The adopted data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

Public Comments

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC received one precomment from an association of credit access businesses, which supported the proposed changes. The OCCC appreciates the thoughtful input of stakeholders.

The OCCC received no official comments on the proposed rule changes after publication in the *Texas Register*.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.3001 - 83.3003, 83.3006 - 83.3009, 83.3011

Statutory Authority and Affected Provisions

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the rule changes relating to the NMLS transition are adopted under Texas Finance Code, §14.109,

which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 393. The rule changes relating to the NMLS transition are also adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14, which includes Texas Finance Code, §14.109.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.3002. Filing of New Application.

(a) NMLS. In order to submit a credit access business license application, an applicant must submit a complete, accurate, and truthful license application through NMLS (or a successor system designated by the OCCC), using the current form prescribed by the OCCC. An application is complete when it conforms to the OCCC's written instructions and necessary fees have been paid. The OCCC has made application checklists available through NMLS, outlining the necessary information for a license application.

(b) Company license application. A company license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A company form including the name of the applicant entity, contact information, registered agent, location of books and records, bank account information, legal status, and responses to disclosure questions.

(2) An individual form for each key individual, including name, contact information, and responses to disclosure questions.

(3) A business operating plan.

(4) An organizational chart showing the applicant's management divisions, officers, and ownership information for any affiliates, subsidiaries, and parent companies.

(5) A statement of experience detailing prior experience relevant to the license sought.

(6) A certificate of formation or other formation document.

(7) Any assumed names or other trade names that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(8) Franchise tax account information showing that the applicant entity is authorized to do business in Texas.

(9) Financial statement and supporting financial information complying with generally accepted accounting principles (GAAP). The OCCC may require a bank confirmation to confirm account balance information with financial institutions.

(A) If a financial statement is unaudited, then it should be dated no earlier than 90 days before the application date.

(B) If a financial statement is audited, then it should be dated no earlier than one year before the application date.

(10) The applicant's credit services organization certificate issued by the Texas Secretary of State.

(11) The name, physical address, and phone number of each third-party lender organization with which the applicant contracts to provide services or from which the business arranges extensions of consumer credit, as described by Texas Finance Code, §393.604(a)(4).

(12) For a license application involving a transfer of ownership, documentation of the transfer of ownership as described by

§83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(c) Branch license application. A branch license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A branch form including the address of the branch, contact details, and business activities.

(2) Any assumed name or other trade name that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(3) A financial statement and supporting financial information, as described by subsection (b)(9) of this section.

(4) For a license application involving a transfer of ownership, documentation of the transfer of ownership as described by §83.3003 of this title.

(d) Supplemental information. The OCCC may require additional, clarifying, or supplemental information or documentation as necessary or appropriate to determine that an applicant meets the licensing requirements of Texas Finance Code, Chapter 393.

(e) Amendments to pending application. An applicant must immediately amend a pending application if any information changes requiring a materially different response from information provided in the original application.

§83.3003. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers ownership of the entity. If a transfer of ownership occurs, the transferee must submit a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership that results in the exact same owners still owning the business (unless an owner that previously held less than 10% obtains an interest of 10% or more). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(C) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. To transfer a license, a transferor may request surrender after the OCCC approves the transferee's new license application on transfer of ownership. A license transfer is complete when the OCCC has approved the transferee's new license application and the transferor's license surrender.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete new license application on transfer of ownership in accordance with subsection (e) of this section. A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately request surrender or inactivation of its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) of this section includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e) of this section.

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e) of this section, by the deadline described by subsection (d) of this section, then the transferee may engage in business as a credit access business. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §83.3007(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing credit access business activity under a license, the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) of this section, then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§83.3009. License Inactivation or Voluntary Surrender.

(a) Inactivation of active license. A licensee may cease operating under a credit access business license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed

by the OCCC. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.3010 of this title (relating to Fees), or the license will expire as described by §83.4002 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.3010 of this title.

(c) Voluntary surrender of license. Subject to §83.4005(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may request voluntary surrender of a license by providing the information required by the OCCC's written instructions. A surrender is effective when the OCCC approves the surrender. An approved surrender will result in cancellation of the license.

§83.3011. Applications and Notices as Public Records

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §441.190, §441.191 and §552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives Commission under Government Code, §441.187. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §83.3004, §83.3005

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the rule changes relating to the NMLS transition are adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 393. The rule changes relating to the NMLS transition are also adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14, which includes Texas Finance Code, §14.109.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

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DIVISION 4. LICENSE

7 TAC §83.4001

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the rule changes relating to the NMLS transition are adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 393. The rule changes relating to the NMLS transition are also adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14, which includes Texas Finance Code, §14.109.

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7 TAC §83.4002, §83.4003

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the rule changes relating to the NMLS transition are adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 393. The rule

changes relating to the NMLS transition are also adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14, which includes Texas Finance Code, §14.109.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.4003. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its key individuals. The OCCC will obtain criminal history record information through NMLS. The OCCC will continue to receive information on new criminal activity reported after the license application has been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its key individuals;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensee; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its key individuals. If the applicant or a key individual has been convicted of an offense described by subsections (c)(1) or (f)(1) of this section, this reflects negatively on an applicant's char-

acter and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its key individuals if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3);

(2) errors or incomplete information in the license application;

(3) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(4) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

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DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5004

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the rule changes relating to the NMLS transition are adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 393. The rule changes relating to the NMLS transition are also adopted under Texas Finance Code, §11.304, which authorizes the commission

to adopt rules to ensure compliance with Texas Finance Code, Chapter 14, which includes Texas Finance Code, §14.109.

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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 C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.58

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.58, relating to Contracts for Electric Energy Storage, with changes to the proposed text as published in the April 17, 2026, issue of the *Texas Register* (51 TexReg 2465). The new rule implements Public Utility Regulatory Act (PURA) §35.153 as enacted Senate Bill (SB) 415 during the Texas 87th Regular Legislative Session. The new rule establishes an avenue for transmission and distribution utilities (TDUs) to contract with power generation companies (PGCs) for electric energy storage facility (EESF) capacity to ensure reliable service to distribution customers. This section is adopted under Project Number 59523. The rule will be republished.

The commission received written comments on the proposed section from American Energy Works (AEW), Sierra Club, Texas Electric Cooperatives, Inc. (TEC), CenterPoint Energy Houston Electric, LLC. (CEHE), the City of Houston (Houston), Solar Energy Industries Association (SEIA), Oncor Electric Delivery Company, LLC. (Oncor), Texas-New Mexico Power Company (TNMP), Hill Country Energy Sub-Regional Planning Commission (HCESRPC), Electric Reliability Council of Texas (ERCOT), AEP Texas, Inc. (AEP), Hunt Energy Network, LLC. (Hunt Energy), Texas Retail Electric Provider Coalition (REP Coalition), Geometric Strategies, LLC. (Geometric Strategies), Protect Our Piney Woods Coalition (Piney Woods Coalition), and Conservative Texans for Energy Innovation (CTEI), Scott Brownfield, Joanna Friebele, and Claire Nybro.

A public hearing on the proposed new section was held at commission offices on June 25, 2026. The following commenters attended the hearing and provided comments: Kristina Richie, Lon Musgrove, Sandra Musgrove, Cecilia King, Marsha Bauman, Danny Holcomb, David Nash, Terri Hall (Texas TURF and Liberty in Action), Molly Voght (AEW), Nancy White (Secure the Grid), Don Brown (Secure the Grid), Rich Paces (HCESRPC), Linda Bullard (HCESRPC), and Cyrus Reed (Sierra Club). To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

Comments on Questions 1 and 2

Along with the proposed rule, the commission issued two questions for stakeholder comment.

Question 1

"Should a transmission and distribution utility's recovery of costs under these contracts be limited to comprehensive base-rate cases or also be permitted in interim proceedings? If the latter, which interim proceedings are appropriate for recovery of these costs?"

Sierra Club, TEC, and Houston recommended limiting the review of EESF costs to comprehensive base-rate proceedings, emphasizing greater scrutiny of reasonableness and necessity. Sierra Club additionally recommended that, if interim cost recovery is permitted, the commission clarify the distribution cost recovery factor (DCRF) filing requirements.

CEHE, TNMP, AEP, Hunt Energy, and Geometric Strategies supported recovery of costs through interim mechanisms such as DCRF proceedings. Geometric Strategies asserted that EESFs should receive cost recovery treatment that is comparable to traditional distribution infrastructure.

The REP Coalition opposed the creation of a new cost recovery mechanism and recommended that any costs be recovered through existing proceedings and established implementation schedules. The REP Coalition also requested that TDUs be required to provide retail electric providers (REPs) with a 45-day notice before approved rates become effective.

Commission Response

The commission agrees with commenters that supported the recovery of EESF contract costs through existing interim cost recovery mechanisms, such as the DCRF. This is consistent with the ratemaking treatment of other distribution-related costs under the commission's substantive rules, and PURA §35.153 does not explicitly limit the recovery of EESF contract costs to base rate proceedings or provide for the creation of a new cost recovery mechanism. Further, all EESF contract costs will still undergo a prudence review during the TDU's next comprehensive base rate proceeding.

The commission confirms for the REP Coalition that, under adopted §25.58(h)(1)(A), a TDU is required to provide REPs with a 45-day notice before approved rates become effective.

Question 2

"Should PURA §35.153(i) be read to require all contracts to satisfy relevant accounting standards for a capital lease or finance lease, or should those criteria only be required if a transmission and distribution utility seeks recovery plus a reasonable return on the payments under the contract?"

Sierra Club and Hunt Energy supported the requirement for all EESF contracts to satisfy capital or finance lease accounting standards.

CEHE, AEP, CTEI, SEIA, and Geometric Strategies opposed the requirement for all EESF contracts to satisfy capital lease or finance lease accounting standards and asserted that these accounting standards should only apply to an EESF contract for which a TDU seeks a return.

Commission Response

The commission agrees with commenters that asserted that capital lease and finance lease accounting standards should only apply to an EESF contract for which a TDU seeks a return on contract payments. PURA §35.153(i) specifies that a TDU's contract for EESF capacity must satisfy capital lease and finance lease accounting standards to be eligible for a reasonable return on contract payments. However, it does not require a TDU to seek a return on EESF contract payments, nor does it specify that all EESF contracts are required to satisfy capital lease and finance lease accounting standards to be eligible for a return of contract costs. Because the statutory language establishes lease accounting criteria for only those EESF contracts that a TDU seeks a return on contract payments, the commission modifies proposed §25.58(g)(1)(A) and (B) accordingly.

Comments on Proposed §25.58

General Comments

Prohibition on Eminent Domain

AEW, Scott Brownfield, Joanna Friebele, Claire Nybro, and the Piney Woods Coalition asserted that utility infrastructure projects could threaten private landowners and sought stronger protection against eminent domain. The Piney Woods Coalition requested that the commission include in adopted §25.58 an explicit prohibition on eminent domain or projects that are developed under the rule.

Commission Response

The commission declines to address eminent domain or include an explicit prohibition on eminent domain for EESF projects in adopted §25.58 as recommended by commenters. This rule governs contracts for electric energy storage capacity under PURA §35.153 and does not grant, modify, or revoke any eminent-domain authority that may exist under other law. A TDU's eminent-domain authority is governed by applicable statutes, not commission rule, and is outside the scope of this rulemaking.

Opposition to §25.58

Multiple commenters expressed opposition to proposed §25.58 and recommended that the commission not adopt the rule, asserting that EESFs do not generate electricity, offer only short-duration, unreliable discharge capabilities as compared to dispatchable generation resources, and are likely to increase ratepayer costs. These commenters included AEW, Scott Brownfield, Joanna Friebele, Claire Nybro, the Piney Woods Coalition, HCESRPC, Kristina Richie, Lon Musgrove, Sandra Musgrove, Cecilia King, Marsha Bauman, Danny Holcomb, Terri Hall, Molly Voght, Nancy White, Don Brown, Rich Paces, and Linda Bullard.

Commission Response

The commission declines to not adopt §25.58 as recommended by commenters because PURA §35.153 explicitly requires the

commission to adopt rules to implement the section, including by establishing the maximum amount of electric energy storage capacity allotted to each TDU and by establishing criteria for the commission's approval of TDU contracts for EESF capacity. The commission further notes that PURA §35.153 and §25.58 are designed to mitigate the stated concerns. The leasing of EESF capacity under this rule is limited to 100 MWs across the entire ERCOT region, is only authorized if it is a more cost effective solution than traditional distribution facilities, and may only be used for reliability purposes. EESF capacity leased to a TDU under this section is not authorized to be used for resource adequacy purposes or to supplant or compete with generation resources.

Additional Opportunities for Local Input

Scott Brownfield, Claire Nybro, Linda Bullard, Rich Paces, and HCESRPC requested that the commission provide additional opportunities for local input under §25.58.

Commission Response

The commission declines to provide additional opportunities for local input under §25.58 as recommended by commenters because it is unnecessary. Any person with a standing to intervene in a contested case proceeding under §22.103, relating to Standing to Intervene, may file a motion to intervene in that proceeding under §22.103, relating to Motions to Intervene. This provides an opportunity for the requested local input.

Responsibility for EESFs

TNMP recommended that the commission modify proposed §25.58 to clarify that a PGC that owns and operates an EESF retains compliance responsibility related to the operation and performance of the EESF. TNMP asserted that this clarification would "better align [§25.58] with market structure and ensure that liability and regulatory accountability rest with the appropriate entity."

Commission Response

The commission declines to adopt the proposed revision because proposed §25.58 sufficiently distinguishes between the respective roles of the TDU and the PGC. Further, PURA §35.153(h) explicitly states that a contract under this section "must require a [PGC] that owns or operates an [EESF] to reimburse a [TDU] for the cost of an administrative penalty assessed against the utility for a violation caused by the facility's failure to meet the requirements of the agreement." This statutory language expressly contemplates circumstances where an EESF's operational failure could lead to an enforcement action against the TDU. Rather than fully isolating TDUs from responsibility for operational failures, the statute provides a more limited protection from administrative penalties in the form of a contractual protection that can be enforced in civil court.

TDU Discretion

Oncor recommended that the commission confirm in the preamble of the rule that a TDU retains the discretion to choose to pursue, or not to pursue, a contract for EESF capacity under adopted §25.58.

Commission Response

The commission confirms that a TDU may, but is not required to, pursue a contract for EESF capacity under the framework established by adopted §25.58. To further clarify this in the rule, the commission adopts §25.58(b)(1).

EESF Ownership and Purchase

SEIA and CTEI recommended that the commission modify proposed §25.58 to clarify that finance lease treatment of an EESF contract does not constitute a transfer of the EESF's ownership to a TDU, or an option for the TDU to purchase the EESF.

Commission Response

The commission agrees with SEIA and CTEI that the finance lease treatment of an EESF contract under §25.58 does not constitute a transfer of the EESF's ownership to a TDU, nor an option for the TDU to purchase the EESF. To further clarify this in the rule, the commission specifies in adopted §25.58(b)(3) that "Nothing in this section, or a commission order issued under this section, authorizes the ownership of an EESF by a TDU."

Proposed §25.58(b)

Proposed §25.58(b) defines an electric energy storage facility (EESF) as a piece of equipment or a facility in the ERCOT region that is intended to: (1) provide energy or ancillary services at wholesale, including an electric energy storage equipment or facility that is listed on a PGC's registration with the commission or, for an exempt wholesale generator, on the generator's registration with the Federal Energy Regulatory Commission; or (2) provide reliable delivery of electric energy to distribution customers.

The commission removes the definition of "EESF" from the adopted rule, because it did not provide clarity to other provisions in the rule and introduced potential ambiguity as to the relevant use cases addressed by the rule. The commission replaces this definition with a new subsection (b) that clarifies the purpose for which a TDU may contract with a PGC for EESF capacity under the section, as well as limitations on the use of such capacity.

ERCOT recommended that the commission modify the EESF definition under proposed §25.58(b) by removing the language related to energy and ancillary services under proposed §25.58(b)(1) and limiting an EESF to "a piece of equipment or a facility located on the distribution system in the ERCOT region that is intended to provide reliable delivery of electric energy to distribution customers." ERCOT asserted that these modifications would better align adopted §25.58(b) with SB 415, the enacting legislation for PURA §35.153, because SB 415 "added provisions specific to only one purpose of an EESF, related to the delivery of energy to distribution customers."

Commission Response

The commission declines to limit the EESF definition under adopted §25.58(b) to only those equipment and facilities that are located on the distribution system as recommended by ERCOT, because the commission removed the definition from the rule, rendering the recommendation moot.

Proposed §25.58(c)

Proposed §25.58(c) allocates the 100 MW cap on contracted EESF capacity among TDUs based on each utility's ERCOT load-ratio share and allows a TDU to request an update to the allocation methodology or amount up to once per year.

Under proposed §25.58(c), action from both a TDU and the commission is necessary to reflect changes to the TDU's load ratio share and resulting amount of allocated EESF capacity. The commission modifies this provision for ease of administration. Specifically, the commission modifies proposed §25.58(c)(2) to specify that a TDU's allocation of EESF capacity corresponds to its load ratio share on the date it files an application under

subsection (d), rather than on the effective date of the section. This ensures that a TDU's allocation of EESF capacity will remain aligned with the TDU's current load ratio share. The commission accordingly removes the ability for TDUs to petition the commission for periodic changes to the allocation methodology or amount, because it is unnecessary.

CEHE recommended that the commission modify proposed §25.58(c)(2) to allow TDUs to lend and borrow unused allocated EESF capacity. CEHE also recommended that the commission modify proposed §25.58(c)(2) to clarify that a reallocation of EESF capacity will not affect contracts for EESF capacity that were executed prior to the reallocation.

Commission Response

The commission declines to modify proposed §25.58(c)(2) to allow TDUs to lend or borrow unused EESF capacity as recommended by CEHE. PURA §35.153(j) directs the commission to, by rule, establish the "maximum amount" of capacity allotted to each TDU.

Regarding CEHE's comment regarding reallocation's effect on current EESF contracts, the commission's revisions to this subsection render that concern moot. Rather than doing uniform reallocations across TDUs, the adopted rule assesses each TDU's allocation at the time it applies for commission authorization of EESF capacity under adopted §25.58(d). Thus, a TDU's allocation will never automatically drop below its contracted capacity. The only scenario in which a TDU's contracted capacity should fall below its allocated capacity is if its load ratio share falls, and the TDU applies for commission authorization for capacity after an initial authorization expires, while the initial contracts are still in effect. However, in this scenario, the new allocation would only apply to new contracts, per subsection (d) (...a TDU must not enter into, renew, or extend a contract...) and subsection (e) (...may enter into one or more contracts...).

Proposed §25.58(d)

Proposed §25.58(d) requires a TDU to obtain commission approval before contracting for electric energy storage capacity and to demonstrate that the contract is needed for reliability and is a cost-effective alternative to traditional distribution facilities. Proposed §25.58(d) also describes the criteria the commission will consider in evaluating a TDU's application under this subsection.

