

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§25.41. Price to Beat.

- (a) **Applicability.** This section applies to all affiliated retail electric providers (REPs) and transmission and distribution utilities, except river authorities. This section does not apply to an electric utility subject to Public Utility Regulatory Act (PURA) §39.102(c) until the end of the utility's rate freeze.
- (b) **Purpose.** The purpose of this section is to promote the competitiveness of the retail electric market through the establishment of the price to beat that affiliated REPs must offer to retail customers beginning on January 1, 2002 pursuant to PURA §39.202.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:
- (1) **Affiliated electric utility** — The electric utility from which an affiliated REP was unbundled in accordance with PURA §39.051.
 - (2) **Competitive retailer** — A REP or a municipally owned utility or distribution cooperative that offers customer choice in the restructured competitive electric power market or any other entity authorized to sell electric power and energy at retail in Texas.
 - (3) **Headroom** — The difference between the average price to beat (in cents per kilowatt hour (kWh)) and the sum of the average non-bypassable charges or credits approved by the commission in a proceeding pursuant to PURA §39.201, or PURA Subchapter G (in cents per kWh) and the representative power price (in cents per kWh). Headroom may be a positive or negative number. A separate headroom number shall be calculated for the typical residential customer and the typical small commercial customer. The calculation for the typical residential customer shall assume 1,000 kWh per month in usage. The calculation of the typical small commercial customer shall assume 35 kilowatts (kW) of demand and 15,000 kWh per month in usage.
 - (4) **Nonaffiliated REP** — Any competitive retailer conducting business in a transmission and distribution utility's (TDU's) certificated service territory that is not affiliated with that TDU unless the competitive retailer is a successor in interest to a retail electric provider affiliated with that TDU.
 - (5) **Peak demand** — The highest 15-minute or 30-minute demand recorded during a 12-month period.
 - (6) **Price to beat period** — The price to beat period shall be from January 1, 2002 to January 1, 2007. In a power region outside the Electric Reliability Council of Texas (ERCOT) if customer choice is introduced before the date the commission certifies the power region pursuant to PURA §39.152(a) are met, the price to beat period continues, unless changed by the commission in accordance with PURA Chapter 39, until the later of 60 months after the date customer choice is introduced in the power region or the date the commission certifies the power region as a qualified power region.
 - (7) **Provider of last resort (POLR)** — As defined in §25.43 of this title (relating to Provider of Last Resort).
 - (8) **Registration agent** — As defined in §25.454 of this title (relating to Rate Reduction Programs).
 - (9) **Representative power price** — The simple average of the results of:
 - (A) a request for proposals (RFP) for full-requirements service of 10% of price to beat load for a duration of three years expressed in cents per kWh; and
 - (B) the price resulting from the capacity auctions of the affiliated power generation company (PGC) required by §25.381 of this title (relating to Capacity Auctions) for baseload capacity entitlements auctioned in the ERCOT zone where the majority of price to beat customers reside, expressed in cents per kWh. The calculation of the price resulting from the capacity auctions shall assume dispatch of 100% of the

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entitlement and shall use the most recent auction of a 12-month forward strip of entitlements, or the most recent aggregated forward 12 months of entitlements. The affiliated REP, at its option, may conduct an RFP or purchase auction for an amount equivalent to the amount, in MWs, of the affiliated PGC's capacity auction for the September 2001 12-month forward strip baseload entitlements.

