

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

§25.478. Credit Requirements and Deposits.

- (a) **Credit requirements for residential customers.** A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.
- (1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.
 - (2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.
 - (3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph.
 - (A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:
 - (i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;
 - (ii) is not delinquent in payment of any such electric service account; and
 - (iii) during the last 12 consecutive months of service was not late in paying a bill more than once.
 - (B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.
 - (C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
 - (D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.
 - (E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:
 - (i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and
 - (ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*

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- (4) A residential customer or applicant seeking to establish service with a REP other than an affiliated REP or POLR can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (B) of this paragraph. Notice of these options for customers or applicants shall be included in any written or oral notice to a customer or applicant when a deposit is requested. A REP other than an affiliated REP or POLR may establish additional methods by which a customer or applicant not meeting the criteria of subparagraphs (A) or (B) of this paragraph can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).
- (A) The residential customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
- (B) The customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the REP.
- (5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.
- (b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.
- (c) **Initial deposits for applicants and existing customers.**
- (1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.
- (2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.
- (3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).
- (d) **Additional deposits by existing customers.**
- (1) A REP may request an additional deposit from an existing customer if:
- (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and

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- (B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.
 - (2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.
 - (3) A REP may disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.
- (e) **Amount of deposit.**
- (1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant:
 - (A) shall not exceed an amount equivalent to the greater of:
 - (i) one-fifth of the customer's estimated annual billing; or
 - (ii) the sum of the estimated billings for the next two months.
 - (B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.
 - (2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant.
 - (3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.
- (f) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.
- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
 - (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.
- (g) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.
- (h) **Records of deposits.**

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- (1) A REP that collects a deposit shall keep records to show:
 - (A) the name and address of each depositor;
 - (B) the amount and date of the deposit; and
 - (C) each transaction concerning the deposit.
 - (2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.
 - (3) A REP shall maintain a record of each unclaimed deposit for at least four years.
 - (4) A REP shall make a reasonable effort to return unclaimed deposits.
- (i) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:
- (1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.
 - (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.
 - (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.
 - (4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.
 - (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
 - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.
 - (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
 - (6) The REP may initiate disconnection for nonpayment of the guaranteed amount only if the disconnection of service was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection or §25.483 of this title.
- (j) **Refunding deposits and voiding letters of guarantee.**
- (1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable, but no later than August 31, 2004.
 - (2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.

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- (3) If a customer's or applicant's service is not connected, or is disconnected, or the service is terminated by the customer, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is disconnected, or the service is terminated by the customer, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.
- (4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.
- (k) **Re-establishment of credit.** A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.
- (l) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.