

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

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

- (a) **Application.** This section applies to all persons who seek to provide electric service to retail customers in Texas on or after the date of customer choice, as established by Public Utility Regulatory Act (PURA) Chapter 39, or as a provider of retail electric service in the Customer Choice Pilot Projects, as established under PURA §39.104 and §39.405. This section does not apply to the state, political subdivisions of the state, electric cooperatives or municipal corporations, or to electric utilities subject to PURA §39.102(c) until the end of the utility's rate freeze. An electric cooperative or municipally owned utility participating in customer choice may offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without obtaining certification as a REP. The statutory mandate for certification of persons who provide retail electric service in this state, provided by PURA §39.352(a), is interpreted to address business functions as follows:
- (1) Persons who purchase, take title to, and resell electricity must register as REPs. Persons who do not purchase, take title to, or resell electricity, but perform a service pursuant to a contract with the REP do not need to become certificated as REPS.
 - (2) A REP may contract to outsource functional requirements specified in this section or other commission rules, however:
 - (A) the REP remains accountable to applicable laws and commission rules for all activities conducted on its behalf by any subcontractor, agent, or any other entity;
 - (B) the REP and any of its agents are sellers and seller's agents and may not represent themselves as agents of the buyer's interests; and
 - (C) all REPs are responsible for providing or contracting for all of the elements necessary to provide continuous and reliable electric service to retail customers as required by commission rules.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:
- (1) **Continuous and reliable electric service** – Electric power service provided at retail by a retail electric provider (REP), consistent with the customer's terms and conditions of service, uninterrupted by unlawful or unjustified action or inaction of the REP.
 - (2) **Customer** – Any entity who has applied for, has been accepted, or is receiving retail electric service from a REP for use on an end-use basis.
 - (3) **Person** – Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative or a municipal corporation.
 - (4) **Retail electric provider** – A person that sells electric energy to retail customers in this state. As provided in PURA §31.002(17), a retail electric provider may not own or operate generation assets. As provided in PURA §39.353(b), a REP is not an aggregator.
 - (5) **Revocation** – The cessation of all REP business operations in the state of Texas, pursuant to commission order.
 - (6) **Suspension** – The cessation of all REP business operations in the state of Texas associated with obtaining new customers, pursuant to commission order.

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(c) Application for REP certification.

- (1) After the date of customer choice, or as a participant in the Customer Choice Pilot Projects, a person, including an affiliate of an electric utility, may not provide retail electric service in the state unless the person is certified by the commission as a retail electric provider in accordance with PURA §39.352 and this section.
- (2) A retail electric provider may apply for certification any time after September 1, 2000. A certificate granted pursuant to this section is not transferable without prior approval by the commission.
- (3) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an applicant's owner or partner, or an officer of the applicant. Applications may be obtained in the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each applicant shall file its application with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and Other Documents).
- (4) The applicant may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Applicants may not designate the entire application as confidential. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission for use with applications for certification as a REP. If and when a public information request is received for information designated as confidential, the applicant or REP has the burden of establishing that information filed pursuant to this rule is proprietary or confidential.
- (5) Except where good cause exists to extend the time for review, the presiding officer shall issue an order stating whether an application is deficient or complete within 20 days of filing. Deficient applications and those without necessary supporting documentation will be rejected without prejudice to the applicant's right to reapply.
- (6) While the application is pending, an applicant shall inform the commission of any material change in the information provided in the application within ten days of any such change.
- (7) The commission will make an effort, where the facts of the case permit, to insure that applications filed simultaneously are resolved simultaneously. Except where good cause exists to extend the time for review, the commission shall enter an order approving, rejecting, or approving an application with modifications within 90 days of filing an application.
- (8) A certificate granted pursuant to this section shall continue in force until further order of the commission.
- (9) A certificate granted pursuant to this section shall not be construed to vest exclusive service or property rights in and to the area for which the certificate is granted.

(d) REP certification requirements based on service area. As a requisite for obtaining and maintaining certification, a REP must designate a service area defined by either paragraph (1) or (2) of this subsection, and meet the certification requirements designated therein.