- (10) **Residential customer** — Retail customers classified as residential by the applicable transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity for personal, family or household purposes and who are not resellers of electricity.
 - (11) **Small commercial customer** — A non-residential retail customer having a peak demand of 1,000 kilowatts (kW) or less. For purposes of this section, the term small commercial customer refers to a metered point of delivery. Additionally, any non-residential, non-metered point of delivery with peak demand of less than 1,000 kW shall also be considered a small commercial customer. For purposes of subsection (i) of this section, unmetered guard and security lights are not considered small commercial customers unless such an account has historically been treated as a separate customer for billing purposes.
 - (12) **Transmission and distribution utility** — As defined in §25.5 of this title (relating to Definitions), except for purposes of this section, this term does not include a river authority.
- (d) **Price to beat offer.**
- (1) Beginning with the first billing cycle of the price to beat period and continuing through the last billing cycle of the price to beat period, an affiliated REP shall make available to residential and small commercial customers of its affiliated transmission and distribution utility rates that, subject to the exception listed in subsection (f)(2)(A) of this section, on a bundled basis, are 6.0% less than the affiliated electric utility's corresponding average residential and small commercial rates that were in effect on January 1, 1999, adjusted to reflect the fuel factor determined in accordance with subsection (f)(3)(D) of this section and adjusted for any base rate reduction as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999.
 - (2) Unless specifically required by commission rule, an affiliated REP may only sell electricity to price to beat customers labeled or marketed as "green," "renewable," "interruptible," "experimental," "time of use," "curtailable," or "real time," if and only if such a tariff option existed on January 1, 1999 and only for service under the price to beat rate that was developed from that tariff.
- (e) **Eligibility for the price to beat.** The following criteria shall be used in determining eligibility for the price to beat:
- (1) **Residential customers.** All current and future residential customers, as defined by this section, shall be eligible for the price to beat rate(s) for which they meet the eligibility criteria in the applicable price to beat tariffs for the duration of the price to beat period. An affiliated REP may not refuse service under the price to beat to a residential customer except as provided by §25.477 of this title (relating to Refusal of Service). An affiliated REP may not require residential customers to enter into service agreements with a term of service as a condition of obtaining service under the price to beat, nor may an affiliated REP provide any inducements to encourage customers to agree to a term of service in conjunction with service under the price to beat.
 - (2) **Small commercial customers.**
 - (A) A non-residential customer taking service from the affiliated electric utility on December 31, 2001, shall be considered a small commercial customer under this

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section and shall be eligible for service under price to beat tariffs if that customer's peak demand during the 12 consecutive months ending on September 30, 2001, does not exceed 1,000 kilowatts (kW). A non-residential customer with a peak demand in excess of 1,000 kW during the 12 months ending September 30, 2001, or during the price to beat period, shall no longer be considered a small commercial customer under this section. However, any non-residential customer whose peak demand does not exceed 1,000 kW for any period of 12 consecutive months after it became ineligible to be a small commercial customer under this section shall be considered a small commercial customer for billing periods going forward for purposes of this section.

- (B) All small commercial customers, as defined by this section, shall be eligible for the price to beat rate(s) for which they meet the eligibility criteria in the applicable price to beat tariffs for the duration of the price to beat period. An affiliated REP may not refuse service under the price to beat to a small commercial customer, except as provided by §25.477 of this title. An affiliated REP may not require small commercial customers to enter into service agreements with a term of service as a condition to obtaining service under the price to beat, nor may an affiliated REP provide any inducements to encourage customers to agree to a term of service in conjunction with service under the price to beat.

(f) **Calculation of the price to beat.**

- (1) **Rates to be used for price to beat calculation.** The following criteria shall be used in determining the rates to be used for the price to beat calculation.

- (A) Residential. A price to beat rate shall be calculated for each rate and service rider under which a residential customer was taking service on January 1, 1999, except as approved by the commission pursuant to subparagraph (C) of this paragraph. A price to beat rate shall not be calculated for any new service or tariff option granted to an affiliated electric utility pursuant to PURA §39.054, or any other rate or tariff option not in effect on January 1, 1999.
- (i) Beginning with the first full billing cycle of the price to beat period, residential customers served by the affiliated REP shall be placed on the price to beat rate derived from the rate under which they were taking service on December 31, 2001.
- (ii) Beginning with the first full billing cycle of the price to beat period, residential customers served by the affiliated REP who were taking service under a rate for which a price to beat rate was not developed, shall be placed on the price to beat rate derived from any eligible residential rate that was or would have been available to the customer on January 1, 1999.
- (iii) New residential customers after December 31, 2001, may choose any price to beat rate for which they meet the eligibility requirements as detailed in the applicable price to beat tariff.
- (iv) Residential customers who return to the affiliated REP after being served by a non-affiliated REP may choose any price to beat for which they meet the eligibility requirements as detailed in the applicable price to beat tariff(s).
- (v) Notwithstanding clauses (i) – (iv) of this subparagraph, residential customers may request service under any price to beat rate for which they are eligible. Selection of the most advantageous rate shall be the sole responsibility of the residential customer.