While proposed §25.58(c)(1) explicitly states that the total amount of EESF capacity reserved by contracts under this section may not exceed 100 MW, the application evaluation criteria under proposed §25.58(d) are insufficient to protect against this outcome. For example, if every TDU enters into EESF contracts for its full allocation amount and a single TDU's load ratio share increases, the proposed evaluation criteria could permit the commission to approve that TDU's application for additional EESF capacity without considering the 100 MW cap. This risk increases under adopted §25.58(c), which ties a TDU's allocation amount to its load ratio share on the date that it files an application under subsection (d).

To ensure that adopted §25.58 complies with the statutory 100 MW allocation cap, the commission modifies the evaluation criteria under proposed §25.58(d)(3)(A) to additionally provide that the commission may consider whether "the requested amount of EESF energy and output capacity exceeds, either by itself or together with existing amounts authorized for all TDUs, 100 MW." The commission recognizes that this could result in a scenario where a TDU experiences an upward adjustment to its load ra-

tio share, and thus its allocation amount, but is prohibited from contracting for its full allocation amount. However, this is an unavoidable consequence of the incongruence between contract durations and load ratio share adjustment timing.

CEHE recommended that the commission modify proposed §25.58(d)(1)(A)(ii)(I) to require applicants to address reliability metrics such as the System Average Interruption Duration Index (SAIDI), System Average Interruption Frequency Index (SAIFI), and outage causes. Houston recommended that the commission modify proposed §25.58(d)(1)(A)(ii)(I) - (III) to require applicants to identify specific substations, feeders, load pockets, affected customers, and expected reductions in outage frequency and duration.

Commission Response

The commission declines to modify proposed §25.58(d)(1)(A)(ii) to require applicants to address reliability metrics, or to identify expected component- or customer-specific benefits, as respectively recommended by CEHE and Houston. Adopted §25.58(d)(1)(A)(ii) requires that a TDU include in an application under adopted §25.58(d) "any necessary supporting documentation" that the requested EESF capacity and authorization length will ensure reliable service to the TDU's distribution customers. If deemed necessary to support its request, a TDU may include in an application documentation related to reliability metrics and other expected benefits. If the TDU does not provide sufficient documentation or a precise enough request to demonstrate the reliability benefit, the commission will not grant the requested capacity. This is sufficient to address CEHE's and Houston's comments.

HCESRPC recommended that the commission modify proposed §25.58(d)(1)(A)(ii)(V) to require a TDU to include a cost-benefit analysis of the safety risks, environmental impacts, wildfire risks, groundwater impacts, and property value impacts of an EESF contract. Similar concerns were raised by Kristina Richie, David Nash, Nancy White, Cecilia King, Terri Hall, Rich Paces, Sandra Musgrove, and Don Brown.

Commission Response

The commission declines to modify proposed §25.58(d)(1)(A)(ii)(V) to require a TDU to include in an application under adopted §25.58(d) a cost-benefit analysis of the safety risks, environmental impacts, wildfire risks, groundwater impacts, and property value impacts of an EESF project as recommended by commenters. The application under adopted §25.58(d) relates to the reservation of electric energy from an EESF by a TDU. It does not authorize the construction or general operation of EESF projects by a PGC. Accordingly, modifying proposed §25.58(d) to require a TDU to provide the requested analysis would be inappropriate both because this rulemaking does not address the construction of EESF projects and because a TDU will neither own nor directly operate an EESF under this rule.

Houston recommended that the commission modify proposed §25.58(d)(1)(A)(ii)(V) to require a TDU to include "a detailed cost-benefit analysis that compares the EESF contract to feasible alternative measures, including traditional distribution facilities, demand-side measures, and other non-storage alternatives, and including sensitivity analyses related to utilization, contract duration and technology risk."

Commission Response

The commission declines to modify proposed §25.58(d)(1)(A)(ii)(V) to require a TDU to include in an application under adopted §25.58(d) a detailed cost-benefit analysis that compares an EESF contract to feasible alternative measures, or that contains specific sensitivity analyses, as recommended by Houston. PURA §35.153(d) specifies that an EESF contract must be more cost-effective than the construction or modification of traditional distribution facilities. It does not specify that an EESF contract must be more cost-effective than other alternative non-storage measures, nor that a TDU must conduct sensitivity analyses to demonstrate cost-effectiveness. The adopted rule is consistent with this statutory language.

TNMP asserted that the notice requirements under proposed §25.58(d)(2) could negatively impact the cost-effectiveness of EESFs by "[imposing] administrative burdens that are not well aligned with the localized nature of EESFs." Accordingly, TNMP recommended that the commission limit the notice requirements under proposed §25.58(d)(2) to entities that are "meaningfully impacted" by the requested approval.

Commission Response

The commission does not share TNMP's concern about the burdensomeness of providing notice under proposed §25.58(d) because the rule provides a TDU with flexibility regarding the method of notice. In many instances, the TDU may be able to meet the notice requirements under this section via email. Further, it is not clear to which entities TNMP is recommending a notice limitation. In the absence of an alternative proposal, the commission retains the proposed notice requirements, which are consistent with other commission rules.

Houston recommended that the commission modify proposed §25.58(d)(2)(A) to expressly provide municipalities with opportunities to participate and present evidence regarding localized reliability needs and customer impacts.

Commission Response

The commission declines to modify proposed §25.58(d)(2)(A) to expressly provide municipalities with opportunities to participate and present evidence regarding localized reliability needs and customer impacts as recommended by Houston because it is unnecessary. Any person, including a municipality, with a standing to intervene in a contested case proceeding under §22.103, relating to Standing to Intervene, may file a motion to intervene under §22.103, relating to Motions to Intervene.

ERCOT asserted that it will need notice of when and where an EESF will be interconnected. Accordingly, ERCOT recommended that the commission modify proposed §25.58(d)(3)(B) to specify that the commission's final order in a preapproval proceeding may require notice of project size, location, use case, and interconnection timing to be provided to ERCOT.

Commission Response

The commission declines to modify proposed §25.58(d)(3)(B) to specify that the commission's final order in a preapproval proceeding may require notice of project size, location, use case, and interconnection timing to be provided to ERCOT. As clarified in a previous commission response, an application under adopted §25.58(d) relates to the reservation of electric energy from an EESF, not to the construction or interconnection of a new EESF.

Proposed §25.58(e)

Proposed §25.58(e) allows a TDU that has received commission authorization to enter into contracts with a PGC for EESF capacity and requires the TDU to use a competitive bidding process before selecting a contract.

Hunt Energy asserted that the lack of specificity in the competitive procurement requirements under proposed §25.58(e)(1) is the "single greatest barrier" to regulatory certainty around the outcomes of future commission determinations on contract and cost reasonableness for TDUs and PGCs. To address this concern, Hunt Energy recommended that the commission modify proposed §25.58(e)(1) to require publicly posted RFPs, minimum solicitation periods, published evaluation criteria, documented scoring procedures, and certification that selected bids were the most cost-effective option.

Commission Response

The commission disagrees with Hunt Energy that specifying additional competitive procurement requirements in adopted §25.58(e) will eliminate regulatory uncertainty around the outcomes of future commission determinations on contract and cost reasonableness for TDUs and PGCs. In a proceeding that the commission is reviewing the reasonableness, necessity, or prudence of the costs associated with a contract, the burden of proof falls onto the TDU. A TDU may determine that the use and documentation of specific competitive procurement practices--such as publicly posted RFPs, minimum solicitation periods, published evaluation criteria, documented scoring procedures, or cost-effectiveness certifications--are necessary to satisfy that burden. However, the use and documentation of such competitive procurement practices will not themselves guarantee that the commission will find the costs associated with a contract reasonable, necessary, or prudent. Accordingly, the commission declines to modify proposed §25.58(e)(1) as recommended by Hunt Energy.

Houston recommended that the commission modify proposed §25.58(e)(1)(A) to require a TDU to conduct a competitive bidding process that "meaningfully evaluates alternative bids, technologies, and contract structures to select a power generation company."

Commission Response

The commission declines to modify proposed §25.58(e)(1)(A) to require a TDU to conduct a competitive bidding process that "meaningfully evaluates alternative bids, technologies, and contract structures to select a power generation company" as recommended by Houston. PURA §35.153(c) specifies that "Before entering into a contract under Subsection (a), [a TDU] must issue a request for proposals for use of an electric energy storage facility to meet the utility's reliability needs" (emphasis added). It does not require a TDU to consider proposals or bids that pertain to non-EESF technologies or contract structures. Accordingly, the adopted rule is consistent with the statutory intent.

Proposed §25.58(f)

Proposed §25.58(f) establishes the responsibilities of a PGC that owns or operates a contracted electric energy storage facility, including reserving contracted capacity, discharging energy only at the TDU's direction, and reimbursing the TDU for penalties resulting from the facility's failure to meet contract requirements.

ERCOT asserted that allowing a PGC to 'split' or simultaneously reserve an EESF's contracted capacity and sell the EESF's uncontracted capacity into the ERCOT wholesale markets under §25.58 would require complex and costly changes to ERCOT's

systems. Accordingly, ERCOT recommended that the commission modify proposed §25.58(f)(1) to provide that a PGC that owns or operates an EESF subject to a contract under §25.58 "may only enter into such contract for the entire capacity of an EESF."

More generally, ERCOT expressed similar system-constraint and market-design concerns related to the practical implementation of §25.58. Issues posed by ERCOT included how a TDU's dispatch instructions to a PGC will interact with the dispatch of resources through Security-Constrained Economic Dispatch (SCED) and how a contracted EESF will be registered with ERCOT, modeled, and qualified for ancillary services. ERCOT indicated that these issues would need to be addressed through the Nodal Protocol Revision Request (NPRR) process before contracted EESFs will be able to operate effectively. Accordingly, ERCOT recommended that the commission add a new subsection to require that ERCOT develop any necessary procedures, guides, technical requirements, protocols, or other standards to implement §25.58, and to delay the effective date of §25.58 until the commission's approval of related NPRRs. ERCOT additionally noted that NPRR development will likely not begin until a concrete use case for a TDU and PGC EESF contract exists.

Commission Response

The commission declines to modify proposed §25.58(f)(1) to provide that a PGC that owns or operates an EESF subject to a contract under §25.58 "may only enter into such contract for the entire capacity of an EESF" as recommended by ERCOT because PURA §35.153(f) expressly contemplates that a power generation company may sell electric energy and ancillary services from an EESF's unreserved capacity. Similarly, the commission will not explicitly delay the effective date of §25.58 until the commission's approval of NPRRs establishing related technical and operational requirements because it is unnecessary. The adoption of this section provides the regulatory framework required to implement PURA §35.153, and the lack of specific implementation direction provides flexibility for ERCOT stakeholders to develop appropriate systems and protocols when an interest and viable use cases have been identified.

The commission recognizes that the implementation of particular EESF arrangements may require modifications to ERCOT systems, protocols, or procedures. In evaluating an application under this section, the commission may consider whether "the requested amount of EESF energy and output capacity will ensure reliable service to the TDU's distribution customers." This is a practical evaluation that will take into account whether ERCOT is capable of implementing the requested use case at that time, providing a more fine-tuned method of ensuring use case feasibility than a prohibition on split-use arrangements or the delayed effectiveness of this section.

Hunt Energy requested that the commission confirm that the determination of whether contracted capacity has been reserved at any given time is governed exclusively by the contract terms authorized under proposed §25.58(d), and that a PGC's ERCOT market participation outside reserved capacity windows does not constitute a violation of §25.58 or PURA §35.153(f), absent a failure to maintain required reserved capacity.

Commission Response

The commission generally agrees with Hunt Energy that the quantity and timing of reserved capacity is determined contractually, but the commission will not state unequivocally that

whether capacity has been reserved at any given time is governed exclusively by the terms of the contract. The preamble to an adoption order is not a binding commission determination. Whether there are circumstances in which factors beyond the express terms of a contract are relevant to a commission determination is not a question the commission will evaluate in this context.

The commission also agrees with Hunt Energy that, consistent with PURA §35.153, a PGC can sell energy or ancillary services from an EESF that is subject to a contract under this section. However, the commission will not unequivocally confirm that ERCOT market participation outside of "reserved capacity windows" is never a violation of PURA or this section. Adopted §25.58 does not specifically include a reserved capacity window concept or explicitly address issues such as state of charge within such a model. Whether, in the context of a capacity window model, a PGC's participation in the ERCOT market outside of reserved capacity windows could potentially jeopardize its ability to fulfill its obligations within a reserved capacity window, is also not a question the commission will evaluate in this adoption order.

Proposed §25.58(g)

Proposed §25.58(g) establishes that reasonable and necessary costs associated with an EESF contract, including the costs of future contract payments, are eligible for recovery and a return if the contract satisfies the accounting standards for a capital lease or finance lease. Proposed §25.58(g) also allows for the deferred recovery of a return.

SEIA recommended that the commission modify proposed §25.58(g)(1) by removing the phrase "capital lease" for consistency with current Federal Accounting Standards Board terminology.

Commission Response

The commission declines to modify proposed §25.58(g)(1) by removing the phrase "capital lease" as recommended by SEIA because the use of this phrase is consistent with PURA §35.153(i).

CEHE recommended that the commission modify proposed §25.58(g)(1)(B) to clarify that reasonable and necessary costs associated with a contract for EESF capacity are eligible for recovery and a return, and that "A TDU may include a reasonable return on the payments required under the contract only if the contract terms satisfy the relevant accounting standards for a capital lease or finance lease."

Commission Response

The commission agrees with CEHE and modifies proposed §25.58(g)(1)(B) to provide that "Reasonable and necessary costs associated with a contract for EESF capacity, including the present value of future payments required under the contract, may include a return on investment using the rate of return on investment established in the commission's final order in a TDU's most recent comprehensive base-rate proceeding, only if the contract terms satisfy the accounting standards relevant to a TDU for a capital lease or finance lease."

CEHE recommended that the commission modify proposed §25.58(g)(2) to clarify that "reasonable and necessary costs" may be deferred for future recovery. AEP recommended that the commission modify proposed §25.58(g)(2) to establish that a TDU may create a regulatory asset to defer the recovery of a return not otherwise included in any of the TDU's rates "as of the first date on which the TDU was eligible to file the application."

Commission Response

The commission declines to modify proposed §25.58(g)(2) to clarify that "reasonable and necessary costs" may be deferred for future recovery as recommended by CEHE, or to specify that a TDU may create a regulatory asset to defer the recovery of a return not otherwise included in any of the TDU's rates "as of the first date on which the TDU was eligible to file the application" as recommended by AEP, because the language of proposed §25.58(g)(2) is consistent with the ratemaking treatment of other distribution-related costs under the commission's substantive rules.

Proposed §25.58(h)

Proposed §25.58(h) establishes how TDUs may recover eligible costs through ratemaking proceedings appropriate for the recovery of distribution-related costs and establishes requirements related to cost allocation, review, and reconciliation.

AEP recommended that the commission clarify whether the allocation and recovery of EESF costs under proposed §25.58(h)(1)(B) will apply to wholesale distribution battery storage customers that receive service under AEP's primary substation and primary distribution line distribution service rate schedules.

Commission Response

The commission clarifies for AEP that eligible costs under §25.58 may be allocated to, and collected from, a TDU's distribution-level rate classes. Under adopted §25.58(b)(1)(B), only retail transmission service customers and wholesale transmission service at transmission voltage customers are excluded from the allocation and collection of eligible costs.

AEP asserted that the cost allocation methodology under proposed §25.58(h)(1)(C) "appears to contemplate using an individual customer peak-demand... allocator rather than a distribution class allocator," which would result in EESF allocators that differ from the DCRF class allocators. AEP expressed concern that this language may create alignment and implementation concerns if recovery of EESF costs is sought through a DCRF or base rate proceeding. Accordingly, AEP recommended that the commission modify proposed §25.58(h)(1)(C) by establishing that EESF costs will be allocated according to the "class allocation method approved for use in the applicable recovery filing."

Commission Response

The commission declines to modify the cost allocation methodology under proposed §25.58(h)(1)(C) by establishing that EESF costs will be allocated according to the "class allocation method approved for use in the applicable recovery filing" as recommended by AEP because the proposed methodology already contemplates a class-based allocation methodology. This sufficiently addresses AEP's concern that EESF costs will be allocated on the basis of individual customer demand.

AEP and Oncor recommended that the commission modify proposed §25.58(h)(1)(E) by removing the three-month application timeframe, asserting that the requirement creates an unpredictable and confusing filing framework for reflecting reduced rate cost recovery.

Commission Response

The commission agrees with commenters and revises the rule to remove the three-month application timeframe following a con-

tract amendment that reduces the rate of necessary cost recovery.

TEC opposed recovery through Transmission Cost Recovery Factor (TCRF) proceedings and recommended that the commission modify proposed §25.58(h)(1)(F), (h)(1)(G), and (h)(4) to specifically reference DCRF proceedings, rather than interim proceedings.

Commission Response

The commission declines to modify proposed §25.58(h)(1)(F), (h)(1)(G), and (h)(4) to specifically reference DCRF proceedings, rather than interim proceedings as recommended by TEC because it is unnecessary. Under adopted §25.58(h)(1), recovery of eligible costs may only be requested in a DCRF proceeding or another ratemaking proceeding appropriate for the recovery of distribution-invested capital and associated costs.

Houston recommended that the commission modify proposed §25.58(h)(3) to require a TDU to demonstrate that, for an affiliate contract, the contract terms to the TDU were "priced no higher than comparable transactions with unaffiliated providers."

Commission Response

The commission declines to modify proposed §25.58(h)(3) to require a TDU to demonstrate that, for an affiliate contract, the contract terms to the TDU were "priced no higher than comparable transactions with unaffiliated providers" as recommended by Houston because Houston does not explain why that language is preferable to the proposed requirement that the TDU must demonstrate that the affiliated rate "did not exceed the prices charged by the supplying affiliate to...unaffiliated persons." Additionally, adopted §25.58(e)(1)(B) specifies that "In any proceeding in which the commission is reviewing the reasonableness, necessity, or prudence of the costs associated with a contract, the commission may also consider whether the contract the TDU entered into was reasonable relative to other bids that were available to the TDU, if any." This is sufficient to address Houston's concerns.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under the following provisions of Public Utility Regulatory Act (PURA): §§14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and 35.153, which authorizes a TDU to, with prior commission approval, contract with a PGC to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers and directs the commission to adopt rules as necessary to implement the section and establish criteria for approving these contracts.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001; 14.002; and 35.153.

§25.58. *Contracts for Electric Energy Storage.*

(a) Applicability. This section applies to:

(1) a transmission and distribution utility (TDU) that operates facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers; and

(2) a power generation company (PGC) that enters into a contract with a TDU to provide energy and output capacity from an electric energy storage facility (EESF) under this section.

(b) TDU Use of EESF.

(1) A TDU may, with prior authorization from the commission under subsection (d) of this section, enter into a contract with a PGC for EESF energy and output capacity for the limited purpose of ensuring reliable service to the TDU's distribution customers.

(2) A TDU that has entered into a contract with a PGC for EESF energy and output capacity in compliance with this section may direct the PGC to discharge the contracted capacity only to the extent necessary to ensure reliable service to the TDU's distribution customers.