- (1) **Option 1.** For REPs defining service areas by geography:
 - (A) A REP must designate one of the following categories as its geographical service area:
 - (i) The geographic area of the entire state of Texas; (indicating the zip codes applicable to that area); or

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- (ii) The service area of specific transmission and distribution utilities, and/or municipal utilities or electric cooperatives in which competition is offered; or
- (iii) The geographic area of Electric Reliability Council of Texas (ERCOT) or territory of another independent organization to the extent it is within Texas.
- (B) A REP with a geographical service area is subject to all subsections of this section, including those pertaining to administration, financial, technical and managerial, customer protection, and reporting requirements, as applicable.
- (C) The commission shall decide whether to grant a certificate to an applicant proposing to provide retail electric service to a geographical service area in Texas based on:
 - (i) Provision of all of the information required of the applicant in the form, *Application for a Certificate to Provide Retail Electric Service*, approved by the commission.
 - (ii) Whether the applicant has met the business name, office, and threshold residential service level requirements specified in subsection (e) of this section.
 - (iii) Whether the applicant has demonstrated that it possesses the financial and technical resources to provide continuous and reliable electric service to its customers in the area for which certification is sought and the technical and managerial ability to supply electricity at retail in accordance with customer contracts, pursuant to subsections (f) and (g) of this section.
 - (iv) Whether the applicant has demonstrated that it possesses the resources needed to meet the customer protection requirements, disclosure requirements, and marketing guidelines as specified in subsection (h) of this section.
 - (v) Whether the configuration of the proposed geographic area, if any, would discriminate in the provision of electric service to any customer because of race, creed, color, national origin, or any other basis prohibited by law or by subsection (h)(1) of this section.
- (D) If the presiding officer determines that an applicant does not possess resources sufficient to serve the geographical area designated by the applicant, the presiding officer shall notify the applicant of the deficiencies and allow the applicant to designate a different geographical service area commensurate with its resources. If the applicant designates no suitable area within a reasonable time, the application shall be denied.
- (2) **Option 2 – For REPs defining service areas by customers.** As an alternative to a geographical service area, a REP may define a service area by a specific list of customers, each of whom contract for one megawatt or more of capacity. The applicant shall be certified as a REP only for purposes of serving the named customers.
 - (A) To obtain certification under this paragraph, an applicant must file with the commission a signed, notarized affidavit from each individual retail customer with which it has contracted to provide one megawatt or more of capacity. The affidavit shall state that the customer is satisfied that the REP meets the financial, technical and managerial, and customer protection standards prescribed in subsections (f)(2), (g), and (h) of this section. The one-megawatt threshold may not be met by aggregation of individual electricity customers.
 - (B) A REP whose service area is defined by customers shall meet the administrative requirements specified in subsection (e) of this section.

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- (C) A REP whose service area is defined by customers shall meet the financial requirements for billing and collection of transition charges pursuant to subsection (f)(3) of this section, if applicable.
 - (D) The commission will grant a certificate to an applicant under this paragraph upon a finding that the affidavits for each designated customer have been received and that all requirements of this paragraph are met.
 - (E) A REP certified pursuant to this paragraph may be authorized to serve additional customers by amending its certificate pursuant to subsection (i)(6) of this section.
 - (F) A REP certified pursuant to this paragraph is subject to reporting requirements specified in subsection (i) of this section.
- (e) **Administrative requirements.** As a requisite for obtaining and maintaining certification, a REP must meet the following requirements concerning business names, office access, and percentage of electricity sold to residential customers.
- (1) **Names on certificates.** All retail electric service shall be provided in the names under which the certificate was granted. If the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant.
 - (A) No more than five assumed names may be authorized for use by any one REP at one time.
 - (B) Business names shall 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 an existing REP certificate holder.
 - (C) The commission shall review any names in which the applicant proposes to do business. If the commission determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the REP. A REP will be required to amend its application to provide at least one suitable name in order to be certificated.
 - (2) **Office requirements.** A REP shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of PURA Chapter 39, Subchapter H, and applicable commission rules. The office satisfying this requirement for a REP shall have a physical address that is not a post office box and shall be a location where the above three functions can occur. To evaluate compliance with requirements in this paragraph, the commission's authorized representative may visit the office of a certificated REP at any time during normal business hours on the same basis available to an electric customer. An applicant shall submit the following information with an application:
 - (A) Evidence that it has made arrangements for an office located in Texas, including the physical address of the office; or
 - (B) An affidavit stating that the applicant will obtain an office located within Texas meeting the requirements of this paragraph, and will notify the commission of its physical address, after certification but before providing retail electric service to customers in Texas.