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- (B) Small commercial. A price to beat rate shall be calculated for each rate and service rider under which a small commercial customer was taking service on January 1, 1999, except as approved by the commission pursuant to subparagraph (C) of this paragraph. A price to beat rate shall not be calculated for any new service or tariff option granted to an affiliated electric utility pursuant to PURA §39.054, or for any rate of tariff option not in effect on January 1, 1999.
- (i) Beginning with the first full billing cycle of the price to beat period, small commercial customers served by the affiliated REP shall be placed on the price to beat rate derived from the rate under which they were taking service on December 31, 2001.
 - (ii) Beginning with the first full billing cycle of the price to beat period, small commercial customers served by the affiliated REP beginning in January of 2002, who were taking service under a rate for which a price to beat rate was not developed, shall be placed on a price to beat rate derived from an eligible rate that was or would have been available to the customer on January 1, 1999.
 - (iii) New small commercial customers after December 31, 2001, may choose any price to beat rate for which they meet the eligibility requirements as detailed in the applicable price to beat tariff.
 - (iv) Small commercial customers who return to the affiliated REP after being served by a non-affiliated REP may choose any price to beat rate for which they meet the eligibility requirements as detailed in the price to beat tariff(s).
 - (v) Notwithstanding clauses (i) – (iv) of this subparagraph, small commercial customers may request service under any price to beat tariff for which they are eligible. Selection of the most advantageous rate shall be the sole responsibility of the small commercial customer.
- (C) An electric utility, on behalf of its future affiliated REP, shall file within 60 days of the effective date of this section, price to beat tariffs and supporting workpapers for the price to beat rates developed in accordance with subparagraphs (A) and (B) of this paragraph. At the time of this filing, the affiliated REP may request that a price to beat rate not be developed from a particular rate of service rider along with justification for the request. The electric utility shall provide notice to all customers currently taking service under such rates or service riders of the utility's request.
- (2) **Base rate component of price to beat.** For the eligible rates identified in paragraph (1) of this subsection, the affiliated REP shall reduce each base rate component including any purchased power cost recovery factor (PCRf), in effect for the affiliated electric utility on January 1, 1999, by 6.0% in order to determine the base rate component of the price to beat, with the following exceptions:
- (A) If base rates for the affiliated electric utility were reduced by more than 12% as the result of a final order issued by the commission after October 1, 1998, then the price to beat shall be the rate in effect as a result of a settlement approved by the commission after January 1, 1999.
 - (B) For affiliated REPs operating in a region defined by PURA §39.401, the commission may reduce rates by less than 6.0% if the commission determines a lesser reduction is necessary and consistent with the capital requirements needed to develop the infrastructure necessary to facilitate competition among electric generators.