(3) Nothing in this section, or a commission order issued under this section, authorizes the ownership of an EESF by a TDU.

(c) Allocation of total EESF capacity.

(1) The total amount of EESF output capacity reserved by contracts under this section may not exceed 100 megawatts (MW).

(2) A TDU is allocated a portion of 100 MW according to its load ratio share on the date it files an application under subsection (d) of this section, as calculated by ERCOT.

(d) Authorization to contract for EESF capacity. A TDU must not enter into, renew, or extend a contract with a PGC for energy and output capacity from an EESF until receiving authorization from the commission under this subsection.

(1) Application. A TDU must file an application to obtain commission authorization.

(A) Contents. The application must include:

(i) If applicable, the TDU's history with EESF, including:

(I) Whether the TDU is currently authorized, or has previously been authorized, by the commission to contract for EESF energy and output capacity, including the details of existing and prior authorizations and each docket number in which the existing and prior authorizations were granted; and

(II) A description of all EESF energy and output capacity the TDU has under contract at the time of the application, including the total energy and output capacity the TDU has under contract, the length of the contract(s), and a description of the contract terms for discharging an EESF's energy capacity.

(ii) The total EESF energy and output capacity the TDU is requesting authorization to contract for and the length of time for which the TDU is requesting authorization. In support of its request, the TDU must include, with any necessary supporting documentation:

(I) Whether the amount of requested EESF energy and output capacity and requested authorization length will ensure reliable service to the TDU's distribution customers;

(II) The location(s) where a need for EESF energy and output capacity exists;

(III) The number of distribution customers, by customer class, that the TDU expects to benefit from a contract for EESF energy and output capacity;

(IV) The conditions in which the TDU would direct a PGC to discharge contracted EESF energy capacity;

(V) A cost-benefit analysis that demonstrates the expected cost savings associated with entering into a contract for EESF energy and output capacity over constructing or modifying a traditional distribution facility; and

(VI) A description of any additional measures being implemented, or scheduled for implementation, that may mitigate the TDU's need for EESF energy and output capacity.

(B) The TDU may provide in its application additional information that it believes will be necessary for the commission's consideration of the TDU's request. Any additional information that the TDU provides must be clearly labeled as supplemental and separate from the information that the TDU is required to provide under subparagraph (A) of this paragraph.

(C) The commission may request additional information from the TDU that it believes is necessary to evaluate the TDU's request.

(D) As appropriate, data provided under this section must be filed in a format native to Microsoft Excel and must permit basic data manipulation functions, such as copying and pasting data.

(2) Notice and intervention. Within one working day after the TDU files its application, the TDU must provide notice of its filed application, including the docket number assigned to the application and the deadline for intervention in accordance with this paragraph. The intervention deadline is 45 days from the date the application is filed with the commission. The notice must be provided using a reasonable method of notice to:

(A) all municipalities in the TDU's service area that have retained original jurisdiction;

(B) all parties in the TDU's last base-rate proceeding;

(C) each retail electric provider that provides service in the TDU's service area; and

(D) the Office of Public Utility Counsel.

(3) Commission evaluation and decision.

(A) In reviewing a TDU's application, the commission may consider whether:

(i) the requested amount of EESF energy and output capacity will ensure reliable service to the TDU's distribution customers;

(ii) the requested amount of EESF energy and output capacity exceeds, either by itself or together with the TDU's existing authorized amounts, the amount allocated to the TDU under subsection (c) of this section;

(iii) the requested amount of EESF energy and output capacity exceeds, either by itself or together with existing amounts authorized for all TDUs, 100 MW; and

(iv) the estimated cost of entering into a contract for the requested amount of EESF energy and output capacity is less than the estimated cost of constructing or modifying a traditional distribution facility.

(B) The commission's final order may:

(i) include the total amount of EESF energy and output capacity the TDU is authorized to contract for;

(ii) include the date the authorization expires; and

(iii) require a contract under this section to comply with Public Utility Regulatory Act (PURA) §35.153.

(C) The commission's final order may include additional requirements related to an EESF's characteristics.

(e) Contract for EESF capacity. A TDU that has obtained authorization under subsection (d) of this section may enter into one or more contracts with a PGC for EESF energy and output capacity, provided that all contracts comply with the commission's authorization under subsection (d) of this section.

(1) Competitive bidding process.

(A) Prior to entering into a contract under this section, the TDU must conduct a competitive bidding process.

(B) In any proceeding in which the commission is reviewing the reasonableness, necessity, or prudence of the costs associated with a contract, the commission may also consider whether the contract the TDU entered into was reasonable relative to other bids that were available to the TDU, if any.

(2) If requested by a commissioner or commission staff, the TDU must allow for the inspection of any contract entered into under this section. If a commissioner or commission staff retains a copy of the contract, the contract will be treated as a confidential document if so requested by the TDU.

(f) PGC responsibilities. A PGC that owns or operates an EESF subject to a contract under this section:

(1) may offer electric energy or ancillary services from an EESF into the ERCOT wholesale markets, only to the extent that the PGC reserves capacity as required by the contract;

(2) may not discharge energy from an EESF to satisfy the contract's requirements unless directed by the TDU; and

(3) must reimburse the TDU for the cost of an administrative penalty assessed against the TDU for a violation caused by the EESF's failure to meet the contract requirements.

(g) Eligible costs and deferred recovery.

(1) Eligible costs.

(A) Contract costs. Reasonable and necessary costs associated with a contract for EESF capacity, including the present value of future payments required under the contract, are eligible for recovery under this section.

(B) Return. Reasonable and necessary costs associated with a contract for EESF capacity, including the present value of future payments required under the contract, may include a return on investment using the rate of return on investment established in the commission's final order in a TDU's most recent comprehensive base-rate proceeding, only if the contract terms satisfy the accounting standards relevant to a TDU for a capital lease or finance lease.

(2) Deferred recovery. A TDU may create a regulatory asset to defer for recovery in a future ratemaking proceeding the return, not otherwise included in any of the TDU's rates.

(h) Cost recovery. Eligible costs under this section may be recovered as follows.

(1) Ratemaking proceedings. A TDU may request recovery of eligible costs, including any deferred expenses, in a proceeding under §25.243 of this title (relating to Distribution Cost Recovery Factor (DCRF)) or in another ratemaking proceeding where it is appropriate to recover distribution invested capital and associated costs. A river authority may request recovery of eligible costs, including any deferred expenses, through a ratemaking proceeding where it is appropriate to recover distribution invested capital.

(A) A TDU must provide notice to REPs of the approved rates not later than the 45th day prior to the effective date of the approved rates.

(B) Eligible costs must not be allocated to, or collected from, retail transmission service customers or wholesale transmission service at transmission voltage customers.

(C) Notwithstanding the provisions of §25.243 of this title, an allocation of eligible costs among distribution-level rate classes, based on substation-level class non-coincident peak demand, regardless of the time at which the class demand occurs, from the TDU's current or most recent base-rate proceeding, is presumed to be reasonable.

(D) EESF rates may not be established on a per-kilowatt-hour basis for any customer class that includes demand charges.

(E) Upon any amendment to a contract under this section that would reduce the rate of necessary cost recovery, a TDU must submit an application to reflect the reduced rate of necessary cost recovery, dating back to the contract amendment date, at the time of the TDU's next DCRF or other appropriate ratemaking proceeding.

(F) Eligible costs will not be reviewed for reasonableness, necessity, or prudence in a proceeding other than a base-rate proceeding, unless the presiding officer finds good cause to review them in another proceeding.

(G) In any proceeding in which eligible costs are reviewed for reasonableness, necessity, or prudence, the TDU's application must also include the contracts associated with the eligible costs being reviewed. The commission will review the contracts to ensure compliance with the final order under subsection (d) of this section, the requirements under subsection (e) of this section, and PURA §35.153.

(2) Notice. The notice for any ratemaking proceeding in which eligible costs are sought must specifically identify those eligible costs.

(3) Affiliate contracts. For any contract between a TDU and an affiliate, the TDU bears the burden of proof to show that the terms to the TDU were reasonable and necessary and did not exceed the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons within the same market area or having the same market conditions. In addition, all affiliate payments must comply with the requirements of PURA §36.058.

(4) Reconciliation. If EESF rates include any eligible costs that have not been reviewed for reasonableness, necessity, and prudence, any rates to recover any portion of those costs are temporary rates that must be reconciled in the TDU's next base-rate proceeding, including to determine whether the costs are reasonable, necessary, and prudent.

(A) In reconciling eligible costs, all revenues received associated with EESF programs, including actual rate revenues, must be applied to offset reasonable, necessary, and prudent EESF costs as these costs and revenues were incurred and received.

(B) A TDU must provide comprehensive testimony and workpapers supporting the reconciliation of all eligible costs and associated rate revenues as part of any base rate proceeding application. Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return, taxes, and carrying costs, must either be refunded or applied as an offset to any outstanding regulatory asset associated with eligible costs. In any proceeding in which the commission determines that a TDU has included in rates any amounts deemed unreasonable, unnecessary, or imprudent, or that the TDU has other-

wise over-recovered costs, the commission may order a compliance proceeding to determine the amounts and manner of any necessary refunds to ratepayers or the proper accounting of over-recovered amounts as an offset to any outstanding regulatory assets associated with eligible costs. Carrying costs will be determined as follows:

(i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TDU's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the TDU's rate base included in base rates in effect when the over-recovery began.

(ii) For the time period beginning with the effective date of the TDU's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the TDU's rate of return authorized in that base-rate proceeding.

(C) As part of the reconciliation of EESF costs, the commission may consider whether the contracted EESF complied with the characteristics required under subsection (d) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Public Utility Commission of Texas

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For further information, please call: (512) 936-7044



SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.107

The Public Utility Commission of Texas (commission) adopts amended 16 Texas Administrative Code (TAC) §25.107, relating to Certification and Obligations of Retail Electric Providers (REPs). The commission adopts these rules with changes to the proposed text as published in the April 17, 2026 issue of the *Texas Register* (51 TexReg 2470). The commission also adopts amendments to three commission-prescribed forms: (1) the REP Irrevocable Stand-By Letter of Credit template; (2) the REP Application and Amendment Form; and (3) the REP Reporting Instructions Form. The rule will be republished.

The amended rule implements the new electronic filing requirements applicable to REP letters of credit (LoCs) adopted in 2025 under Project 52059 which revised §22.71, relating to Commission Filing Requirements and Procedures, and §22.72, relating to Form Standards for Documents Filed with the Commission in Chapter 22 of the commission's procedural rules. Specifically, §22.71(d)(1)(A) requires a REP with a physical irrevocable stand-by letter of credit (ILOC) on file with the commission as of the effective date of the section to file an original ILOC electronically on or before March 5, 2027. The amended rule accordingly

details the specific procedures and requirements for filing REP ILOCs electronically with the commission.

The amended rule also revises the definition of "affiliate" to more appropriately conform with the disclosure and financial requirements of §25.107. The amended rule also makes minor clarifying changes to requirements applicable to Option 2 REPs and to the financial documentation requirements of segregated cash accounts and escrow accounts.

Amendments to the REP Irrevocable Stand-By Letter of Credit template include conforming revisions to reflect electronic filing, including the prohibition on amending an ILOC without commission approval and the authorization for the commission to present or terminate an ILOC by electronic transmission. Amendments to the REP Application and Amendment Form and REP Reporting Instructions Form are conforming changes to reflect the amended rule, ILOC electronic filing requirements, as well as the revised definition of "affiliate."

This rule is a competition rule subject to judicial review as specified in PURA §39.001(e).

The commission received comments on the proposed rule from Persistence Analytics Group LLC and the Texas Retail Electric Provider Coalition (REP Coalition).

Summary of Electronic Filing and Updated ILOC Template Timeline

The adopted amendments establish separate deadlines for electronic filing of irrevocable stand-by letters of credit (ILOCs) and for transition to the commission's updated ILOC template. Beginning on the effective date of the amended rule, any new ILOC executed for purposes of compliance with §25.107 must use the updated commission template and must be filed electronically in Project No. 37919. Existing ILOCs may continue to use the prior template until August 15, 2027, and may be maintained or amended using that template until that date. By March 5, 2027, any REP relying on an existing physical ILOC must ensure that its current ILOC has been electronically filed in Project No. 37919 in accordance with §22.71. A REP relying on a physical ILOC that has been previously scanned and filed is in compliance with the March 5 deadline. By August 15, 2027, all existing ILOCs must be re-issued or amended to conform to the updated commission template. Accordingly, March 5, 2027 serves as the deadline for electronic filing of existing ILOCs, while August 15, 2027 serves as the deadline for transition of all existing ILOCs to the updated template.

General Comments

Persistence Analytics filed comments relating to large load interconnections. Persistence Analytics comments expressed general support for large loads in Texas on the condition that such interconnections be validated under a clear evidence standard for financing, operability, and reliability. Persistence Analytics emphasized the importance of verification of large loads to avoid stranded costs and to ensure retail customers do not subsidize interconnections that do not materialize.

Commission response

The filed comments do not relate to the present rulemaking.

REP Coalition emphasized that the proposed changes to §25.107 should be contextualized with §22.71(d)(1)(A) which eliminated the option for a REP to file a physical ILOC with the commission and required a REP to file an original ILOC with the commission electronically by March 5, 2027. REP Coal-

tion indicated that the proposed changes have wide-reaching impacts for almost every REP because letters of credit are primary means for satisfying the financial access to capital obligations for obtaining and maintaining a REP certification under proposed §25.107(f)(1)(B). REP Coalition further noted that a REP is also authorized under proposed §25.107(f)(2)(A) and (B) to use an ILOC to satisfy the financial requirements related to customer deposits or prepayments. Moreover, if a REP collects both customer deposits and prepayments, proposed §25.107(f)(2)(A)(i) authorizes a REP to submit a separate ILOC for each purpose. As such, if a REP uses an ILOC for both obligations, the REP is accordingly required to file at least two separate letters of credit with the commission in Project 37919.

REP Coalition further noted that on April 26, 2023 in Project 52796, the commission increased the face value requirement for an ILOC used to satisfy the REP's access to capital obligation. Specifically, the commission increased the face value from \$500,000 to \$750,000 or \$1,500,000, depending on the number of electronic service identifiers (ESIDs) served by the REP. Additionally, the commission further revised the guarantor requirements for satisfying access to capital requirements in that rulemaking and required a REP to come into compliance by March 5, 2024. REP Coalition remarked that, as a result of the aforementioned changes, some REPs were required to amend existing ILOCs used to satisfy access to capital requirements or otherwise had to obtain new letters of credit because they elected to no longer rely on a guarantor to satisfy these requirements. REP Coalition highlighted that "it has been just over two years since the last Commission rulemaking necessitating changes to, or an entirely new, LOC."

Commission response

The proposed changes to §25.107 are consistent with the electronic-only ILOC filing requirements established under §22.71(d)(1)(A) which states: "A retail electric provider with a physical [ILOC] on file with the commission on the effective date of this section must file an original [ILOC] electronically on or before March 5, 2027." For purposes of that requirement, a REP is not required to transition to the new ILOC template by March 5, 2027- for that transition, the terms of §25.107(c)(7)(A)(i)-(iii) govern (i.e., by August 15, 2027). The electronic filing requirement of §22.71(d)(1)(A) is satisfied if a REP's most up-to-date ILOC is on file in Project 37919. The commission accordingly adds new §25.107(f)(4)(F)(viii) which provides: "Unless otherwise specified by the terms of the [ILOC], the return of a physical copy of an [ILOC] to the issuing financial institution or REP is not required."

Additionally, the commission acknowledges the burdens associated with REPs transitioning to the new ILOC template and makes appropriate accommodations in the rule text under §25.107(c)(7)(A) and (f)(4)(F). Substantive discussion of these changes is provided below.

REP Coalition recommended that March 5, 2027 be clarified as the deadline for a REP with a physical ILOC on file with the commission to replace it with an electronic copy, including a scanned PDF, in Project 37919. REP Coalition explained that it is unclear whether the March 5, 2027 deadline under §22.71(d)(1)(A) is a deadline for REPs to submit "a wholly new original electronic [ILOC] that conforms with the new standard form [ILOC]" proposed in this rulemaking. REP Coalition endorsed an alternative approach that accounts for "the significant financial implications of switching out an LOC for the sole purpose of complying with regulatory changes that do not affect the validity of an existing

LOC." REP Coalition further highlighted that [ILOCs] currently on file with the commission comply with the requirement under existing and proposed §25.107(f)(4)(F)(ii)(II) that an ILOC automatically renew and is therefore effective on an ongoing basis.

REP Coalition also emphasized that March 5, 2027 should not be the deadline for REPs to update electronic ILOCs to the new template proposed in this rulemaking as it would "unnecessarily increase the cost of REPs to provide service to customers in Texas." REP Coalition noted that otherwise a REP would be required to "maintain two letters of credit that serve the same regulatory purpose for an unknown period of time." Specifically, REP Coalition explained that a REP is required to post the face value of the ILOC in collateral to satisfy the access to capital requirements of existing and proposed §25.107(f)(1)(B) (i.e., the collateral is removed from a REP's working capital). REP Coalition indicated that a REP would be required to essentially post the face value of the ILOC in collateral again to replace the ILOC currently on file with the commission to ensure it maintains continuous compliance with the access to capital requirements during the pendency of the cancellation.

REP Coalition noted the same unnecessarily duplicative requirement to post double collateral would apply to other letters of credit the REP may have on file, such as for customer deposits. REP Coalition stated that, in addition to posting collateral, fees for maintaining an ILOC can amount to "more than \$4,000 per day in the aggregate for a REP with a large market share, plus origination fees." REP Coalition commented that the purpose of the proposed changes to the ILOC template and proposed rule appear to be largely administrative in nature rather than substantively relating to the underlying purpose of the ILOC. Accordingly, requiring a REP to post double the collateral to accommodate what are essentially administrative changes impose regulatory burdens that far outweigh any benefit to the public.

REP Coalition alternatively recommended that if REPs are required to file new ILOCs that comply with the updated template by March 5, 2027, that a new provision be added that the commission must return and cancel a physical ILOC that is on file in Project 37919 "as soon as possible, but within no later than two weeks from the date a REP files a new/replacement LOC." REP Coalition explained that such language would mitigate the time a REP would be required to carry two ILOCs for the same regulatory purpose to ensure compliance (i.e., one pending cancellation and one for the new changes), and therefore reduce expenses. REP Coalition further remarked that such language would also enable REPs with multiple letters of credit on file with the commission to facilitate a staggered filing of replacements to mitigate the financial impact.

Commission response

A REP must transition to the new ILOC template by August 15, 2027, which is the deadline for a REP's semi-annual report under existing §25.107(i)(2). The commission acknowledges REP Coalition's concerns and revises §25.107(c)(7)(A) and adds new §25.107(c)(7)(A)(i)-(iii) to address the deadline and ease the transition process. Specifically, the commission adds a provision to §25.107(c)(7)(A) which authorizes either the financial institution issuing the ILOC, the REP or applicant, or an affiliate of the REP or applicant to file the ILOC with the commission in Project 37919. This addition provides for additional flexibility when filing ILOCs as in some instances the financial institution (the "Issuer") will be filing with the commission (the "Beneficiary"), rather than the REP (the "Applicant").