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- (3) **Threshold residential service requirement.** For 36 months after retail competition begins, if a REP serves an aggregate load in excess of 300 megawatts within Texas during a given year, not less than 5.0% of the REP's load for the year in megawatt hours must consist of residential customers, pursuant to PURA §39.352(g). For the purposes of this paragraph, "residential customers" shall include any customers classified as residential by the applicable transmission and distribution utility tariff or, in the absence of a residential rate class, those customers that are primarily end users consuming electricity for personal, family or household purposes and who are not resellers of electricity.
- (A) The 300 megawatt aggregate load threshold shall be calculated by averaging the highest average hourly demand for each of the months of June, July, August, and September. REPs shall use the sum of the amount of generation scheduled at the relevant independent organization(s) to serve the REP's customers for determining the demand to be used in this calculation.
- (B) If the calculation made under subparagraph (A) of this paragraph is in excess of 300 megawatts, the certificate holder shall:
- (i) demonstrate that not less than 5.0% of the total quantity of megawatt hours it sold in the calendar year was supplied to residential customers, or
 - (ii) demonstrate that another REP served sufficient qualifying residential load on its behalf, or
 - (iii) make the necessary calculations and pay an amount into the system benefit fund equal to \$1 multiplied by a number equal to the difference between the number of megawatt hours it sold to residential customers and the number of megawatt hours it was required to sell to such customers.
- (C) The calculations in subparagraph (B) of this paragraph are subject to the following limitations:
- (i) An affiliated REP shall pay \$1 multiplied by a number equal to the difference between the number of megawatt hours sold to residential customers outside of the electric utility's service area and the number of megawatt hours it was required to sell to such customers outside of the electric utility's service area.
 - (ii) For purposes of subparagraph (B)(ii) of this paragraph, "qualifying residential load" may not include customers served by an affiliated retail electric provider in its affiliated electric utility's service area.
 - (iii) The requirements of this paragraph apply only to the portion of an affiliated REP's load that is outside the electric utility's service area. With respect to that "outside" load, any residential customers counted to meet the 5.0% threshold of residential customers must also be outside the electric utility's service area.
 - (iv) Where several REPs belong to a common owner, their loads will be combined for purposes of evaluation under this subsection. If the common owner is an electric utility, only loads served outside the electric utility's service area will be used in the calculations under this paragraph.

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- (f) **Financial requirements.** As a requisite for obtaining and maintaining certification, a REP must meet the financial resource standards established by this subsection. The standards established by paragraphs (1), (2), and (3) of this subsection are additive.
- (1) **Financial standards required for credit quality.** A REP shall fulfill the following financial qualifications listed below concerning its underlying credit quality:
- (A) **Minimum credit standards for REP certification.** In order to be certified by the commission, a REP or its parent corporation or controlling shareholder providing a guaranty to its REP under subparagraph (D) of this paragraph must demonstrate and, as a condition of continued certification, maintain:
- (i) An investment grade credit rating as provided for under subparagraph (F) of this paragraph; or
 - (ii) Assets in excess of liabilities, *i.e.*, equity, of at least \$50,000,000 on its most recent balance sheet; or
 - (iii) Unused cash resources of at least \$100,000, which will allow the REP to incur in Texas up to \$250,000 in total monthly billings (excluding transition charges billings) from TDUs. In the event of surpassing the \$250,000 per month level of total billings from TDUs in Texas, the REP shall maintain this same ratio of unused cash resources to TDU billings on an ongoing basis. Within 90 days of surpassing the \$250,000 billing threshold, the REP shall file with the commission a sworn affidavit demonstrating compliance with this clause. The REP shall thereafter include demonstration of its compliance with this clause in its annual reports. The cash resources under this clause shall be used to first address all commission penalties and then credit obligations to the TDU, if any, in the event of the REP's default.
- (B) **Utility credit standards for REPs.** With the exception of the credit standards provided for in paragraph (3) of this subsection, a transmission and distribution utility shall not impose any additional or separate credit conditions on a REP, unless the REP has defaulted on one or more payments to the utility for services provided by the utility. A transmission and distribution utility may impose credit conditions on a REP that has defaulted to the extent specified in its tariff and allowed by commission rules.
- (C) **Financial evidence.** A REP shall be permitted to use any of the financial instruments listed below, as well as any other financial instruments approved in advance by the commission, in order to satisfy the cash requirements established by this rule.
- (i) Cash or cash equivalent, including cashier's check or sight draft;
 - (ii) A certificate of deposit with a bank or other financial institution;
 - (iii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 15 months;
 - (iv) A line of credit or other loan issued by a bank or other financial institution, including a bond in a form approved by the commission, irrevocable for a period of at least 15 months;
 - (v) A loan issued by a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 15 months;
 - (vi) A guaranty issued by a shareholder or principal of the applicant; a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant; irrevocable for a period of at least 15 months.