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- (C) Except as provided in subparagraphs (A) and (B) of this paragraph, for any affiliated electric utility that has stipulated to rate reductions in a proceeding for which a final order had not been issued by January 1, 1999, such rate reductions shall be deducted from the base rates in effect on January 1, 1999, in addition to the 6.0% reduction. Such rate credits shall also be applied to the rates of the transmission and distribution utility.
- (3) **Fuel factor component of price to beat.**
- (A) Each affiliated electric utility shall file an application to establish one or more fuel factors, to be effective on January 1, 2002, according to the following schedule:
- (i) April 1, 2001 - Reliant Houston Lighting & Power;
 - (ii) May 1, 2001 - TXU Electric Company;
 - (iii) June 1, 2001 - Texas-New Mexico Power Company and Central Power & Light Company;
 - (iv) July 1, 2001 - Entergy Gulf States, Inc. and West Texas Utilities;
 - (v) August 1, 2001 - Southwestern Electric Power Company and Southwestern Public Service Company.
- (B) The rate year for the filing shall be calendar year 2002. The affiliated electric utility shall follow the requirements of §25.237(a)(1), (b), (c) and (e) of this title (relating to Fuel Factors) and the Fuel Factor Filing Package of November 23, 1993, for the filing of its fuel factor(s). To the extent that the commission has issued an order for a utility that includes provisions relating to the price to beat fuel factor, the price to beat fuel factor shall be set consistent with such an order.
- (C) Subject to the limitations in clause (i) and (ii) of this subparagraph, affiliated electric utilities may utilize seasonal fuel factors to reflect the expected differences in the cost of the market price of electricity throughout the year.
- (i) Affiliated electric utilities with seasonal fuel factors in effect on or before March 1, 2001, may request seasonal fuel factors for their residential and small commercial price to beat customers provided the level of seasonality is identical to that reflected in its commission-approved fuel factors on March 1, 2001.
 - (ii) Affiliated electric utilities without seasonal fuel factors in effect on or before March 1, 2001, may request seasonal fuel factors to be applicable to small commercial price to beat customers only. Any request for seasonal fuel factors under this clause must demonstrate that the average small commercial customer will receive, on an annual basis, a 6.0% reduction from the average bundled rate in effect on January 1, 1999, adjusted for the final fuel factor determined under subparagraph (D) of this paragraph; provided, however, that a utility subject to the exception in paragraph (2)(A) of this subsection must demonstrate that the average small commercial customer will receive, on an annual basis, the average bundled rate in effect as the result of a settlement approved by the commission after January 1, 1999, adjusted for the final fuel factor determined under subparagraph (D) of this paragraph.
- (D) Each affiliated electric utility shall file additional information on October 1, 2001, to reflect changes in the price of natural gas for the rate year of 2002. The affiliated electric utility shall also file information necessary to determine the initial headroom that exists under the price to beat as a result of the setting of the initial price to beat fuel factor pursuant to this subparagraph. The adjustment shall be calculated using the following methodology:

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- (i) For the ten-day period ending on September 15, 2001, an average price shall be calculated for each month of 2002 in the closing forward NYMEX Henry Hub natural gas prices, as reported in the Wall Street Journal.
- (ii) All other inputs into the calculation of the fuel factors will be the same as those used to calculate the fuel factor in subparagraphs (B) and (C) of this paragraph.
- (iii) Except for affiliated electric utilities whose base rates were reduced by more than 12% as the result of a final order issued by the commission after October 1, 1998, the fuel factor(s) to be used at the beginning of the price to beat period shall be the fuel factor in effect on January 1, 1999, reduced by 6.0%, plus the difference between the fuel factor(s) established pursuant to this subparagraph and the fuel factor in effect on January 1, 1999.
- (iv) The fuel factor(s) for affiliate electric utilities whose base rates were reduced by more than 12% as the result of a final order issued by the commission after October 1, 1998, to be used at the beginning of the price to beat period shall be the fuel factor(s) established pursuant to this subparagraph.
- (E) For a non-generating investor-owned utility with no fuel factor as of January 1, 1999, its PCRf in effect on January 1, 1999, shall be the equivalent to a fuel factor for purposes of calculating its price to beat rates and future fuel cost adjustments under subsection (g) of this section. Upon expiration of a purchased power contract of an affiliated REP unbundled from such a utility, the affiliated REP may request a change in its PCRf to account for any difference in purchased power costs.