New §25.107(c)(7)(A)(i) requires that "[a] new [ILOC] executed on or after the effective date of this rule use the following template in accordance with subsection (f)(4)(F) of this section." The provision also includes a figure which links to the new ILOC template. Accordingly, a new REP or a REP executing an ILOC on or after the effective date of the rule must use the updated template.

New §25.107(c)(7)(A)(ii) authorizes "[a]n amendment to a currently executed irrevocable stand-by ILOC may be performed using the same template it was executed in or the updated template specified under clause (i) of this subparagraph." This provision enables a REP with a currently effective ILOC to continue to use the existing template or transition to the new template after the effective date of the rule. However, new §25.107(c)(7)(A)(iii) states "[n]otwithstanding clause (ii) of this subsection, an existing [ILOC] must be re-issued or amended using the updated template specified under clause (i) of this subparagraph on or before August 15, 2027." (emphasis added) This provision requires an existing ILOC to transition to the new template by the specified deadline meaning all REPs must use the new template by August 15, 2027.

An ILOC that is updated to the new template will be considered as an amendment by the commission, if preferable to the REP, to ensure that the REP continues to meet its ongoing financial assurance obligations without the potential interruption of requesting a financial institution of re-issuing an ILOC with the same face value with the new template language.

REP Coalition further requested that the commission revisit §22.71(j)(1)(C)(i) which authorizes a cover letter describing the content of a confidentially filed LOC in lieu of a redacted version. Specifically, REP Coalition recommended that letters of credit should be exempt from §22.71(j)(1) entirely and that the commission maintain the option to physically file an original ILOC in lieu of a redacted version. REP Coalition remarked that letters of credit, by their nature, contain sensitive competitive information because the face value of a ILOC corresponds to "the number of customers served and the amounts of deposits and/or prepayments held." REP Coalition stated that because letters of credit are filed in a single project designated for that purpose (i.e., Project 37919), a cover letter indicating that a REP is filing a new ILOC or an amendment does not provide "does not provide any additional transparency."

Commission response

The commission declines to implement the recommended change because it is out of scope. Section §22.71 is not included in this rulemaking package. Further, ILOCs are one of two specific items (the other being large Microsoft Excel sheets) that are exempt from the redaction requirements of §22.71(j), making the requirements already less burdensome than for other types of documents.

Questions for Comment

Question 1

Should additional means or methods of financial assurance be added and made available to REPs to meet the access to capital requirements under §25.107(f)(1) or customer deposit and prepayment requirements under §25.107(f)(2)? (e.g., surety bonds, insurance, etc.)

REP Coalition recommended the commission authorize the use of surety bonds to satisfy both the access to capital requirements under proposed §25.107(f)(1) and for customer deposits or pre-

payments under proposed §25.107(f)(2). REP Coalition noted that ERCOT authorizes the use of surety bonds as a method for a counterparty to fulfill its financial security obligations with ERCOT. Specifically, a counterparty may use a surety bond to satisfy credit and collateral on an ongoing basis under ERCOT Nodal Protocols §16.11(1) and §16.11.3(b). REP Coalition explained that a surety bond requires a premium to be paid that generally amounts to a percentage of the face value of the bond, the amount of which is dependent on the finances of the potential bondholder. In contrast, an ILOC generally requires the posting of collateral equivalent to the full amount of the face value of the ILOC "such that the full amount of the collateral is removed from the books of the REP." As such a surety bond would tie up less capital than an ILOC for a financially healthy REP and therefore enables more cost-effective service to customers.

REP Coalition recommended that if surety bonds are adopted as an additional option to satisfy a REP's financial obligations, any timing requirements for surety bond payments mirror Section 2.03 of ERCOT's surety bond template which require payment on or before 5:00 p.m. local time in Austin Texas on the first business day after receiving notice. REP Coalition indicated that language would ensure that customer deposits and prepayments are efficiently distributed to customers in the event of a mass transition of customers to a provider of last resort.

Commission response

The commission agrees that allowing surety bonds as an alternative form of financial assurance may provide more compliance flexibility for REPs. However, additional scrutiny, with the benefit of public feedback, on potential drawbacks and on the necessary details that must be included in a standard template to avoid performance loopholes, is required. Accordingly, the commission declines to permit surety bonds as a form of financial assurance at this time.

Question 2

Should the financial documentation or verification requirements for segregated cash accounts or escrow accounts under §25.107(f)(4)(D) be modified (i.e., expanded, reduced, clarified, etc.)?

Commission response

The commenter responses for Question 2 are addressed, as appropriate, with comments on proposed §25.107(f)(4)(D)-(E) below.

Question 3

The proposed REP ILOC Template incorporates language from the LoC template used for the Texas Energy Fund (TEF) (See Project 56896, Item #79) and the ERCOT LoC template (See).

Question 3a

Should additional language from the TEF or ERCOT LoC templates be added to the REP ILOC Template?

REP Coalition recommended that REPs be authorized to file a physical ILOC with the commission in addition to any electronic copy of an ILOC filed on the Interchange, including a scanned PDF of a physical original.

REP Coalition also generally cautioned against assuming that language in ERCOT's ILOC that is acceptable to financial institutions will, for that reason, be acceptable to financial institutions in the commission's ILOC. REP Coalition noted that the difference in submission methods (i.e., e-mail for ERCOT and the Inter-

change for the commission) may raise cybersecurity concerns that may affect the methods available to a financial institution for processing draws on an ILOC. REP Coalition noted that while ERCOT currently requires an ILOC to be submitted via e-mail in electronic or PDF format, ERCOT also accepts physical ILOCs and that approximately 70-80% of ILOCs are submitted physically. REP Coalition concluded that this implies that even if a bank accepts a demand to draw on an ILOC presented through e-mail to ERCOT, the bank may additionally require a physical ILOC to be maintained on file by ERCOT to minimize the risk of fraudulent draws being made.

In contrast, the commission requires only electronic ILOCs to be filed in accordance with §22.71(d)(1)(A) - as such, it is possible that "a financial institution that has agreed to language in ERCOT's form LOC (e.g., language contemplating that an LOC could be drawn upon via a demand by email) will not agree to the same or similar language in the commission's ILOC because the financial institution will not have the assurance that the physical original ILOC is also maintained by the Commission."

Commission response

The new ILOC template authorizes the provision of a physical copy of the ILOC only if requested by the commission. This is consistent with the transition to electronic transmission for letters of credit specified in §22.71(d)(1)(A).

The commission disagrees that the difference in delivery method between ERCOT and the commission presents a significant risk of financial institutions not accepting aspects of the commission's ILOC that they accept from ERCOT. From a cybersecurity perspective, the interchange is no less secure than the e-mail submissions accepted by ERCOT. Additionally, as described in more detail below, the commission's direct experience verifies that financial institutions will accept the language in the commission's ILOC without the added assurance that the commission maintains a physical original ILOC. An electronic original is sufficient.

The commission does appreciate that some financial institutions, which are not regulated by the commission, both prefer to deliver the original ILOC to the beneficiary and are not comfortable - or accustomed to - the commission's interchange. To provide comfort to such financial institutions, the commission modifies the ILOC template to include a new e-mail address that financial institutions can use to deliver electronic ILOCs to the commission. However, to comply with the commission's filing rules, the ILOC will not be considered submitted until it is also properly submitted to the commission's interchange by the REP. These revisions best satisfy the concerns of financial institutions and the commission until the commission is able to further modernize its document submission practices and interfaces.

REP Coalition also noted that transferring language from the ERCOT template ILOC should be done carefully as ERCOT has different eligibility requirements for financial institutions and because "ERCOT differentiates between requirements for the issuance of and draw on an LOC." Specifically, ERCOT requires an ILOC to be issued by a bank or other financial institution "that is acceptable to ERCOT," with a minimum rating of A- with S&P and Fitch and A3 with Moody's. For draws, ERCOT requires that all ILOCs must be drawn on a United States domestic bank or the United States domestic office of a foreign bank. In contrast for commission ILOCs, proposed §25.107(f)(4)(F)(i) requires an ILOC to be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state

banking department and is either a United States domestic bank or a domestic office of a foreign bank with an investment-grade credit rating. REP Coalition noted that, in its analysis of ERCOT ILOCs, the practice of using of electronic ILOCs is more common with foreign financial institutions than domestic ones due to international or foreign law authorizing electronic documents to legally function as paper originals. REP Coalition indicated that ERCOT "imposes a limit per LOC as well as an overall limit on a financial institution that has issued more than one LOC" and prepares a report that identifies all issuers of ILOCs at ERCOT and details the available capacity for each issuer based on concentration limits. REP Coalition observed that twelve banks included in ERCOT's report are also referenced in Project 37919 filings on or after the March 5, 2024 compliance deadline for compliance with the amendments to §25.107 made in Project 52796, while eleven banks included in the report were referenced in Project 37919 before the March 5, 2024 deadline. REP Coalition further noted that the majority of financial institutions included in ERCOT's report are foreign and that a preponderance of the market collateral required by ERCOT is held by foreign banks where electronic LOCs are more common.

Commission response

The language in the adopted template is consistent with Section 4.15 of the 1998 International Standby Practices (ISP98), Article 17 of the 2007 Uniform Customs and Practices for Documentary Credits, Publication 600 (UCP 600) published by the International Chamber of Commerce, and Section 5-108(e) of the 1995 Uniform Commercial Code (UCC) - all of which are currently effective. Therefore, the usage and acceptance of the commission's template is purely a business decision by a financial institution as to whether it will revise its internal procedures to use the commission ILOC template and associated practices. Commission experience and discussions with financial institutions support the conclusion that financial institutions will be willing to do so. However, significant changes have been made to both the rule and the template on adoption to accommodate the concerns of both REP Coalition and financial institutions. The template revisions are detailed below under the header for the Irrevocable Stand-By ILOC Template.

In response to REP Coalition's specific point regarding the usage of "maintained at" in §25.107(f)(4)(F) versus "drawn on" and "issued by" in ERCOT Protocol 16.11.3(1)(a) - there is effectively no functional difference in the requirements as both identify the minimum prerequisites that must be met before the commission and ERCOT will accept an ILOC from a financial institution. However, to minimize ambiguity, the commission revises §25.107(f)(4)(F)(i) to use similar terminology.

To REP Coalition's point about electronic-only filing practices for ILOCs being more common only among foreign financial institutions, §25.107 does not prohibit a REP from obtaining a ILOC from a foreign bank provided they have an investment-grade credit rating in accordance with §25.107(f)(4)(F)(i)(II). If REP Coalition's point is that electronic-only ILOCs have only been recently adopted by foreign banks rather than domestic banks it is moot for purposes of this rulemaking as the commission has previously determined that it will transition to electronic-only filing requirements in Project 52059 with the adoption of §22.71(d)(1)(A).

Question 3b

Should any other revisions be made to the REP Letter of Credit Template?

REP Coalition recommended that any changes made to the commission's REP ILOC template should be made to be acceptable to the largest number of financial institutions as possible to enable REPs to obtain letters of credit at competitive rates and mindful of the fact that financial institutions, as regulated entities themselves, may be unwilling to make changes to their approved forms and processes to comply with the regulatory requirements the commission imposes on REPs. REP Coalition accordingly recommended the commission adopt its redlines to the proposed ILOC template (Attachment A). REP Coalition noted that its recommended changes consist of an anonymized sample of redlines provided by several financial institutions. REP Coalition commented that its redlines and the Texas Energy Fund ILOC template indicate that fully electronic letters of credit and draws made through e-mail are not standard industry practice. REP Coalition observed that financial institutions most commonly revised "Presentation and Demand for Payment," "Automatic Extension and Non-renewal of Letter of Credit," and "Cancellation of Letter of Credit." REP Coalition further noted that the applicable law was frequently revised by financial institutions to reflect the State of New York which is consistent with the TEF ILOC template.

REP Coalition supported proposed §25.107(f)(4)(F)(iv) which authorizes an affidavit in lieu of a verifiable electronic signature. REP Coalition recommended that any requirement prescribed by proposed §25.107 applicable to ILOCs should be included in the ILOC template itself as that is the document that will be referenced and used by the financial institution.

REP Coalition expressed concern that "the pool of financial institutions willing to accept the [ILOC] as proposed with the requirements proposed may not be as inclusive as it could be and will negatively impact a REP's ability to obtain [ILOCs] at competitive rates" based on the feedback it received from financial institutions. Accordingly, REP Coalition requested the opportunity to work with the commission to revise the ILOC template language prior to adoption.

Commission response

The commission generally agrees with REP Coalition that the ILOC template should be designed to minimize barriers to entry in the competitive retail electric market and promote administrative efficiency. The primary objectives of the revised template and rule amendment are to (1) provide greater clarity for draws, amendments, and terminations (i.e., cancellations and non-renewals) for all parties to the ILOC; (2) facilitate electronic transmission practices that are consistent with standard financial industry standards; and (3) ensure compliance with the filing requirements of §22.71(d)(1)(A). Therefore, the commission makes extensive revisions to the template language as recommended by REP Coalition in comments and informed by extensive outreach to third-party financial institutions conducted by commission staff. The specific substantive changes to the template are identified under the Irrevocable Stand-by Letter of Credit Template header below.

The commission generally agrees with REP Coalition that fully electronic ILOCs are not yet standard industry practice. However, the commission disagrees that this shift will result in a meaningfully reduced pool of available financial institutions. Since §22.71 was adopted, the commission has worked with a number of financial institutions to effectuate electronic-only filing, draws, and cancellations. This historical experience combined with continued outreach efforts to financial institutions by commission staff and the significant revisions that have

been made to the rule and template support the conclusion that REPs will continue to have access to a wide pool of financial institutions under the adopted rule.

Irrevocable Stand-By Letter of Credit Template

The proposed Irrevocable Stand-By Letter of Credit Template is the financial instrument that REPs must transition to in accordance with the schedule prescribed by §25.107(c)(7)(A)(i)-(iii). The template contemplates electronic delivery through e-mail as a method for presentation and demand for payment and establishes specific requirements and template exhibits for actions undertaken in accordance with the terms of the ILOC (e.g., presentation and demand, payment, amendments, non-renewals, and cancellations)

The commission generally restructures and revises the ILOC template in a manner generally consistent with the redlines from financial institutions provided by REP Coalition under the heading for Question 3b and the prior discussion. The commission also implements minor and clarifying revisions. The specific changes are identified below.

Commission Authorized Representative for ILOC

The commission replaces the assignment of the "Executive Director or another person authorized by the Executive Director in writing or authorized by commission rule." as the Authorized Representative with the following: "The Authorized Representative of the Beneficiary is the PUCT Executive Director; PUCT Deputy Executive Director; PUCT Executive Counsel; or PUCT Chief Operating Officer."

Form and Manner of Transmission and New E-Mail Address for Processing REP ILOCs

The commission specifies that the ILOC must be transmitted by e-mail but provides the option and process for the commission to request a physical copy, including the method used to make such a request. The commission also replaces the cited REPcollateral@puc.texas.gov e-mail with a new e-mail, REPloc@puc.texas.gov, that will be used solely for processing e-mailed REP ILOCs. This change will ensure e-mails concerning REP ILOCs are appropriately identified and processed separately from other e-mails related to REP financial assurance.

Issuer and Applicant Contact Information

The commission adds a form entry for an Applicant's affiliate, if the affiliate is filing the ILOC on behalf of the applicant. The commission further revises the form entry descriptions for the Issuer and the Applicant for clarity.

Presentation and Demand for Payment (including Exhibits)

The commission consolidates proposed Exhibits I and II into a single exhibit (new Exhibit I) and renumbers all subsequent Exhibits. The commission further revises the template to specify that payment is available upon the commission's demand at sight by either physical or electronic mail upon presentation through delivery of a written demand containing the text of Exhibit I and signed by the authorized representative, which must include a signed and dated statement of amount due. The commission also specifies the format of electronic and physical presentation and clarifies the form entry for the Issuer's physical address. The commission further revises Exhibit II to specify both the original and new effective date and the last amendment date of the ILOC. The commission also revises the text of Exhibit II to spec-

ify that amendments decreasing the stated amount are effective only upon consent of the Beneficiary in accordance with the terms of the ILOC for consistency with changes made to §25.107(f)(4)(F)(v)(II). The commission also adds form entries for both the Beneficiary and the Applicant's contact information and adds tick boxes for identifying whether the amendment involves increases or decreases and whether the commission has accepted or rejected the amendment.

Payment Instructions

The commission omits the last sentence under the Payment Instructions requiring that transferred funds will be immediately available as this is inconsistent with the actual presentation and demand process.

Amendment to ILOC Amount (including Exhibits)

The commission consolidates the separate paragraph regarding increase and non-material change amendments and decrease amendments to a single paragraph. The commission further revises the text to specify when each respective type of amendment is effective for consistency with §25.107(f)(4)(F)(v)(I) or (II), as applicable. The commission also identifies the notice requirements for increase or non-material change amendments.

Automatic Extension or Non-Extension of ILOC and Cancellation of ILOC (including Exhibits)

The commission replaces the phrase "non-renewal" with "non-extension" for consistency across the template and the rule text. The commission also simplifies the notice requirement for both types of termination by requiring notice of non-extension or cancellation to be e-mail only and eliminating the language identifying when physical receipt is effective. The commission removes the "Received" signature block for the commission from Exhibit III as it is unnecessary for non-renewals. The commission also revises the text of Exhibit IV for a cancellation to only require written agreement of the Beneficiary (i.e., commission staff) rather than exclusively from the commission's Authorized Representative. The commission also revises the commission signature block to "Received and Accepted."

Applicable Law

The commission omits the phrase "including any amendments, modifications, or revisions thereof" as it is surplusage and changes the applicable governing law to New York.

Other Changes

The commission revises the template for clarity, including the addition of specific cross-references to Exhibits where applicable, removal of extraneous terms identified by ISP98 §1.10, insertion of parentheticals and other clarifications, and the specification permissible formats for actions undertaken in accordance with the terms of the ILOC (e.g., cancellations must be in Microsoft Word or PDF format). The commission also adds signature blocks for the Issuer Representative for the ILOC portion of the template and makes clarifications relating to the Issuer Representative's contact information.

Proposed §25.107 - Certification and Obligations of Retail Electric Providers (REPs)

Proposed §25.107(a) and proposed §25.107(b)(3) - Applicability and compliance update form

Proposed §25.107(b) and proposed §25.107(b)(1) - Definition of "affiliate"

Proposed §25.107(b) establishes the definitions for use in the rule. Proposed §25.107(b)(1) establishes the definition of "affiliate" as "any company that is related by common control with another company. Any company in the immediate corporate family or a company in the direct or indirect chain of corporate ownership up to the ultimate parent company is an affiliate unless the context indicates otherwise."

REP Coalition opposed the proposed definition of affiliate. REP Coalition instead recommended the definition of "affiliate" under proposed §25.107(b)(1) be revised to utilize the definition of "affiliate" used under §25.5(92), relating to Definitions except replacing all references to "public utility" to "retail electric provider." The REP Coalition also recommended expanding the definition such that "any person who is required to hold a power generation company registration or retail electric provider certificate issued by the commission or is a registered market participant with ERCOT and shares the same ultimate parent company as a retail electric provider" as an affiliate.