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- (D) Loans or guarantees. To the extent that it relies upon a loan or guaranty described in subparagraph (C)(v) or (vi) of this paragraph, the REP shall provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalents needed to fund the loan or guaranty.
 - (E) Unencumbered resources. All cash and other instruments listed in subparagraph (C) of this paragraph as evidence of financial resources shall be unencumbered by pledges for collateral. These financial resources shall be subject to verification and review prior to certification of the REP and at any time after certification in which the REP relies on the cash or other financial instrument to meet the requirements under this subsection. The resources available to the REP must be authenticated by independent, third party documentation.
 - (F) Credit ratings. To meet the requirements of this paragraph, a REP may rely upon either its own investment grade credit rating, or a bond, guaranty, or corporate commitment of an affiliate or another company, if the entity providing such security is also rated investment grade. The determination of such investment grade quality will be based on the credit ratings of Standard & Poor's (S&P), Moody's Investor Services (Moody's), or any other nationally recognized rating agency, including Fitch for financial institutions and Best for insurance companies. Minimum investment credit ratings include "BBB-" for S&P or "Baa3" for Moody's, or their financial equivalent. If the investment grade credit rating of either S&P or Moody's is suspended or withdrawn, the REP must provide alternative financial evidence included under subparagraphs (C) - (E) of this paragraph within ten days of the credit downgrade.
- (2) **Financial standards required for customer protection.** A REP shall maintain records on an ongoing basis for any deposits or advance payments received from customers. Financial obligations to customers shall be payable to them within 30 calendar days from the date the REP notifies the commission that it intends to withdraw its certification or is deemed by the commission not able to meet its current customer obligations. Customer obligations shall be settled before the REP withdraws its certification or ceases doing business in Texas. A REP must meet the following financial qualifications concerning its receipt of customer payments:
- (A) Financial obligations to customers. The REP must maintain and provide evidence of financial resources equal to the sum of its obligations to customers for any deposits or other advance payments received from customers, subject to the following conditions.
 - (i) Financial resources required under this paragraph shall be maintained at levels sufficient to demonstrate that the REP can cover all deposits or other advance payments that are outstanding at any given time.
 - (ii) The REP shall file with the commission a sworn affidavit demonstrating compliance with this paragraph within 90 days of receiving the first deposit or other advance payment from customers for its services.
 - (iii) Financial resources required pursuant to this subsection shall not be reduced by the REP without the advance approval of the commission.
 - (B) Financial evidence. A REP shall be permitted to use any of the financial instruments and conditions set out in paragraph (1)(C) – (F) of this subsection to demonstrate that its resources are adequate for customer protection.
 - (C) External notice. Any party providing the financial resources necessary to protect customers under this provision of the rule, either directly or indirectly, shall be provided a copy of this rule by the REP.

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- (3) **Financial standards required of REPs for the billing and collection of transition charges.** If a REP serves customers in the service area of a transmission and distribution utility that is subject to a financing order pursuant to PURA §39.310, the REP shall comply with any additional standards specified in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges).
 - (4) **Credit support by affiliates.** To the extent it relies on an affiliated transmission or distribution utility for credit, investment, or financing arrangements pursuant to this subsection, the REP shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title.
 - (5) **Reporting requirements.** A REP certified under this subsection is subject to the ongoing annual financial requirements of subsection (f) of this section and any other applicable requirements of subsection (i) of this section.
- (g) **Technical and managerial resource requirements.** As a requisite for providing retail electric service, a REP must have technical resources to provide continuous and reliable electric service to customers in its service area and technical and managerial ability to supply electric service at retail in accordance with its customer contracts. Technical and managerial resource requirements include:
- (1) Capability to comply with all scheduling, operating, planning, reliability, customer registration and settlement policies, rules, guidelines, and procedures established by the ERCOT independent system operator (ISO), or other independent organization, if applicable, including any independent organization requirements for 24 hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, interruption plan implementation, and telephone number, fax number, and address where its staff can be directly reached at all times.
 - (2) Capability to comply with the registration and certification requirements of the ERCOT ISO or other independent organization and its system rules, or contracts for the purchase of power from entities registered with or certified by the ERCOT ISO or independent organization and capable of complying with its system rules.
 - (3) Purchase of capacity and reserves, or other ancillary services, as may be required by the ERCOT ISO or other independent organization to provide adequate electricity to all the applicant's customers in its certificated area.
 - (4) Compliance with all renewable energy portfolio standards in accordance with §25.173 of this title (relating to Goal for Renewable Energy), whether by money or by deed.
 - (5) At least one principal or employee experienced in the retail electric industry or a related industry.
 - (6) Adequate staffing and employee training to meet all service level commitments.
 - (7) 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 transmission and distribution utility on a 24 hour basis.
 - (8) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.
 - (9) The following information submitted in an initial application:
 - (A) Prior experience of the applicant or one or more of the applicant's principals or employees in the retail electric industry or a related industry.