(g) **Adjustments to the price to beat.**

- (1) **Fuel factor adjustments.** An affiliated REP may request that the commission adjust the fuel factor(s) established under subsection (f)(3) of this section upward or downward not more than twice in a calendar year if the affiliated REP demonstrates that the existing fuel factor(s) do not adequately reflect significant changes in the market price of natural gas and purchased energy used to serve retail customers. As part of a filing made pursuant to this paragraph, an affiliated REP may also request an adjustment to the seasonality imparted to the fuel factor in accordance with subsection (f)(3)(C) of this section. Alternatively, the commission may, as part of its approval of an adjustment to the fuel factor, impose a change in the seasonality imparted to the fuel factor. The methodology for calculating the adjustment to the fuel factor(s) shall be the following:
 - (A) For each day of the 20 trading-day period ending no later than two days before the filing of a fuel factor adjustment application, an average of the closing forward 12-month NYMEX Henry Hub natural gas prices, as reported by the *Wall Street Journal* (either in print or on-line), is calculated.
 - (B) The average forward price for each trading day calculated in subparagraph (A) of this paragraph will then be averaged to determine a 20 trading-day rolling price.
 - (C) The percentage difference between the averaged 20 trading-day rolling price calculated under subparagraphs (A) and (B) of this paragraph and the averaged price used to calculate the current fuel factor(s) is calculated. If the current fuel factor was calculated through an adjustment under subparagraph (E) of this paragraph, then the averaged 20 trading-day rolling price calculated concurrent with that adjustment shall be used. If the percentage difference is 5.0% or more, then the

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current fuel factor(s) may be adjusted, unless the filing is made after November 15 of a calendar year, in which event the percentage difference must be 10% or more.

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- (D) If the absolute value of the percentage difference calculated in subparagraph (C) of this paragraph meets or exceeds 5.0% (or 10% if applicable), then the current fuel factors are deemed to be unreflective of significant changes in the market price of natural gas and purchased energy. To adjust the current fuel factor(s), the percentage difference calculated in subparagraph (C), either positive or negative, is added to one and then multiplied by the current factor(s). The results are the adjusted fuel factor(s) that will be implemented according to the procedural schedule in clause (i) and (ii) of this subparagraph:
- (i) if no hearing is requested within 15 days after the petition has been filed, a final order shall be issued within 20 days, or as soon as practicable thereafter, after the petition is filed;
 - (ii) if a hearing is requested within 15 days after the petition is filed, a final order shall be issued within 45 days, or as soon as practicable thereafter, after the petition is filed. The 45 day timeline for issuance of an order may be extended upon mutual agreement of the parties. Such agreement may provide for interim rate relief.
- (E) In addition to the adjustment permitted under subparagraphs (A)-(D) of this paragraph, an affiliated REP may also request an adjustment to the fuel factor if the headroom under the price to beat decreases as a result of significant changes in the price of purchased energy. In making a request under this subparagraph:
- (i) an affiliated REP shall demonstrate that:
 - (I) the representative power price has changed such that the headroom under the price to beat has decreased; and
 - (II) the adjustment to the fuel factor is necessary to restore the amount of headroom that existed at the time that the initial price to beat fuel factor was set by the commission using then current forecasts of the representative power price.
 - (III) an affiliated REP making an adjustment under this subparagraph shall also file the gas price calculation in subparagraphs (A) and (B) of this paragraph for purposes of subsequent adjustments to the fuel factor based on changes in natural gas prices.
 - (ii) the commission will issue a final order on an application filed under this subparagraph within 60 days, or as soon as practicable thereafter, after the application is filed. The 60 day timeline for issuance of an order may be extended upon mutual agreement of the parties. Such agreement may provide for interim rate relief.
- (F) The commission shall, upon a showing made by an interested party, that a sufficiently liquid electricity commodity trading hub (or hubs) or index has developed for the affiliated REP's relevant geographic or power region, allow an affiliated REP to transition to the use of electricity commodity futures prices at that hub or index to adjust the fuel factor to adequately reflect significant changes in the price of purchased energy. After the commission has made a finding that a sufficiently liquid electricity commodity trading hub or index has developed, the affiliated REP shall be required to perform an additional adjustment under subparagraphs (A) through (D) or (E) of this paragraph before utilization of the futures prices at that trading hub or index to change the fuel factor so that a benchmark electricity price can be established. Subsequent changes to the fuel factor shall be based on the percentage change in the electricity commodity index