REP Coalition argued that utilizing a modified version of the commission's existing definition would create consistency across the definitions of affiliate used by the commission. It would also better align with the definition of affiliate used by ERCOT, which also applies to REPs and is more similar to the existing definition than the definition proposed in this rulemaking. Finally, the REP Coalition argued that this would avoid the use of undefined and potentially vague terms such as "common control" and "immediate corporate family."

Commission response

The commission declines to implement the recommended change. The purpose of identifying a REP or applicant's affiliates in §25.107 is to identify other subsidiaries or sister companies with a REP or applicant that are under the commission's jurisdiction and identify the chain of corporate ownership up to the ultimate parent company and identify any entities that may possess beneficial ownership (i.e., 5.0%) of the REP or applicant's ultimate corporate parent. The commission therefore revises the term "affiliate" as follows: "In contexts where the term refers to an affiliate of the REP or an affiliate of an applicant, any subsidiaries or sister companies of the REP or applicant that are registered or certificated with the commission or are registered with ERCOT as a market participant; and any company in the chain of corporate ownership of the REP or applicant up to the ultimate corporate parent company. In contexts where the term refers to an affiliate of the ultimate parent company of a REP or applicant, the term means any company with common control or beneficial ownership (i.e., direct or indirect ownership of at least 5.0% of voting securities) of the ultimate parent company. A principal may be an affiliate."

The commission does not share REP Coalition's concern about aligning the definition of affiliate in this rule with the definition that applies to utilities. Since these definitions apply to different entity types, there should not be any confusion, because both definitions do not apply to any single entity. Further, even REP Coalition recommends modifications to the commission's existing definition of utility, so uniformity of definitions wouldn't be achieved in either scenario.

To accommodate the revised definition, the commission makes conforming revisions where applicable in the REP Certification Form and REP Reporting Instructions forms and the following provisions: (e)(2)(D); (f)(1)(A)(i)(III); (f)(1)(B)(iv); (f)(2)(D); (f)(2)(D)(i)(III); and (f)(4)(D)(iii). These changes consist of

rephrasing of specific requirements or compliance obligations with different terms to accommodate the revised definition of affiliate. In each instance the requirement on the REP or applicant remains identical or is reduced.

Proposed §25.107(c), proposed §25.107(c)(7), and proposed §25.107(c)(7)(B) - Confidential disposal of noncompliant ILOC

Proposed §25.107(c) establishes the application processing requirements for REP certification or amendment of a REP certification with the commission. Proposed §25.107(c)(7) establishes the filing requirements for ILOCs. Proposed §25.107(c)(7)(B) provides that an ILOC that does not comply with the filing requirements of §22.71 for REP ILOCs will be rejected and securely and confidentially disposed of in accordance with §22.71.

REP Coalition recommended that proposed §25.107(c)(7)(B) be revised or deleted if the commission proceeds with an electronic-only ILOC process. REP Coalition maintained that it is "inappropriate for the Commission to destroy a valid financial instrument due solely to an administrative issue regarding filing procedures." REP Coalition emphasized that without the return of the physical document, it will be difficult for a REP to cancel the ILOC. REP Coalition indicated that if a physical ILOC was delivered to the commission through FedEx or some other method that includes confirmation of delivery, then "it is highly likely the financial institution that issued the ILOC will require some action on the part of the Commission to confirm that the ILOC was destroyed before it will effectuate a cancellation." REP Coalition further commented that a REP that has its physical ILOC destroyed would have to spend additional time and resources to obtain a new ILOC that complies with the electronic-only requirements. REP Coalition alternatively recommended that the rule could require Central Records to contact the REP with the physical ILOC on file with the commission and request it be picked up in person.

Commission response

The commission will not revise the rule to remove proposed §25.107(c)(7)(B) or to establish a REP pickup process, because physical ILOCs submitted contrary to §22.71 filing requirements are not properly filed documents and secure destruction is the procedure already established in §22.71.

Since the adoption of §22.71, the practice of securely disposing of physical copies of ILOCs and cancelling of ILOCs without the return of a physical document has proceeded without issue. In each instance, the issuing financial institution has acceded to electronic-only cancellation after communications with commission staff - even with the existing ILOC template that does not contemplate electronic draws or cancellations. Once all REPs have transitioned to the new template which includes such language, there should be significantly less friction between the commission and the issuing financial institution regarding electronic-only draws and cancellations.

The commission revises §25.107(c)(7)(B) to replace the phrase "and confidentially disposed of" with the term "destroyed" to align with §22.71(j)(1)(F)(iv) which states "[a] physical filing designated as confidential that has been rejected by Central Records will be securely destroyed after rejection."

Proposed §25.107(f) and proposed §25.107(f)(4) - Financial documentation requirements

Proposed §25.107(f) establishes the financial assurance requirements that an Option 1 REP must comply with on an ongoing basis. Proposed §25.107(f)(4) establishes the docu-

mentation requirements for financial documentation that must be provided by an Option 1 REP.

Proposed §25.107(f)(4)(D), proposed §25.107(f)(4)(D)(i), and proposed §25.107(f)(4)(D)(i)(III) - Account names for segregated cash account statements (customer deposits or prepayments)

Proposed §25.107(f)(4)(D) requires segregated cash accounts to be documented by a current account statement and the executed agreement with an unaffiliated person that controls the segregated cash account. Proposed §25.107(f)(4)(D)(i) establishes the specific requirements for the segregated cash account statement. Proposed §25.107(f)(4)(D)(i)(III) requires the account statement for the segregated cash account to clearly identify the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.

REP Coalition recommended proposed §25.107(f)(4)(D)(i)(III) be deleted from the rule. Specifically, REP Coalition emphasized that there "is no material difference between the agreement controlling the segregated cash account referencing a specific account number as opposed to a specific account name." Instead, only whether the agreement uses an identifier that can be easily linked to the account is material. REP Coalition further noted that a bank does not always authorize an account holder to officially assign an account name "such that the name appears on the account statement."

Commission response

The commission omits the requirement for the account statement to "clearly indicate the account is designated for containing only customer deposits, prepayments, or both" from §25.107(f)(4)(D)(i)(III). The revised provision only requires the account statement to clearly identify "the account name." However, the commission revises §25.107(f)(4)(D) to additionally require "a separate written statement detailing information about the segregated cash account" and adds new §25.107(f)(4)(D)(iv) and §25.107(f)(4)(D)(iv)(I)-(III) which identify the requirements for the separate written statement. Specifically, §25.107(f)(4)(D)(iv)(I)-(III) requires the separate written statement detailing information about the segregated cash account to "clearly indicate whether the segregated cash account is designated for containing only customer deposits, prepayments, or both;" "include, as applicable, the amount of customer deposits or advanced prepayments held within the account;" and affirm that the financial institution meets the criteria of §25.107(f)(4)(D)(ii). The revisions and new language preserve the requirement without making it a necessary component of the account statement itself - the REP can provide it independently as an attachment.

The commission also revises §25.107(f)(4)(D) to clarify that, if applicable, segregated cash accounts must also be documented by the executed agreement with the provider of credit that maintains (i.e., controls) the account. Similarly, the commission revises §25.107(f)(4)(D)(iii) to require the filing of such an agreement with the commission.

Proposed §25.107(f)(4)(E) - Escrow account requirements

Proposed §25.107(f)(4)(E) requires an escrow account to be documented by a current account statement and the executed escrow account agreement.

REP Coalition recommended proposed §25.107(f)(4)(E) be deleted in its entirety. REP Coalition commented that the provision does not define the term "escrow agent" or identify any

eligibility for criteria for the same. REP Coalition highlighted that, in contrast, this is unlike proposed §25.107(f)(4)(D)(iii) for segregated cash accounts which requires that an agreement controlling the account be with a provider of credit that meets specific eligibility criteria. REP Coalition observed that an "escrow agent" for purposes of the rule provision is the financial institution. REP Coalition noted that, in its own non-exhaustive search, it has not identified a financial institution that provides escrow accounts that meet the rule criteria. As such, the proposed rule appears to provide "more options for protecting deposits and/or prepayments than actually exist." REP Coalition stated that, without additional information from a more authoritative sampling of financial institutions that confirm the availability of such escrow accounts, the commission should delete the provision.

Commission response

The commission appreciates the diligence of the REP Coalition on this issue but will not revise the order to remove this provision at this time as more investigation is required before a potential option is removed from the rule.

Proposed §25.107(f)(4)(F) - Requirements for standard form ILOC

Proposed §25.107(f)(4)(F) requires ILOCs to use the commission-prescribed template, except for amendments or cancellations under proposed §25.107(f)(4)(F)(v) or (vi). Proposed §25.107(f)(4)(F) further requires the original stand-by ILOC to be filed electronically in accordance with §22.71.

REP Coalition recommended that proposed §25.107(f)(4)(F) be revised to authorize the submission of an ILOC that "substantially complies with" the standard [ILOC] template. REP Coalition explained that "substantial compliance" would necessitate satisfaction of all the requirements specified by proposed §25.107(f)(4)(F)(ii). REP Coalition commented that requiring only "substantial compliance" is reasonable given the amount of redlines to the template ILOC received from financial institutions, such as the deletion of specific exhibits. REP Coalition emphasized that its recommended change provides sufficient flexibility for individual financial institutions to adhere to their own processes and requirements while still complying with all substantive elements of the rule. REP Coalition noted that substantial compliance, rather than strict compliance, provides adaptability to "incorporate evolving technology that may bring opportunities for effective and efficient process of LOCs that cannot be presently contemplated."

Commission response

The commission declines to modify the rule to only require substantial compliance with the ILOC template as requested by the REP Coalition. A REP or financial institution may not deviate from the body text of the template commission-prescribed form for ILOCs to ensure the commission may draw on the ILOC without issue and maintain uniform practices for handling ILOCs. However, the adopted rule allows for substantial compliance for specific exhibits where action on an ILOC may be taken by the commission, REP, or financial institution on behalf of the REP (i.e., amendments, cancellations, and non-renewals). The commission revises the relevant provisions for additional clarity regarding "substantial compliance." Specifically, §25.107(f)(4)(F) is revised to clarify the applicable cross references for amendments under (f)(4)(F)(v) and non-extensions under (f)(4)(F)(vi). Additionally, §25.107(f)(4)(F)(iv)(III) is revised to replace the "substantially comply with and conform

to" requirement with "substantially adhere to," mirroring the language used in §25.107(f)(4)(F)(v)(I)(-a-) and (II)(-a-). The commission also revises (f)(4)(F) to state that letters of credit must use the prescribed template without variation from the prescribed terms. The commission further omits the requirement to file ILOCs electronically as it is redundant of §25.107(c)(7)(A).

Proposed §25.107(f)(4)(F)(ii) and proposed §25.107(f)(4)(F)(ii)(VI) - Draw of ILOC with return of original document or photocopy

Proposed §25.107(f)(4)(F)(ii) establishes the requirements for an ILOC. Proposed §25.107(f)(4)(F)(ii)(VI) requires an irrevocable stand-by ILOC to permit a draw to be made with the return of the original document or a photocopy.

REP Coalition recommended that, in the event the commission does not allow a REP to provide a physical copy of an ILOC in addition to electronic filing, proposed §25.107(f)(4)(F)(ii)(VI) be revised to permit a draw to be made with the return of the original electronic ILOCs or a physical copy of the electronic ILOC. REP Coalition noted that referring to an "original document or a photocopy" is ambiguous as those terms are generally used in reference to a physical ILOC.

Commission response

The commission disagrees with REP Coalition and declines to implement the recommended change for the reasons already stated. However, for clarity and to ensure consistency with the terms of the existing and new ILOC template, the commission restructures and simplifies the requirements of §25.107(f)(4)(F)(ii). Specifically, the commission omits proposed §25.107(f)(4)(F)(ii)(II)-(IX) as those are terms of the ILOC reflected in the template itself. Instead the commission adds new §25.107(f)(4)(F)(ii)(II) which requires adherence "to the terms specified by the applicable standard form irrevocable stand-by ILOC template without variation." This ensures that a REP that is using the prior template and has not transitioned to the new template prior to the date required for transition to the new template under §25.107(c)(7)(A)(iii) is not out of compliance. The addition also clarifies the existing requirement that any ILOC must be adhered to without deviation from the terms prescribed by the commission template.

The commission also moves proposed §25.107(f)(4)(F)(ii)(X) to be new (IV) and proposed §25.107(f)(4)(F)(ii)(XI) to be new (III) for clarity. The commission revises new §25.107(f)(4)(F)(ii)(III) to state that a ILOC must "contain a verifiable electronic signature in accordance with clause (iii) of this subparagraph and, if required by the commission, other acceptable means of authentication in accordance with clause (iv) of this subparagraph." The commission also adds new §25.107(f)(4)(F)(ii)(V) which states that an ILOC must be filed in Project 37919 for consistency with §25.107(c)(7)(A) and §25.107(f)(4)(F)(v).

Proposed §25.107(f)(4)(F)(iii), proposed §25.107(f)(4)(F)(iii)(I) and (II), and proposed §25.107(f)(4)(F)(iv) - signature from executive officer of the issuing bank with digital identifier (verifiable electronic signature); other means of authentication

Proposed §25.107(f)(4)(F)(iii) establishes the requirements for a verifiable electronic signature for purposes of an ILOC. Proposed §25.107(f)(4)(F)(iii)(I) requires a verifiable electronic signature to include a signature from an executive officer of the issuing bank with a digital identifier, such as a public-key certificate or self-signed certificate. Proposed §25.107(f)(4)(F)(iv) requires an ILOC without a verifiable electronic signature to include other means of authentication. The provision further spec-

ifies that other means of authentication must consist of, at a minimum, an affidavit attesting to the authenticity of the ILOC which must use the form prescribed by the commission; be sworn; be signed by an executive officer of the REP; and include the date the affidavit was signed. The provision also authorizes a REP that utilizes multiple letters of credit to use a single affidavit for authentication purposes.

REP Coalition recommended proposed §25.107(f)(4)(F)(iii)(I) be revised to require a signature of a representative of the issuing bank with the authority to issue an ILOC rather than require a signature exclusively from an executive officer. REP Coalition explained that the proposed language substitutes "the Commission's judgment for the judgment of a financial institution with respect to who has the authority to execute an LOC on behalf of the [issuing] financial institution." REP Coalition emphasized that the issuing bank should have final discretion as to whom has authority to sign an ILOC on its behalf. REP Coalition highlighted that because financial institutions are also regulated entities, it is appropriate for the commission to assume that "likelihood of an unauthorized signatory is very minimal." REP Coalition indicated that at least one financial institution has expressed that, if requested by the commission, it would issue a "certificate of incumbency verifying the authority of the signatory on an LOC." REP Coalition cautioned, however, that it is unclear how widely adopted or available this practice is. REP Coalition further emphasized that a certificate of incumbency or equivalent should "should only be requested if absolutely necessary" due to the difficulty and time associated with providing one. REP Coalition provided draft language consistent with its recommendation.

Commission response

The commission acknowledges REP Coalition's concern and revises §25.107(f)(4)(F)(iii)(I) to only require a signature from a representative of the issuing bank with the authority to issue an ILOC. Additionally, the commission substantively rewrites §25.107(f)(4)(F)(iv) to broaden what may be considered other means of authentication by adding new §25.107(f)(4)(F)(iv)(I)-(III) which identify a non-exhaustive list of what constitutes "other means of authentication." Specifically, such means may include: a written statement from the issuing financial institution verifying the authenticity of the ILOC; documentation from the issuing financial institution identifying the persons authorized to sign the irrevocable stand-by ILOC on behalf of the financial institution (e.g., a certificate of incumbency); or a sworn affidavit signed by a principal or executive officer of the REP attesting to the authenticity of the ILOC (which may take the form of Attachment C-2C from the REP Certification Form). Additionally, commission staff will communicate with the REP and the applicable financial institution to verify an ILOC if necessary. This provides additional flexibility by not limiting the means by which the commission or an issuing financial institution can verify a ILOC for filing purposes as well as for draws and terminations. The commission also revises §25.107(f)(4)(F)(iii)(II) by adding a parenthetical clarifying that the date an ILOC is signed by the financial institution is the date of issuance.

Proposed §25.107(f)(4)(F)(v); proposed §25.107(f)(4)(F)(v)(I); and proposed §25.107(f)(4)(F)(v)(II) - Requirements for amendments to ILOCs

Proposed §25.107(f)(4)(F)(v) prescribes the requirements for amendments to an ILOCs. Proposed §25.107(f)(4)(F)(v)(I) provides that an amendment to an ILOC involving an increase

to the stated amount or a non-material change to the ILOC (e.g., address, contact information) is only effective upon the filing of written confirmation of the change by the issuing financial institution and further requires such written confirmation to be filed in Project 37919 or by any other means prescribed by the commission. Proposed §25.107(f)(4)(F)(v)(I) provides that an amendment to an ILOC involving a request to decrease the value of the ILOC is only effective upon the execution of a written agreement by the executive director or his or her designee approving the change. The provision also specifies an additional requirement for a sworn affidavit that must accompany the request for a decrease.

The commission revises proposed §25.107(f)(4)(F)(v) to specify that written confirmation of any amendment must be filed in Project 37919 and deletes the corresponding requirement from proposed §25.107(f)(4)(F)(v)(I), including "or by any other means prescribed by the commission." The commission further revises proposed §25.107(f)(4)(F)(v)(I) to state that an increase amendment or amendment making a non-material change is effective immediately. The commission also expands the parenthetical clarifying what a non-material change is to explicitly include changes to expiration dates for renewals. The commission also revises proposed §25.107(f)(4)(F)(v)(II) to clarify that an amendment to an ILOC involving a request to decrease the face value of the ILOC is effective only upon the issuance of a written acceptance signed by the commission's authorized representative approving the change.

Proposed §25.107(f)(4)(F)(v)(III) - Additional requirements for amendments to irrevocable stand-by letters of credit

Proposed §25.107(f)(4)(F)(v)(III) specifies that an amendment to an ILOC must substantially comply with and conform to the commission-prescribed form in addition to the requirements specified under §25.107(f)(4)(F)(v)(I) and (II), as applicable.

The commission replaces the phrase "substantially comply with and conform to" with "substantially adhere to" to conform with similar language elsewhere in the rule. The commission also makes minor clerical changes to the provision.

Proposed §25.107(f)(4)(F)(v)(III)(-b-), (-c-), (-d-), (-e-) and (-g-) - Mandatory minimum requirements for amendments to ILOCs; financial institution contact information; change to stated amount; effective date, and contact information and signature of financial institution representative

Proposed §25.107(f)(4)(F)(v)(III)(-b-) requires an amendment to include the previous effective date of the ILOC being amended. Proposed §25.107(f)(4)(F)(v)(III)(-c-) requires an amendment to include the name and contact information of the issuing financial institution. Proposed §25.107(f)(4)(F)(v)(III)(-d-) requires an amendment to include the stated amount of the previously effective irrevocable stand-by ILOC immediately followed by the new amount of the ILOC. Proposed §25.107(f)(4)(F)(v)(III)(-e-) requires an amendment to include the effective date of the amendment, as applicable under §25.107(f)(4)(F)(v)(I) or §25.107(f)(4)(F)(v)(II). Proposed §25.107(f)(4)(F)(v)(III)(-g-) requires an amendment to include the signature of a representative of the issuing financial institution and their corresponding contact information.

The commission revises §25.107(f)(4)(F)(v)(III)(-b-)(-c-), (-d-), (-e-), and (-g-) for clarity.

Specifically, the commission revises §25.107(f)(4)(F)(v)(III)(-b-) to require "the original effective date of the ILOC being

amended including, if applicable, the previous effective date of the most recent amendment. The commission revises §25.107(f)(4)(F)(v)(III)(-c-) to require the "full business name and contact information, including an e-mail address, of the issuing financial institution and the applicant. The commission also revises §25.107(f)(4)(F)(v)(III)(-d-) to require "information identifying whether the amendment involves an increase or decrease, including the face value of the previously effective irrevocable stand-by letter of credit immediately followed by the new face value of the [ILOC]." The commission additionally revises §25.107(f)(4)(F)(v)(III)(-e-) to require the new effective date of the amendment, as may be applicable. Lastly, the commission revises §25.107(f)(4)(F)(v)(III)(-g-) to require the name, title, contact information, and signature of a representative of the issuing financial institution."

Proposed §25.107(f)(4)(F)(vi); proposed §25.107(f)(4)(F)(vi)(I) and proposed §25.107(f)(4)(F)(vi)(I)(-b-); proposed §25.107(f)(4)(F)(vi)(II); and proposed §25.107(f)(4)(F)(vi)(II)(-a-) and (-b-) - Requirements for cancellations and non-extensions

Proposed §25.107(f)(4)(F)(vi) establishes that termination of an ILOC may be effectuated through one of the methods specified under §25.107(f)(4)(F)(vi)(I) or §25.107(f)(4)(F)(vi)(II). §25.107(f)(4)(F)(vi)(I) prescribes the criteria by which a cancellation of an ILOC is effective. Proposed §25.107(f)(4)(F)(vi)(I)(-b-) establishes that a non-renewal is effective only upon the signature or written approval of the executive director or his or her designee. Proposed §25.107(f)(4)(F)(vi)(II) prescribes the criteria by which a non-renewal of an ILOC is effective. Proposed §25.107(f)(4)(F)(vi)(II)(-a-) establishes that a non-renewal is effective only upon the filing of a written statement with the commission, provided at least 90 days prior to the expiry date of the ILOC that substantially adheres to the commission-prescribed form for non-renewals and complies with the requirements of §25.107(f)(4)(F)(vi)(III). Proposed §25.107(f)(4)(F)(vi)(II)(-b-) further establishes that a non-renewal is effective only upon the signature of the executive director or his or her designee acknowledging the statement of non-renewal.

The commission revises §25.107(f)(4)(F)(vi)(I)(-b-) to clarify that cancellation is effective upon written acceptance by the commission as approval by the commission executive director or designee or the commission's Authorized Representative is not necessary to approve cancellations under the terms of either the prior or new template. Similarly, the commission omits §25.107(f)(4)(F)(vi)(II)(-b-) for the same reason and consolidates §25.107(f)(4)(F)(vi)(I) §25.107(f)(4)(F)(vi)(I)(-a-) as commission action for non-renewal of an ILOC by a REP is not required. The commission also replaces the phrase "non-renewal" with the phrase "non-extension" in §25.107(f)(4)(F)(vi)(II) for consistency with the new template.

Proposed §25.107(f)(4)(F)(vi)(III) - Minimum requirements for statements terminating an ILOC

Proposed §25.107(f)(4)(F)(vi)(III) establishes the mandatory minimum requirements for a statement terminating an ILOC under proposed §25.107(f)(4)(F)(vi)(III)(-a-) - (-d-).

The commission revises the provision as follows for clarity: "A statement cancelling an [ILOC] or otherwise notifying the commission of non-extension of an [ILOC] must, at a minimum, include:."

New §25.107(f)(4)(F)(viii) - Return of physical copy of ILOC

The commission adds new §25.107(f)(4)(F)(viii) which states that the return of a physical copy of an ILOC to the issuing financial institution or REP is not required unless otherwise specified by the terms of the ILOC.

REP Certification Form and REP Reporting Form

The REP Certification Form is an interactive form based on the requirements of §25.107 for an applicant to certify as a REP or an existing REP to amend its certification. The REP Reporting Form is a reference form containing tables and prefatory notes concerning the annual and semi-annual reporting requirements, including details regarding REP financial assurance.

The commission makes conforming changes to the REP Certification Form and REP Reporting Form based on edits made to the §25.107 rule text and new Irrevocable Stand-By ILOC template.

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.352, which stipulates the requirements to certify a REP.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, and §39.052.

§25.107. Certification and Obligations of Retail Electric Providers (REPs).

(a) Applicability.

(1) This section contains the certification and reporting requirements applicable to a retail electric provider (REP).

(A) A person must obtain a REP certificate under this section before purchasing, taking title to, or reselling electricity to provide retail electric service. A person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under this section. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information in accordance with subsections (i) and (h) of this section.

(B) A person that does not purchase, take title to, or resell electricity to provide electric service to a retail customer is not a REP and must not act as a REP without obtaining a certificate under this section. A REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider.

(C) A person who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004, is not, for that reason, required to be certified as a REP.

(2) This section also applies, where specifically stated, to an independent system operator or transmission and distribution utility (TDU).

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

(1) Affiliate--In contexts where the term refers to an affiliate of the REP or an affiliate of an applicant, any subsidiaries or sister

companies of the REP or applicant that are registered or certificated with the commission or are registered with ERCOT as a market participant; and any company in the chain of corporate ownership of the REP or applicant up to the ultimate corporate parent company. In contexts where the term refers to an affiliate of the ultimate parent company of a REP or applicant, the term means any company with common control or beneficial ownership (i.e., direct or indirect ownership of at least 5.0% of voting securities) of the ultimate parent company. A principal may be an affiliate.

(2) Assumed name--Has the meaning assigned in Chapter 71 of the Texas Business and Commerce Code.

(3) Continuous and reliable electric service--Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP.

(4) Control--The term control (including the terms controlling, controlled by and under common control with) means the direct or indirect possession of binding authority to direct or cause the direction of the management, policies, operations, or decision-making of a person, whether through ownership of voting securities, by contract, formation documents, or otherwise. A principal is a controlling person. A third-party provider may be a controlling person.

(5) Default--As defined in a TDU tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement, ERCOT standard form market participant agreement (SFA), or any similar agreement with an applicable independent organization other than ERCOT.

(6) Executive officer--An entity's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions. Executive officers of subsidiaries may be deemed executive officers of the entity if they perform such policy making functions for the entity.

(7) Guarantor--A person that provides an irrevocable guaranty agreement using the standard form approved by the commission under this section.

(8) Investment-grade credit rating--A long-term unsecured credit rating issued by the bond credit rating companies Moody's Investors' Service (Moody's), Standard & Poor (S&P), or Fitch of at least "Baa3" from Moody's or "BBB-" from S&P or Fitch.

(9) Option 1 REP--A REP that provides its service offerings to any customer class based on geographic service area.

(10) Option 2 REP--A REP that limits its service offerings to specifically identified customers, each of whom contracts for one megawatt or more of capacity.

(11) Option 3 REP--A REP that sells electricity exclusively to a retail customer, other than a small commercial or residential customer, from a distributed generation facility owned by a power generation company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators) located on the same geographic site as the customer.

(12) Person--An individual or any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation. Person does not include an electric cooperative or a municipal corporation.

(13) Principal--Includes:

- (A) A sole proprietor;
- (B) A partner of a partnership;
- (C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);
- (D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;
- (E) A shareholder with more than 10% equity of the REP, if a public company; or
- (F) A person who exercises control and has apparent or actual authority to exercise such control over either the REP or a principal that is otherwise described by this subsection. A consultant, third-party provider, or fiduciary of a company such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(14) Shareholder--The legal or beneficial owner of any of the equity of any business entity as the context and applicable business entity requires, including, stockholders of corporations, members of limited liability companies and equity partners of partnerships.

(15) Tangible net worth--Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.

(16) Third-party provider--An entity to which a REP outsources or plans to outsource any retail or wholesale electric functions. A contractor, consultant, agent, or any other person not directly employed by the REP can be a third-party provider. A third-party provider is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(c) Application processing.

(1) A person can apply to certify as a REP or amend a REP certification by submitting a complete application on a form approved by the commission. Commission staff will review each application for sufficiency and submit a recommendation to the presiding officer within 20 days after the application is filed. The presiding officer will make a determination of sufficiency of the application within ten days of receipt of commission staff's recommendation. If the presiding officer finds that the application is deficient, the presiding officer must notify the applicant. The applicant will have ten days from the issuance of the notice to cure the deficiencies. If the deficiencies are not cured within ten days, the presiding officer may notify the applicant that the certification request is rejected without prejudice.

(2) While an application for certification or amendment is pending, an applicant must notify the commission of any material change to the information provided in the application within ten days of any such change in accordance with subsection (h)(2) of this section.

(3) Except where good cause exists to extend the time for review, the presiding officer will issue an order approving, rejecting, or approving with modifications, an application within 90 days of finding an application sufficient.

(4) For applications to certify as an Option 1 REP, the presiding officer will deny an application if the configuration of the proposed geographic area would unduly discriminate in the provision of electric service to any customer because of race, creed, color, national

origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.

(5) An Option 2 REP application for certification that meets all other requirements of this section except for the provision of customer affidavits under subparagraph (d)(2)(I) may be conditionally granted by the presiding officer. If such an application is conditionally granted, the applicant must, within 30 days from the date the application is granted, file in the docket the affidavit or affidavits required by subsection (d)(2)(I). The application will be withdrawn and the application denied with respect to each customer for whom the applicant fails to timely file the required affidavit. Within 45 days after the application is conditionally granted, commission staff must file a status report indicating whether each of the required affidavits were timely filed. The presiding officer will then issue a follow-up order confirming the approval of the application as to each customer for whom the required affidavit was filed and denying the application as to each customer for whom the required affidavit was not filed.

(6) Document format. If a provision of this subsection specifies a certain format for a document that must be filed with or submitted to the commission, an applicant must file or submit that document in the native format specified. A document filed in its native format must permit basic data manipulation functions, such as copying and pasting of data.

(7) Filing requirements for irrevocable stand-by letters of credit.

(A) To meet the financial requirements under subsection (f) of this section, an irrevocable stand-by letter of credit must be filed electronically with the commission in accordance with §22.71 of this title (relating to Commission Filing Requirements and Procedures). The financial institution issuing the letter of credit, the REP or applicant, or an affiliate of the REP or applicant, may file the irrevocable-stand-by letter of credit with the commission in Project 37919.

(i) A new irrevocable stand-by letter of credit executed on or after the effective date of this rule must use the following template in accordance with subsection (f)(4)(F) of this section: Figure: 16 TAC §25.107(c)(7)(A)(i)

(ii) An amendment to a currently executed irrevocable stand-by letter of credit may be performed using the same template it was executed in or the updated template specified under clause (i) of this subparagraph.

(iii) Notwithstanding clause (ii) of this subsection, an existing irrevocable stand-by letter of credit must be re-issued or amended using the updated template specified under clause (i) of this subparagraph on or before August 15, 2027.

(B) An irrevocable stand-by letter of credit that does not comply with the filing requirements of §22.71 of this title for REP letters of credit will be rejected and securely destroyed in accordance with §22.71 of this title.

(d) Basic requirements.

(1) A REP must maintain its certification by complying with the following subparagraphs on an ongoing basis.

(A) Only provide retail electric service under the name or names set forth in an approved application for certification or subsequent amendment application. A REP's certificate must contain the REP's legal business name and all assumed names under which it proposes to provide service.

(B) Not use more than five assumed names in the REP's regular course of business.

(C) Maintain an active business registration with the Texas Secretary of State.

(D) Maintain current and accurate contact information including:

(i) the applicant's primary contact name and title, street and mailing address, business telephone number and toll-free number, business e-mail address, and applicant's web address;

(ii) for the pendency of the application or amendment, the authorized representative's name, title, street and mailing address, telephone number, e-mail address, and web address;

(iii) regulatory contact name, title, street and mailing address, telephone number, e-mail address and web address;

(iv) customer complaint contact name, title, street and mailing address, telephone number including a toll-free number, e-mail address and web address;

(v) emergency contact's name, title, telephone number, and e-mail address, and web address; and

(E) Maintain current and accurate office information including:

(i) An office that has street address located within Texas that is open during normal business hours for the purpose of providing customer service and making available to commission staff books and records sufficient to establish the REP's compliance with Public Utility Regulatory Act (PURA) and commission rules; the office must have the following contact information where the REP's staff can be directly reached:

(I) a business telephone number and toll-free number,

(II) a business e-mail address and web address, and

(III) a business postal address that is not a post office box.

(ii) The applicant's state of formation or incorporation, and the address of the applicant's primary business office; and

(iii) A mailing address, if different from the applicant's Texas office address or primary business office address; and

(iv) The name and address of the applicant's registered agent for the purpose of receiving service of process.

(F) Comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other protocols established by the applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

(G) Comply with the registration and certification requirements of the applicable independent organization and its system rules and protocols, or each contract for services with a third-party provider that is required to be registered with or certified by the applicable independent organization.

(H) Maintain adequate staffing and employee training to meet all service level commitments.

(I) Respond within five working days to any commission or commission staff request for information, unless otherwise provided by the commission, commission staff, or other applicable law.

(2) An applicant must provide the following information to the commission to certify as a REP under this section.

(A) An application for certification or amendment to a certificate must be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.

(B) Information related to the applicant's status as a legal entity, including information related to its tax status and authority to do business in Texas to verify the information required under paragraphs (1)(A)-(C) of this subsection. The following information must be provided:

(i) A copy of the applicant's Texas Secretary of State registration and filing numbers associated with the registration. A business name must not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

(ii) The applicant's Texas Comptroller of Public Accounts tax identification number, and all other relevant or other applicable certification or file numbers.

(C) The applicant's current contact information required under paragraph (1)(D) of this subsection.

(D) The applicant's current office information required under paragraph (1)(E) of this subsection.

(E) Information on the applicant, including:

(i) a list of the applicant's subsidiaries and parent companies up to the ultimate corporate parent, and any sister companies that are registered or certified with the commission. Each company must be identified by name and, if applicable, type of commission registration or certification.

(ii) an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed under clause (i) of this subparagraph and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

(iii) a list of all principals, provided in Microsoft Excel format;

(iv) a list of all executive officers, provided in Microsoft Excel format.

(F) A statement affirming compliance with paragraphs (1)(F)-(I) of this subsection and a short summary describing how the applicant has complied, or for paragraph (1)(I) of this subsection how the applicant will comply, with each subparagraph.

(G) The control number and item number where the applicant has filed its Emergency Operations Plan as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).

(H) An applicant for an Option 1 REP certificate must designate one of the following categories as its geographic service area:

(i) The geographic area of the entire state of Texas;

(ii) A specific geographic area (indicating the zip codes applicable to that area);

(iii) The service area of one or more specific TDUs, municipal utilities, or electric cooperatives in which competition is offered; or

(iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.

(I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of capacity. Within 30 days of conditional commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of capacity. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

(J) An applicant for an Option 3 REP certificate must:

(i) identify the name of the PGC that owns the distributed generation facilities and affirm that the PGC is registered under §25.109 of this title; and

(ii) provide a signed, notarized affidavit from an executive officer of the PGC confirming:

(I) the PGC operating the distributed generation facility conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);

(II) the distributed generation facility is installed by a licensed electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and

(III) the distributed generation facility is installed in accordance with the National Electric Safety Code as adopted by the Texas Department of Licensing and Regulation and otherwise complies with all applicable local and regional building codes.

(c) Technical and managerial requirements. An Option 1 REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, applicable independent organization protocols, and other applicable laws. This subsection does not apply to an Option 2 or Option 3 REP.

(1) Technical and managerial resource requirements. The following are technical and managerial resource requirements a REP must maintain on an ongoing basis.

(A) One or more principals or employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. A third-party provider's experience may not be used to meet this requirement.

(B) One executive officer or employee in a managerial position who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may enter into a contract for a term not less than two years with a third-party provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least

five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$10,000,000.

(C) If providing retail electric service in the ERCOT region, compliance with all applicable ERCOT requirements, including:

(i) execution of a service agreement with a QSE;

(ii) maintaining the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;

(iii) providing outage notifications in accordance with §25.53 of this title; and

(iv) completing ERCOT flight test obligations.

(D) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(2) Technical and managerial documentation requirements. The following information must be provided by an applicant to demonstrate compliance with the technical and managerial requirements under paragraph (1) of this subsection.

(A) A list of all third-party providers accompanied by a description of each third-party provider's responsibilities and delegation of authority, provided in Microsoft Excel format.

(B) Resumes showing prior experience of one or more of the applicant's principals or managerial employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, a resume showing one of the applicant's executive officers or managerial employees possess at least five years' experience in commodity risk management.

(C) If relying upon a third-party provider for commodity risk management services to satisfy the requirement for paragraph (1)(B) of this subsection, a copy of the executed contract is required.

(D) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, internet, broadband, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons.

(i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information must include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the complaint history of the applicant's principals and affiliates, disciplinary record, and compliance record.

(iii) Any complaint information on file at the commission may also be considered when reviewing the application.

(E) The following statements must be supported by a signed notarized affidavit made by an executive officer of the applicant.

(i) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.

(ii) A statement that identifies whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(iii) A statement that the applicant will register with or be certified by the applicable independent organization and that the applicant will comply with the technical and managerial requirements of this subsection; and that third-party providers with whom the applicant has a contractual relationship are registered with or certified by the independent organization, as appropriate, and will comply with all system rules and protocols established by the applicable independent organization.

(iv) A statement that identifies and, if applicable, describes the applicant's relationship with any of the following persons.

(I) Identification of all of the applicant's principals, executive officers, employees, and third-party providers that:

(-a-) exercised direct or indirect control over a REP that experienced a mass transition of the REP's customers under §25.43 of this title (relating to Provider of Last Resort (POLR)) at any time within the six months prior to the mass transition;

(-b-) exercised direct or indirect control over a market participant at any time within the six months prior to a market participant having had its ERCOT SFA terminated or a similar agreement for an applicable independent organization other than ERCOT terminated;

(-c-) exercised direct or indirect control of a market participant within the prior six months of a market participant having exited an electricity or gas market with outstanding payment obligations that remain outstanding; or

(-d-) have been barred, in any way, participation by commission order.