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using the same methodology for the natural gas price adjustment under subparagraphs (A) - (D) of this paragraph.

- (2) **Adjustment for financial integrity.** Upon a finding that an affiliated REP will be unable to maintain its financial integrity if it complies with subsection (f) of this section, the commission shall set the affiliated REP's price to beat at the minimum level that will allow the affiliated REP to maintain its financial integrity. However, in no event shall the price to beat exceed the level of rates, on a bundled basis, charged by the affiliated electric utility on September 1, 1999, adjusted for fuel.
 - (3) **True-up adjustment.** The commission shall adjust the price to beat following the true-up proceedings under PURA §39.262. The commission shall consider the following adjustments to the price to beat on a schedule consistent with the processing of the TDU rate adjustment application pursuant to §25.263(n) of this title (relating to True-up Proceeding):
 - (A) **Fuel factor adjustment.** A 20 trading-day rolling price shall be calculated in accordance with paragraph (1)(A)-(D) of this subsection. If the 20 trading-day rolling price is less than the price used to calculate the then-current fuel factor (i.e. the percentage difference is negative), then the price to beat fuel factor shall be adjusted downward by the percentage difference in the prices. An adjustment required to be made in accordance with this subparagraph shall not be considered a request by an affiliated REP under paragraph (1) of this subsection.
 - (B) **Base rate adjustment.** Using the typical residential and small commercial usage calculations described in subsection (c)(3) of this section, the base rate components of the price to beat shall be adjusted, either upward or downward, such that the difference between the average price to beat base rate and the average non-bypassable charges that exist following the proceeding pursuant to §25.263(n) of this title is the same as existed on January 1, 2002. Each component of the base rates for each residential price to beat base rate tariff shall be adjusted in the same proportion in complying with this section. Each component of the base rates for each small commercial price to beat base rate tariff shall be adjusted in the same proportion in complying with this section.
 - (C) **Filing by affiliated REP.** An affiliated REP shall make filings necessary to implement subparagraphs (A) and (B) of this paragraph on a schedule to be determined by the commission.
- (h) **Non-price to beat offers.**
- (1) **Offers to residential customers.** An affiliated REP may not offer any rates other than the price to beat rates to residential customers within the affiliated electric utility's service area until the earlier of 36 months after the date customer choice is introduced, or when the commission determines that an affiliated REP has met or exceeded the threshold target for residential customers described in subsection (i) of this section, except as provided by §25.454 of this title (relating to Rate Reduction Program).
 - (2) **Offers to small commercial customers.** An affiliated REP may not offer rates other than the price to beat rates to small commercial customers until the earlier of 36 months after the date customer choice is introduced, or when the commission determines that an affiliated REP has met or exceeded the threshold target for small commercial customers described in subsection (i) of this section.
 - (3) **Offers to aggregated small commercial load.** Notwithstanding paragraph (2) of this subsection, an affiliated REP may charge rates different from the price to beat for service to aggregated loads having an aggregated peak demand in excess of 1,000 kW provided that all affected customers are commonly owned or are franchisees of the same franchisor.

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- (A) If aggregated customers whose loads are served by an affiliated REP in accordance with this subsection disaggregate, those individual customers may resume service under the applicable price to beat rate(s), provided that those customers meet the eligibility requirements of subsection (e) of this section.
- (B) Any usage removed from the threshold calculation in subsection (i)(1)(B) of this section due to aggregation shall be added back into the threshold calculation upon disaggregation of the aggregated load.