(II) If a relationship exists as described in subclause (I) of this clause, the applicant must include in the affidavit for each such relationship:

(-a-) the name of the person;

(-b-) the name of the REP that experienced a mass transition of its customers under §25.43 of this title or market participant whose ERCOT SFA or similar agreement for an applicable independent organization was terminated or exited a market with outstanding payment obligations;

(-c-) details about the person's relationship with the REP or market participant;

(-d-) factual statements about the events that necessitated this response, including, if applicable, whether and, if so, how the REP that experienced a mass transition of its customers under §25.43 of this title settled all outstanding payment obligations;

(-e-) the person's current relationship or position with the applicant; and

(-f-) the extent of the person's apparent or actual authority to act in such a way that may be perceived as having direct or indirect control over the applicant.

(v) A statement affirming that the persons listed under paragraph (g)(1) of this section do not control the applicant and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section.

(F) To document compliance with subsection (e)(1)(C) of this section, an applicant must provide:

(i) all relevant information related to each service agreement executed with a QSE, including:

(I) the term of the service agreement and date the service agreement began;

(II) the name of the QSE;

(III) the QSE's contact name and title;

(IV) the QSE's physical address;

(V) the QSE's e-mail address and web address; and

(VI) the QSE's business telephone number and toll-free number;

(ii) a confirmation that applicant has the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;

(iii) a confirmation that applicant will provide outage notifications in accordance with §25.53 of this title; and

(iv) a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

(f) Financial requirements. An Option 1 REP must, on an ongoing basis, maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.

(1) Access to capital. A REP must maintain the requirements of subparagraph (A) or (B) of this paragraph on an ongoing basis.

(A) A REP may maintain an executed version of the commission approved standard form irrevocable guaranty agreement.

(i) The guarantor must be:

(I) One or more affiliates of the REP;

(II) A financial institution with an investment-grade credit rating; or

(III) A provider of wholesale power supply for the REP, or a parent company, sister company, or subsidiary of a power provider with whom the REP has executed a power purchase agreement.

(ii) The guarantor must have:

(I) An investment-grade credit rating; or

(II) Tangible net worth greater than or equal to \$100 million, a minimum current ratio (defined as current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load.

(B) A REP may maintain an irrevocable stand-by letter of credit with a face value as determined in clause (i) of this subpara-

graph, based on the number of electronic service identifiers (ESI IDs) the REP serves in the manner prescribed by clauses (ii) and (iii) of this subparagraph. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders' equity in accordance with clauses (iv) and (v) of this subparagraph.

(i) Figure: 16 TAC §25.107(f)(1)(B)(i) (No change.)

(ii) The number of ESI IDs includes all customer classes to which a REP provides retail electric service.

(iii) As the number of ESI IDs served by the REP increases, the irrevocable stand-by letter of credit must be adjusted to reflect the required value as determined in clause (i) of this subparagraph. As the number of ESI IDs served by the REP decreases, the irrevocable stand-by letter of credit may be adjusted to reflect the required value as determined in clause (i) of this subparagraph.

(iv) For the first 24 months a REP is serving load, a REP must not make any distribution or other payment to any shareholder, person, or other entity if, after giving effect to the distribution or other payment, the REP's shareholders' equity is less than one million dollars. Distributions or other payments include dividend distributions, redemptions and repurchases of equity securities, and loans.

(v) After a REP has continuously served load for 24 months, a prescribed amount of maintained shareholders' equity is no longer required.

(2) Customer deposits and prepayments. A REP certified to collect customer deposits must comply with this paragraph and the requirements of §25.478 of this title (relating to Credit Requirements and Deposits). A REP certified to collect customer prepayments must comply with this paragraph and the requirements of §25.498 of this title (relating to Prepaid Service).

(A) A REP must maintain customer deposits and prepayments in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit.

(i) If a REP is certified to collect both customer deposits and prepayments then the REP must use and maintain either an escrow account, segregated cash account, or irrevocable stand-by letter of credit to protect customer deposits and prepayments. If a REP uses an escrow account or segregated cash account, the same account must be used for customer deposits and prepayments. More than one irrevocable stand-by letter of credit can be provided to protect customer deposits and prepayments.

(ii) For customer deposits, the escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of the REP's outstanding customer deposits held at the close of each calendar month.

(iii) For customer prepayments, a REP must maintain, at minimum, protection for all customer prepayments that equals or exceeds \$50. The balance of an escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of customer prepayment funds equal to or exceeding \$50 held at the close of each calendar month.

(B) Any irrevocable stand-by letter of credit provided under this paragraph must be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection.

(3) Bankruptcy disclosure. If a REP files a petition for bankruptcy, is the subject of an involuntary bankruptcy proceeding, or

in any other manner becomes insolvent, including being in default with the applicable independent organization or with a TDU:

(A) The REP must notify the commission within three working days of this event and must file with the commission a summary of the nature of the event; and

(B) The notification must be filed in the commission control number established for notices prescribed under this paragraph. If the REP has filed a petition for bankruptcy, then the REP must include in its filing the petition that initiated the bankruptcy.

(4) Financial documentation requirements. The following must be provided by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection, as applicable. Additionally, the applicant must provide the month and last day of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year. The applicant must also provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

(A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the applicant provides must be the most recently released report by the credit reporting agency.

(B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by audited or unaudited financial statements of the guarantor for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the guarantor's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the REP's

most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(D) Segregated cash accounts must be documented by a current account statement, the executed agreement with the provider of credit that maintains (i.e., controls) the segregated cash account if applicable, and a separate written statement detailing information about the segregated cash account.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) If applicable, the agreement executed with the provider of credit that governs the control and management of the account must be filed with the commission.

(iv) the separate written statement detailing information about the segregated cash account must:

(I) clearly indicate whether the segregated cash account is designated for containing only customer deposits, prepayments, or both;

(II) include, as applicable, the amount of customer deposits or advanced prepayments held within the account; and

(III) affirm that the financial institution meets the criteria of clause (ii) of this subparagraph.

(E) Escrow accounts must be documented by a current account statement and the executed escrow account agreement.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) The escrow account agreement must provide that the account holds only customer deposits, prepayments, or both, and that the customer deposits will be held in trust by the escrow agent.

(F) Except as otherwise provided, for amendments under clause (v) of this subparagraph or cancellations or non-extensions under clause (vi) of this subparagraph, irrevocable stand-by letters of

credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission without variation from the prescribed terms.

(i) The irrevocable stand-by letter of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(ii) The irrevocable stand-by letter of credit must:

(I) be an original document;

(II) adhere to the terms specified by the applicable standard form irrevocable stand-by letter of credit template without variation;

(III) contain a verifiable electronic signature in accordance with clause (iii) of this subparagraph and, if required by the commission, other acceptable means of authentication in accordance with clause (iv) of this subparagraph; and (IV) comply with clause (v) of this subparagraph for amendments to and clause (vi) for terminations of an irrevocable, stand-by letter of credit, as applicable

(IV) comply with clause (v) of this subparagraph for amendments to and clause (vi) for terminations of an irrevocable, stand-by letter of credit, as applicable

(V) be filed in Project 37919.

(iii) For purposes of an irrevocable stand-by letter of credit, a verifiable electronic signature includes:

(I) a signature from a representative of the issuing bank with the authority to issue an irrevocable stand-by letter of credit; and

(II) the date the irrevocable stand-by letter of credit was signed (i.e., issued).

(iv) The commission may require other means of authenticating an irrevocable stand-by letter of credit, which may include the following:

(I) a written statement from the issuing financial institution verifying the authenticity of the irrevocable stand-by letter of credit;

(II) documentation from the issuing financial institution identifying the persons authorized to sign the irrevocable stand-by letter of credit on behalf of the financial institution (e.g., a certificate of incumbency); or

(III) a sworn affidavit signed by a principal or executive officer of the REP attesting to the authenticity of the irrevocable stand-by letter of credit.

(v) An amendment to an irrevocable stand-by letter of credit must be filed in Project 37919 and comply with this clause.

(I) An amendment to an irrevocable stand-by letter of credit involving an increase to the face value or a non-material change to the irrevocable stand-by letter of credit (e.g., address, contact information, changes to expiration dates for renewals, etc.) is effective immediately.

(II) An amendment to an irrevocable stand-by letter of credit involving a request to decrease the face value of the irrevocable stand-by letter of credit is effective only upon the issuance

of a written acceptance signed by the commission's authorized representative approving the change. Additionally, an amendment to decrease the value of the irrevocable stand-by letter of credit must be accompanied by an affidavit that:

- (-a-) is sworn;
- (-b-) is signed by an executive officer of the

REP;

signed; and

(-d-) includes a written statement indicating, as applicable, either the current number of ESI IDs the REP serves or the value of customer deposits and prepayments the REP is liable for.

(III) In addition to the requirements of subclause (I) or (II) of this clause, as applicable, an amendment to an irrevocable stand-by letter of credit must substantially adhere to the commission-prescribed form for such amendments and must, at a minimum, include:

(-a-) the number or identifier applicable to the irrevocable stand-by letter of credit being amended;

(-b-) the original effective date of the irrevocable stand-by letter of credit being amended including, if applicable, the previous effective date of the most recent amendment;

(-c-) the full business name and contact information, including an e-mail address, of the issuing financial institution and the applicant;

(-d-) information identifying whether the amendment involves an increase or decrease, including the face value of the previously effective irrevocable stand-by letter of credit immediately followed by the new face value of the irrevocable stand-by letter of credit;

(-e-) the new effective date of the amendment, as applicable under subclause (I) or (II) of this clause;

(-f-) the following language: "All other terms and conditions of the Irrevocable Stand-By Letter of Credit remain unchanged."; and

(-g-) the name, title, contact information, and signature of a representative of the issuing financial institution.

(vi) Termination of an irrevocable stand-by letter of credit may be effectuated through one of the following methods under subclause (I) or (II) of this clause.

(I) Cancellation. The cancellation of an irrevocable stand-by letter of credit is effective only upon:

(-a-) the filing of a written statement with the commission that substantially adheres to the commission-prescribed form for cancellations and complies with the requirements of subclause (III) of this clause; and

(-b-) written acceptance by the commission.

(II) Non-extension. The non-extension of an irrevocable stand-by letter of credit is effective only upon the filing of a written statement with the commission, provided at least 90 days prior to the expiry date of the irrevocable stand-by letter of credit that substantially adheres to the commission-prescribed form for non-extensions and complies with the requirements of subclause (III) of this clause; and

(III) A statement cancelling an irrevocable stand-by letter of credit or otherwise notifying the commission of non-extension of an irrevocable stand-by letter of credit must, at a minimum, include:

(-a-) the number or identifier of the irrevocable stand-by letter of credit used by the financial institution;

(-b-) the date the irrevocable stand-by letter of credit was effective and the date the written statement was filed;

(-c-) the face value of the irrevocable stand-by letter of credit;

(-d-) the name of the applicant associated with the irrevocable stand-by letter of credit; and

(-e-) as applicable, the expiry date of the irrevocable stand-by letter of credit.

(vii) Unless otherwise specified by the terms of the irrevocable stand-by letter of credit, the return of a physical copy of an irrevocable stand-by letter of credit to the issuing financial institution or REP is not required.

(G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission's demands on behalf of the applicant. A copy of the executed irrevocable guaranty agreement must be provided in the manner established by the commission.

(i) The guarantor's obligation to satisfy a commission demand for payment must be in an amount not less than \$1,500,000 and must be absolute, and the guarantor may not avoid its obligation for any reason.

(ii) The irrevocable guaranty agreement must automatically renew and only expire if prior notice is provided to the commission at least 90 days before expiration. Commission staff must sign a notice of non-renewal to acknowledge that the notice was received at least 90 days prior to the date of expiration. Any notices or amendments must be provided to the commission in a commission approved method. Until the 90 days advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain completely and absolutely liable to the extent provided by the terms of the agreement.

(H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.

(5) Commission draw on financial instruments. The commission may seek full or partial funds from a REP's financial resources in any of the following circumstances:

(A) An applicable independent organization performs a mass transition of a REP's customers under §25.43 of this title;

(B) The commission issues an order revoking a REP's certificate;

(C) ERCOT terminates a REP's SFA or the applicable independent organization terminates a similar agreement and the REP's financial resource expires in 30 days less; or

(D) The commission's executive director determines that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols; and the financial resource expires in 30 days or less.

(6) Proceeds from financial instruments.

(A) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection may be used to satisfy the following obligations of a REP, in the following order of priority:

(i) first, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Adminis-

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

(ii) second, if available, to assist in the payment of residential customer deposits to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title;

(iii) third, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title, and to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title;

(iv) fourth, for services provided by the independent organization related to serving customer load;

(v) fifth, for services provided by a TDU; and

(vi) sixth, for administrative penalties assessed under Chapter 15 of PURA or commission rules.

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

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

(1) In no instance may any of the following persons control the REP or be relied upon to meet the requirements of subsections (d) and (e) of this section:

(A) A person who was a principal of a market participant, at any time within the six months prior to the market participant:

(i) experiencing a mass transition of the REP's customers under §25.43 of this title;

(ii) having their ERCOT SFA, or similar agreement for an independent organization other than ERCOT terminated; or

(iii) exiting an electricity or gas market with outstanding payment obligations that, at the time of the application or amendment, remain outstanding; or

(B) A person who, by commission order, is prohibited from serving as a principal for any commission-regulated entity.

(2) If an independent organization or TDU is aware that a person who is otherwise barred from exercising direct or indirect control over a REP is acting in violation of this section or other commission substantive rules, the independent organization or TDU has an affirmative duty to report this information to the division of the commission charged with enforcement of the commission's substantive rules.

(h) Update or relinquishment of certification. A REP must maintain and update the information required by subsections (d), (e), and (f) of this section, as applicable, on an ongoing basis.

(1) A REP must electronically submit updated information in the manner established by the commission within five working days of any change to its contact information as identified in subsection (d)(1)(D) or this section.

(2) A REP must apply to amend its certification within ten working days from the occurrence of a material change to its certi-

fication. A REP may apply for the commission to approve a material change by filing an application to amend its certification before the material change is anticipated to occur. A material change includes:

(A) a change in control of the REP including a change in the controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP, but not including a change in the ownership percentages of individual owners;

(B) a name change (including addition or deletion of assumed names);

(C) for Option 1 REPs, a change in service area;

(D) for Option 1 REPs, a change in technical or managerial qualifications, including

(i) any information previously provided or attested to under the technical and managerial requirements of subsection (e)(1)(A) and (B) of this section that correspond with the documentation requirements under subsection (e)(2)(B) and (C), and (E)(iv) and (v) of this section. Such information includes:

(ii) personnel relied upon for experience, and

(iii) changes, termination, or expiration of a contract to provide commodity risk management services;

(iv) a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under subsection (e)(2)(E)(iv)(I) of this section, or a change in the applicant's relationship with such persons under subsection (e)(2)(E)(iv)(II) of this section, if such a relationship exists; and

(v) a change necessitating an updated statement affirming that the persons identified under subsection (g)(1) of this section do not control the REP and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section; and

(E) for Option 1 REPs, a change in financial qualifications, including:

(i) the REP's certificated method for maintaining its access to capital requirement of subsection (f)(1) of this section, including terminations made to the irrevocable guaranty agreement or power purchase agreement;

(ii) the certificated method for protecting its customer deposits and prepayments, and

(iii) the approved account for protecting customer deposits and prepayments;

(F) a change in REP's type of certification as an Option 1, Option 2, or Option 3 REP; and

(G) for Option 2 REPs, the addition or removal of customers served by the Option 2 REP.

(3) A REP that no longer serves customers may relinquish its REP certificate by filing an application for relinquishment on a form prescribed by the commission. A REP that does not serve customers for two consecutive years must relinquish its certificate. Prior to relinquishing its certificate, the REP must no longer serve any customers. At least 45 days prior to ceasing operations, a REP that intends to cease operations as a REP and is not seeking to relinquish its REP certificate must file a notice in the commission control number established under this paragraph to notify the commission of a REP ceasing operations. A REP must not cease operations as a REP without prior notice of at least

45 days to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations. The REP must also notify, the Low Income Discount Administrator, the applicable independent organization, and all TDUs and the providers of last resort for service territories in which the REP serves customers. As applicable, a REP must also notify all electric cooperatives and municipally owned utilities in whose service territory the REP serves customers. If a REP improperly transfers customers without providing adequate notice, under §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another) then the REP may be subject to enforcement proceedings even after relinquishment of its certificate. Within the application to relinquish its certificate a REP must include a statement explaining whether customers' deposits were refunded to the customers or transferred to an alternative REP. The statement must be supported by a signed, notarized affidavit from an executive officer of the REP.

(4) A REP that applies to amend its certification must:

(A) state the effective date of each material change that prompted the amendment application; and

(B) identify whether it is currently providing service to customers in Texas.

(i) Reporting requirements. An Option 1 REP must file with the commission an annual and a semi-annual report each year. Option 2 and Option 3 REPs do not have reporting obligations under this section.

(1) The annual report is due on March 5, or

(A) 65 days after the end of the REP's fiscal year; or

(B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 65 days after the end of the guarantor's fiscal year.

(2) The semi-annual report is due on August 15, or

(A) 225 days after the end of the REP's fiscal year; or

(B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 225 days after the end of the guarantor's fiscal year.

(3) The annual and semi-annual report must include the following information.

(A) A signed, notarized affidavit from an executive officer affirming that the certificate holder is not in material violation of any of the requirements of its certificate under this section and that the information reported in the entire report is true and correct.

(B) Any changes in ownership, control, corporate restructuring, or transfer of a REP certificate.

(C) Any changes in management, experience, and persons relied on for certification in subsection (e) of this section including the person or third-party provider acting as the REP's risk manager.

(D) A list of all principals, provided in Microsoft Excel format.

(E) A list of all executive officers, provided in Microsoft Excel format.

(F) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided in Microsoft Excel format.

(G) For a REP providing retail electric service in the ERCOT region, a copy of the REP's current LSE contact information kept on file with ERCOT, including a copy of each Notice of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. If the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, the REP must also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all notices of change of information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.

(H) Demonstration of ongoing compliance with the financial requirements of subsection (f) of this section.

(i) This can include:

(I) calculations demonstrating a guarantor's adequate tangible net worth and financial ratios,

(II) proof that a REP maintains adequate shareholders' equity,

(III) a statement of the value of customer deposits and prepayments the REP is currently liable for, and

(IV) a current account statement demonstrating that the balance of the account in which customer deposits and prepayments are held 100% covers the value of customer deposits and prepayments the REP is liable for.

(ii) A REP must submit relevant documentation as required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f)(1) and (2) of this section.

(iii) Financial statements provided as part of the annual and semi-annual report must be as of the end of the most recent fiscal quarter.

(4) In addition to the information required in paragraph (3) of this subsection, the annual report must also include the following information.

(A) Any changes in a REP's contact information identified in subsection (d)(1)(D) of this section.

(B) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.

(C) The information required by §25.491 of this title (relating to Record Retention and Reporting Requirements) and other commission rules, as applicable.

(5) Reporting under this subsection does not change the requirement for a REP to amend its certification to reflect the change in accordance with subsection (h) of this section.

(j) Protection of TDU financial integrity.

(1) A TDU must not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission substantive rules.

(2) A TDU must create a regulatory asset for bad debt expenses, net of collateral posted under paragraph (1) of this subsection and bad debt already included in its rates, resulting from a REP's de-

fault on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset will be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.