(i) **Threshold targets.**

(1) **Calculation of threshold targets.**

- (A) Residential target. The residential threshold target shall be equal to 40% of the total number of kilowatt-hours (kWh) consumed by residential customers served by the affiliated electric utility during the calendar year 2000.
- (B) Small commercial target. The small commercial threshold target shall be equal to 40% of the following difference: the total number of kWh consumed by small commercial customers served by the affiliated electric utility during the calendar year 2000 minus the aggregated load served by the affiliated REP that complies with the requirements of subsection (h)(3) of this section. The kWh associated with a customer who becomes ineligible for the price to beat because the customer's peak demand exceeds 1,000 kW shall also be removed from the threshold target.

(2) **Meeting of threshold targets.** Upon a showing by the affiliated transmission and distribution utility that the electric power consumption of the relevant customer group served by nonaffiliated REPs meets or exceeds the targets determined by the calculation in paragraph (1) of this subsection, the affiliated REP may offer rates other than the price to beat.

- (A) Calculation of residential consumption. The amount of electric power of residential customers served by nonaffiliated REPs shall equal the number of residential customers served by nonaffiliated REPs, except customers that the affiliated REP has dropped to the POLR, times the average annual consumption of residential customers served by the affiliated utility during the calendar year 2000.
 - (i) The number of customers served by nonaffiliated REPs shall be determined by summing the number of customers in the transmission and distribution utility's certificated service area with a designated REP other than the affiliated REP in the registration database maintained by the registration agent. Customers dropped to the POLR by the affiliated REP shall not count as load served by a nonaffiliated REP.
 - (ii) The average annual consumption shall be calculated by dividing the total kWh consumed by residential customers during the calendar year 2000 by the average number of residential customers during the calendar year 2000. The average number of residential customers during the calendar year 2000 shall be calculated by dividing the sum of the total number of such customers for each month of the year 2000 by 12.
- (B) Calculation of small commercial consumption. The amount of electric power consumed by small commercial customers served by nonaffiliated REPs shall be determined using the following criteria, except that customers served by the POLR shall not count as load served by a nonaffiliated REP:
 - (i) The amount of electric power of small commercial customers with peak demand less than 20 kW consumed by nonaffiliated REPs shall be equal to the number of small commercial customers with peak demand less than 20

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kW served by nonaffiliated REPs times the average annual consumption of small commercial customers with peak demand less than 20 kW served by the affiliated electric utility during the calendar year 2000.

- (I) The number of customers served by nonaffiliated REPs shall be determined by summing the number of small commercial customers with peak demands less than 20 kW served in the transmission and distribution utility's certificated service area with a designated REP other than the affiliated REP in the registration database maintained by the registration agent.
 - (II) The average annual consumption shall be calculated by dividing the total kWh consumed by small commercial customers with peak demand of less than 20 kW during the calendar year 2000 by the average number of small commercial customers with peak demand of less than 20 kW during the calendar year 2000. The average number of small commercial customers with peak demand of less than 20 kW shall be calculated by dividing the total number of such customers for each month of 2000 by 12.
- (ii) The amount of electric power consumed by small commercial customers with peak demand in excess of 20 kW shall be the actual usage of those customers during the calendar year 2000.
- (I) If less than 12 months of consumption history exists for such a customer during the calendar year 2000, the available calendar year 2000 usage history shall be supplemented with the most recent prior history of service at that customer's location for the unavailable months.
 - (II) For customers with service to a new location, the annual consumption shall be deemed to be equal to the estimated maximum annual demand used by the affiliated transmission and distribution utility in sizing the facilities installed to serve that customer multiplied by the product of 8,760 hours and the average annual load factor for small commercial customers with peak demand greater than 20 kW for the year 2000.
- (j) **Prohibition on incentives to switch.** An affiliated REP may not provide an incentive to switch to a nonaffiliated REP, promote any nonaffiliated REP, or exchange customers with any nonaffiliated REP in order to meet the requirements of subsection (f) of this section. Non-affiliated REPs may not provide an incentive to return to the price to beat.
- (k) **Disclosure of price to beat rate.** An affiliated retail electric provider shall disclose to customers, the price to beat in accordance with §25.471 (relating to General Provisions of Customer Protection Rules). In addition, if an affiliated REP offers a rate greater than the price to beat, the price to beat rate must be disclosed along with a statement that the customer is eligible for the price to beat. This disclosure must appear on all written authorizations, Internet authorizations, the electricity facts label and Terms of Service document. It must also be disclosed during telephone solicitations before the customer authorizes service.