(k) Revocation of a REP certificate. A certificate granted under this section may be revoked for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. The revocation of a REP's certificate requires the cessation of all REP activities in the state of Texas, in accordance with commission order. The commission may impose an administrative penalty on a person for a violation of PURA, commission substantive rules, or protocols adopted by an independent organization. Significant violations include, but are not limited to:

(1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;

(2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;

(3) Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;

(4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;

(5) Failure to maintain continuous and reliable electric service to a customer or customers under this section;

(6) Failure to maintain financial resources in accordance with subsection (f) of this section;

(7) The inability to meet financial obligations on a reasonable and timely basis;

(8) Failure to timely remit payment for invoiced charges to an independent organization;

(9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other protocols established by an applicable independent organization;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Termination of the REP's SFA with ERCOT or similar agreements with an applicable independent organization other than ERCOT;

(13) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;

(14) Failure to provide retail electric service to a customer or customers within 24 months of the certificate being granted by the commission or ceasing to provide retail electric service for a period of 24 months;

(15) Failure to serve as a POLR if required to do so by the commission under §25.43 of this title;

(16) Failure to timely remit payment for invoiced charges to a TDU under §25.214, of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities);

(17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);

(18) Failure to comply with the terms of a suspension under subsection (l) of this section;

(19) Failure to comply with §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and

(20) Other significant violations or a pattern of failures to meet the requirements of PURA, commissions rules or orders, or protocols adopted by the applicable independent organization.

(l) Suspension of a REP's ability to acquire new customers. The commission may suspend a REP's ability to acquire new customers for a significant violation, as described by subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The suspension order may also impose administrative penalties or other conditions for reinstatement on a REP whose ability to acquire new customers has been suspended.

(1) Commission staff may initiate a proceeding for suspension of a REP's ability to acquire new customers under this subsection by filing a petition for suspension.

(A) Commission staff must provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission).

(B) The REP may submit a request for hearing on the petition for suspension within 20 days after the date the REP receives notice of the petition. Notice is deemed to have been received upon the earlier of receipt of actual notice or three days after the order is mailed. A request for hearing received more than 20 days after the date the petition is received by the REP will be denied by the presiding officer.

(C) If the REP does not submit a request for hearing within 20 days after receiving notice of the petition for suspension, the presiding officer may administratively approve the petition for suspension under §22.35 of this title (relating to Informal Disposition). The commission delegates authority to the presiding officer to approve a petition for suspension under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title.

(2) The executive director may suspend a REP's ability to acquire new customers without prior notice or opportunity for a hearing in the form of a cease and desist order if the executive director determines that providing notice and an opportunity for a hearing is impracticable and that the conduct of the REP meets the criteria for issuing such an order under PURA §15.104(a)(2). In determining the practicability of providing notice and an opportunity for hearing, the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations. For purposes of determining whether the criteria of PURA §15.104(a)(2) are met, the statutory term continuous and adequate electric service includes continuous and reliable electric service as defined in this section. If the executive director issues a cease and desist order suspending a REP's ability to acquire new customers without prior notice or opportunity for a hearing, the procedural provisions of §25.54(d)(2) of this title (relating to Cease and Desist Orders) apply.

(3) In addition to any other applicable requirements, an order suspending a REP's ability to acquire new customers must describe the conduct of the REP and the significant violations that support

the issuance of the order. The order must also describe any conditions the REP must meet for reinstatement.

(4) If appropriate, an order suspending a REP's ability to acquire new customers may also include specific, verifiable conditions for expedited reinstatement. The conditions for expedited reinstatement may require actions beyond those required to come into compliance with applicable law and may include verification from commission staff that the conditions for expedited reinstatement have been met, verification that commission staff has not identified any reasons the suspension should remain in effect, or a deadline for meeting one or more of the conditions. Expedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the pattern of conduct giving rise to the suspension supports a general concern about the REP's ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension. If appropriate, a compliance docket will be opened for filings relevant to this paragraph. If the REP fulfills the conditions for expedited reinstatement and files all required supporting documentation, commission staff must lift the suspension, notify ERCOT of the reinstatement, and file a notice of reinstatement as soon as practicable. If commission staff verification is required and commission staff does not agree that expedited reinstatement is appropriate under the terms of the suspension order, the REP may seek reinstatement under paragraph (6) of this subsection.

(5) A REP that has its ability to acquire new customers suspended must cease, within three working days, the solicitation or enrollment of new customers and the applicable independent organization will be directed to report to commission staff, on a weekly basis, any new customers that have been added by the REP. In this subparagraph, the term "enrollment" means the act of executing a contract with an applicant for the provision of electric service but does not include renewing the contract of an existing customer.

(6) A REP may request reinstatement by filing a petition for reinstatement. The commission delegates authority to the presiding officer to approve a petition for reinstatement under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title. In determining whether to lift the suspension, the presiding officer may consider, as appropriate, whether:

(A) the REP has resolved all violations underlying the suspension and fulfilled all conditions for reinstatement;

(B) the REP is in compliance with all or specific individual technical, managerial, and financial requirements in this section; and

(C) there exist any additional grounds that would support the suspension of the REP's ability to acquire new customers under this subsection.

(7) A REP subject to suspension of acquiring new customers under this section must continue to serve existing customers and maintain compliance with PURA, commission substantive rules, and protocols adopted by the applicable independent organization. Suspension of the ability to acquire new customers does not impact a REP's obligation to timely initiate service to a customer that completed enrollment with the REP prior to the effective date of the suspension, even if the scheduled service initiation date falls within the suspension period.

(8) Nothing in this subsection limits the commission's ability to revoke a REP's certificate, proceed with a draw on a REP's financial instruments, or impose administrative penalties. Commission staff

retains the discretion to seek to revoke the certificate of a REP subject to suspension.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Public Utility Commission of Texas

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For further information, please call: (512) 936-7044



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1010

The Texas Education Agency adopts an amendment to §61.1010, concerning additional state aid for school districts that contract to partner to operate a district campus. The amendment is adopted without changes to the proposed text as published in the August 21, 2026 issue of the *Texas Register* (51 TexReg 5509) and will not be republished. The adopted amendment updates the list of exclusions to align the rule with statute and changes made by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025, and reorders the list for clarity.

REASONED JUSTIFICATION: Section 61.1010 provides an entitlement through the Foundation School Program for school districts that enter contracts to partner to operate a district campus under Texas Education Code (TEC), §11.174 and §11.157(b).

The adopted amendment adds the sparsity adjustment under TEC, §48.052, to the list of exclusions under subsection (e) because HB 2593, 84th Texas Legislature, Regular Session, 2015, stated that the adjustment only applies to school districts with very small student populations.

HB 2, 89th Texas Legislature, Regular Session, 2025, removed the New Tech Network from TEC, §48.106. The adopted amendment to §61.1010(e)(1) removes the reference to the New Tech Network to align with the bill.

HB 2, 89th Texas Legislature, Regular Session, 2025, recodified and transferred the School Safety Allotment from TEC, §48.115 (Subchapter C), to TEC, §48.160 (Subchapter D). The adopted amendment removes the School Safety Allotment from §61.1010(e)(5) because §61.1010(c)(1)(B) does not include TEC, §48.160, allotments.

HB 2, 89th Texas Legislature, Regular Session, 2025, repealed TEC, §48.114, which includes the Mentor Program Allotment, effective September 1, 2026. The adopted amendment removes

the Mentor Program Allotment from §61.1010(e)(4) to align the rule with the bill.

The adopted amendment also reorders the list to match the numerical order of the authority that supports each exclusion.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 21, 2026, and ended September 21, 2026. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under TEC, §29.934, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which enables a local education agency to apply for a campus to become designated as a resource campus if the campus has received an overall performance rating of D, F, or an overall performance rating of "Not Rated" for three years over a 10-year period of time; TEC, §48.052, which provides additional funding to school districts with very low student populations; TEC, §48.102, as amended by Senate Bill (SB) 568 and HB 2, 89th Texas Legislature, Regular Session, 2025, which provides school systems with an annual allotment for special education; TEC, §48.106, as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, which provides school systems with an annual allotment for career and technology education; TEC, §48.160, as transferred, redesignated, and amended by HB 2, HB 121, and SB 260, 89th Texas Legislature, Regular Session, 2025, which provides school systems with an annual allotment for school safety purposes; TEC, §48.252, which authorizes the commissioner of education to adopt rules necessary for the implementation of an entitlement for school districts that enter into a contract to operate a district campus under TEC, §11.174 or §11.157(b), or school districts that operate a resource campus under TEC, §29.934; and HB 2, 89th Texas Legislature, Regular Session, 2025, which repeals TEC, §48.114, effective September 1, 2026. TEC, §48.114, provides school systems with an annual allotment for a mentoring program for classroom teachers.

CROSS REFERENCE TO STATUTE. The amendment implements TEC, §29.934, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; §48.052; §48.102, as amended by SB 568 and HB 2, 89th Texas Legislature, Regular Session, 2025; §48.106, as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025; §48.160, as transferred, redesignated, and amended by HB 2, HB 121, and SB 260, 89th Texas Legislature, Regular Session, 2025; and §48.252; and HB 2, 89th Texas Legislature, Regular Session, 2025, which repeals TEC, §48.114, effective September 1, 2026.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2026.

TRD-202604426

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 8, 2026

Proposal publication date: August 21, 2026

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts amendments to §13.11, concerning Purpose and Scope; §13.13, concerning Definitions; §13.18, concerning Noncompliance with Reporting Requirements; §13.19, concerning Confidential Data; §13.51, concerning Purpose and Scope; and §13.85, concerning Award Criteria and Selection for Funding.

Sections 13.11, 13.19, 13.51, and 13.85 are adopted without changes to the proposed text as published in the July 24, 2026, issue of the *Texas Register* (51 TexReg 4800). These rules will not be republished.

Sections 13.13 and 13.18 are adopted with changes to the proposed text as published in the July 24, 2026, issue of the *Texas Register* (51 TexReg 4800). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (HB) 3801, 89th Legislature, Regular Session, 2025, that repealed Texas Health and Safety Code Chapter 104 and abolished the Statewide Health Coordinating Council (SHCC) and the nursing advisory committee (NAC) for the SHCC effective September 1, 2025. The proposed amendments remove references to those topics from Title 25 of the Texas Administrative Code (TAC) Chapter 13.

COMMENTS

The 31-day comment period ended August 24, 2026. During this period, DSHS did not receive any comments regarding the proposed rules.

Minor editorial changes were made to §13.13(17)(C) to remove a redundant word and §13.18(a)(1) to correct spelling.

SUBCHAPTER B. DATA COLLECTION

25 TAC §§13.11, 13.13, 13.18, 13.19

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services systems and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, HSC §105.005, and Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Secs. 11(2), 11(3) eff. September 1, 2025.

§13.13. Definitions.

The following terms in this subchapter have the following meanings, unless the context clearly indicates otherwise.

(1) Chapter 311--Relates to the powers and duties of hospitals found within Texas Health and Safety Code (HSC) Title 4.

(2) Charity care--The unreimbursed cost to a hospital of:

(A) providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent; and/or

(B) providing, funding, or otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(3) Community benefits--The unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits do not include the cost to the hospital of paying any taxes or other governmental assessments.

(4) Department--The Texas Department of State Health Services.

(5) Donations--The unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(6) Education-related cost--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs, including:

(A) education of medical professionals and health care providers;

(B) scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs; and

(D) community health education through informational programs, publications, and outreach activities in response to community needs.

(7) Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(8) Government-sponsored indigent health care--The unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(9) Government-sponsored program unreimbursed costs--The unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(10) Health care facility--Regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law. This definition does not include an office of physicians or practitioners of the healing arts, singly or in groups, in the conduct of their profession.

(11) Health care organization--A nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(12) Hospital--A general or special hospital licensed under HSC Chapter 241; a private mental hospital licensed under HSC Chapter 577; and a treatment facility licensed under HSC Chapter 464.

(13) Hospital eligibility system--The financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system that sets the income level eligible for charity care lower than that required by counties under HSC §61.023 or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(14) Hospital system--A system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(15) Medically indigent--A person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(16) Net patient revenue--An accounting term calculated in accordance with generally accepted accounting principles for hospitals.

(17) Nonprofit hospital--

(A) A hospital that is organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country and is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes.

(B) A "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source, including the patient or any person legally obligated to support the patient, third-party payers, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or sex in its provision of services.

(C) A "nonprofit hospital" does not include a hospital that is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a health professional shortage area. A "nonprofit hospital" includes a hospital that is located in a county with a population under 50,000 where only a subpopulation, partial geographic area or a facility is designated as a health professional shortage area.

(18) Patient data--Information derived from individual, acute care, inpatient, and outpatient discharge abstract records.

(19) Subsidized health services--Services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity

revenue sources. Subsidized health services include emergency and trauma care, neonatal intensive care, freestanding community clinics, and collaborative efforts with local government or private agencies in preventive medicine.

(20) Survey--The annual data collection conducted by the department to implement the provisions of Texas Health and Safety Code Chapter 311.

(21) Tax-exempt benefits--All of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes, including income, franchise, ad valorem, and sales taxes, foregone by a nonprofit hospital and its nonprofit supporting entities;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(22) Unreimbursed costs--The costs a hospital incurs for providing services after subtracting payments received from any source for such services, including: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. For purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

§13.18. Noncompliance with Reporting Requirements.

(a) Reporting of data through the online survey form for the Annual Survey of Hospitals (ASH).

(1) A hospital that does not complete and submit the online survey form to the department within the 60-day reporting period and according to §13.15 of this subchapter (relating to Survey Forms and Methods of Reporting Data), will be notified of noncompliance in writing by certified mail with return receipt.

(2) If the entity does not send the requested data within 30 days of receiving the certified mail, the commissioner may notify the attorney general in writing that the entity is in noncompliance, providing a copy of the notification to the entity.

(b) Report of the Community Benefit Plan (CBP). A nonprofit hospital or hospital system that does not submit a CBP report, as described in Texas Health and Safety Code §311.046, to the department by April 30 of each year, may be assessed a civil penalty up to \$1,000 each day for which the report is delinquent. The department notifies the entity of noncompliance by certified mail, with return receipt. No penalty may be assessed against a hospital until 10 business days after the written notification to the hospital of its failure to file a report. The commissioner notifies the attorney general in writing of noncompliant entities, providing a copy of the notification to the entity.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2026.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: July 24, 2026

For further information, please call: (512) 696-3881



SUBCHAPTER E. DATA COLLECTION

25 TAC §13.51

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services systems and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, HSC §105.005, and Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Secs. 11(2), 11(3) eff. September 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 696-3881



SUBCHAPTER G. WORKPLACE VIOLENCE AGAINST NURSES PREVENTION GRANT PROGRAM

25 TAC §13.85

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services systems and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001,

HSC §105.005, and Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Secs. 11(2), 11(3) eff. September 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 696-3881



PART 6. STATEWIDE HEALTH COORDINATING COUNCIL

CHAPTER 571. HEALTH PLANNING AND RESOURCE DEVELOPMENT

SUBCHAPTER A. STATEWIDE HEALTH COORDINATING COUNCIL

25 TAC §571.1, §571.2

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §571.1, concerning General Provisions, and §571.2, concerning State Health Plan and Plan Implementation.

Sections 571.1 and 571.2 are adopted without changes to the proposed text as published in the July 24, 2026, issue of the *Texas Register* (51 TexReg 4805). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to provide consistency with amendments to the Texas Health and Safety Code (HSC) that resulted from the passage of House Bill (HB) 3801, 89th Legislature, Regular Session, 2025. HB 3801 repealed HSC Chapter 104 and abolished the Statewide Health Coordinating Council (SHCC). The repeal removes references to those topics in Title 25 of the Texas Administrative Code (TAC) Part 6, Statewide Health Coordinating Council, consisting of Chapter 571, Subchapter A, §571.1 and §571.2.

COMMENTS

The 31-day comment period ended on August 24, 2026. During this period, DSHS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services systems and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the

administration of Texas Health and Safety Code Chapter 1001 and Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 11(1), eff. September 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202604370

Cynthia Hernandez

General Counsel

Statewide Health Coordinating Council

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For further information, please call: (512) 696-3881



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 504. ABORTION FACILITY REPORTING AND LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §504.2

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §504.2, concerning Definitions.

Section 504.2 is adopted without changes to the proposed text as published in the July 10, 2026, issue of the *Texas Register* (51 TexReg 4499). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (SB) 31, 89th Legislature, Regular Session, 2025. SB 31 amended Texas Health and Safety Code (THSC) §245.002 to expand the definition of ectopic pregnancy to include the implantation of a fertilized egg or embryo in an abnormal location in the uterus, or in a scarred portion of the uterus, causing the pregnancy to be non-viable.

The amendment is necessary to ensure consistency with amended THSC §245.002.

COMMENTS

The 31-day comment period ended August 10, 2026.

HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system; THSC §245.011, which requires physicians to report to HHSC information about each abortion performed; and THSC §171.006, which requires physicians and certain health care facilities to

report to HHSC information about each abortion complication diagnosed or treated.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 16, 2026.

TRD-202604390

Stephanie Tourk

Deputy Chief Counsel

Health and Human Services Commission

Effective date: November 5, 2026

Proposal publication date: July 10, 2026

For further information, please call: (512) 834-4591



CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER F. INSPECTIONS AND VISITS

26 TAC §550.1301

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §550.1301, concerning Inspections and Visits.

Section 550.1301 is adopted without changes to the proposed text as published in the August 7, 2026, issue of the *Texas Register* (51 TexReg 5144). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to update the rule to decrease inspection frequency from annually to at least once every three years in alignment with current licensure renewal and inspection timeframe requirements in Texas Health and Safety Code §248A.053 and §248A.102. The amendment reduces administrative and operational burdens for providers associated with annual inspections.

The amendment also deletes or updates obsolete references and clarifies existing language to improve overall readability.

COMMENTS

The 31-day comment period ended September 8, 2026.

HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system; and Texas Health and Safety Code §248A.101, which authorizes the executive commissioner of HHSC to adopt rules that are necessary to implement Chapter 248A, to protect the health

and safety of the public, and to ensure the health, safety and comfort of the minors served.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2026.

TRD-202604355

Stephanie Tourk

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Effective date: November 2, 2026

Proposal publication date: August 7, 2026

For further information, please call: (512) 438-3161



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 281. FOOD SERVICE

37 TAC §281.5

The Texas Commission on Jail Standards (TCJS) adopts the amendment to §281.5 Staff Supervision under Chapter 281 Part 9 of Title 37 of the Texas Administrative Code without changes to the text as proposed in the June 12, 2026, issue of the *Texas Register* (51 TexReg 3869).

No comments were received during the public comment period. No further article, statute, or code is affected by this adoption. The rule will not be republished.

The adoption of this rule updates this standard to reflect new legislation.

Statutory authority to adopt this rule comes from Texas Government Code 511.009.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2026.

TRD-202604359

Ricky Armstrong

Executive Director

Texas Commission on Jail Standards

Effective date: November 3, 2026

Proposal publication date: June 12, 2026

For further information, please call: (512) 850-9668