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(l) Filing requirements.

- (1) On determining that its affiliated retail electric provider has met the requirements of subsection (i) of this section, an electric utility or transmission and distribution utility shall make a filing with the commission attesting under oath to the fact that those requirements have been met and that the restrictions of subsection (h) of this section as well as the true-up in PURA §39.262(e) are no longer applicable.
- (2) An electric utility or transmission and distribution utility shall file a progress report with the commission after its affiliated REP has met the requirements of subsection (i) of this section using a 35% threshold target in lieu of a 40% threshold. Such progress reports(s) shall be filed no later than 30 days after the 35% threshold has been met and shall contain the same information required in this subsection.
- (3) No later than December 31, 2001, each transmission and distribution utility shall determine the power consumption threshold targets under subsection (i) of this section for residential and small commercial customers within its certificated service area and shall file this information with the commission and shall also make this information publicly available through its Internet website. Each transmission and distribution utility, together with its affiliated REP, shall update the small commercial power consumption threshold as needed to reflect additional small commercial load that has met the requirements of subsection (h)(3) of this section and therefore is appropriately removed from the calculation of the threshold target. Concurrent with this update, the transmission and distribution utility, together with its affiliated REP, shall provide, for each group of aggregated customers that have been removed from the calculation of the threshold target, the customers' names, electric service identifiers, size of the customers' loads (individually and in the aggregate), and how the customers meet the requirements of subsection (h)(3). Such information may be filed under confidential seal. All certificated REPs shall be deemed to have standing to review such filings.
- (4) Any application filed pursuant to this subsection shall contain the following information:
 - (A) a detailed explanation of how the relevant customer group has met or exceeded the threshold consumption targets in subsection (i) of this section;
 - (B) calculation of the power consumption threshold target under subsection (i) of this section for the relevant customer group and the date such target was met;
 - (C) verification of the meeting of the threshold target in the following manner:
 - (i) for the residential customer class, independent verification from the registration agent verifying the number of customers in the residential customer class within the transmission and distribution utility's certificated service area that are committed to be served by non-affiliated REPs.
 - (ii) for the small commercial class, an affidavit detailing the number of customers in the small commercial class with peak demand below 20 kW within the transmission and distribution utility's certificated service area committed to be served by non-affiliated REPs and the customers with peak demand in excess of 20 kW with their actual usage calculated in accordance with subsection (i)(2)(B)(ii) within the transmission and distribution utility's certificated service area that are committed to be served by non-affiliated REPs.
 - (iii) For purposes of this subsection, a residential and small commercial customer has committed to be served by a nonaffiliated retail electric provider if the registration agent has received a switch request for that customer and any mandated cancellation period pursuant to applicable commission rule has expired.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§25.41(l) continued

- (5) The commission staff shall review all applications filed under this subsection and shall make a recommendation to the commission within ten days after the application is filed to approve or reject the application. If a filing has insufficient information from which the commission can make a determination, the commission may reject the filing without prejudice for refiling the application. The commission shall issue an order approving or rejecting the application within 30 days after the application is filed. An electric utility or transmission and distribution utility filing an application under this subsection shall not charge rates different from the price to beat until the earlier of 36 months after the date customer choice is introduced or the date such application has been approved by the commission.