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- (B) Any complaint history and compliance record during the three calendar years prior to the filing of the application regarding the applicant, applicant's affiliates that provide utility related services such as telecommunications, electric, gas, water, or cable service, the applicant's predecessors in interest, and principals with public utility commissions, attorney general offices, or other applicable regulatory agencies in other states where the applicant is doing business or has conducted business in the past or with the Texas Secretary of State, Texas Comptroller's Office, or Office of the Texas Attorney General. Relevant information shall include, but is not limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occurred. The Office of Customer Protection shall review any similar complaint information on file at the commission.
 - (C) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest in the three calendar years immediately preceding the application; and
 - (D) A statement indicating whether the applicant is currently under investigation, or has been penalized, by an attorney general or any state or federal regulatory agency, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection laws or regulations.
 - (E) Disclosure of whether the applicant, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft or larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;
 - (F) An affidavit stating that the applicant will register with or be certified by the ERCOT ISO or other independent organization and will comply with the technical and managerial requirements of paragraphs (1)-(4) of this subsection; or that all entities with whom the applicant has a contractual relationship to purchase power are registered with or certified by the independent organization and will comply with all system rules and standards established by the independent organization; and
 - (G) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements listed in paragraphs (1) - (5) of this subsection.
- (h) **Customer Protection requirements.** As a requisite for obtaining and maintaining certification, a REP shall comply with any customer protection requirements, disclosure requirements, marketing guidelines and anti-discrimination rules adopted by the commission. In the absence of other commission rules, certificated REPS shall be held to the general standards listed below. An applicant for certification as a REP shall provide a sworn affidavit, as specified in the application form approved by the commission, that it will comply with this section and any other applicable customer protection rules, disclosure requirements, marketing guidelines, and anti-discrimination rules approved by the commission.
- (1) A REP may not refuse to provide retail electric service or otherwise 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; or refuse to provide retail electric service to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.
 - (2) A REP shall inform its customers whom to contact and what to do in the event of power outage or other electricity-related emergency.

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- (3) A REP shall inform its customers of the customer's rights and avenues available to pursue a complaint against the REP as afforded by PURA §39.101.
 - (4) A REP shall not switch, or cause to be switched, the retail electric provider for a customer without first obtaining proper authorization from the customer.
 - (5) A REP shall not bill, or cause to be billed, an unauthorized charge to a customer's retail electric service bill.
 - (6) A REP shall respond in good faith when notified by a customer of a complaint.
 - (7) A REP shall maintain a customer service staff adequate to handle customer inquiries and complaints.
 - (8) A REP may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission.
- (i) **Requirements for reporting and for changing the terms of a REP certificate.** The ongoing maintenance of a REP certificate is dependent upon keeping the certification information up to date, pursuant to the following requirements:
- (1) The certificate holder shall notify the commission within 30 days of any change in its office address, business address, telephone number(s), or other contact information.
 - (2) A certificate holder that has met certain certification requirements of this rule by affidavit shall supply information to the commission to show compliance with the requirement as follows:
 - (A) A REP who met the Texas office requirement pursuant to subsection (e)(2)(B) of this section shall supply the commission with the physical office address on or before the date of commencing retail electric service in Texas.
 - (B) A REP that demonstrates that it can meet the technical requirements of subsection (g)(9)(G) of this section by means of an affidavit shall supply the commission with evidence that it has the capability to comply with subsection (g)(1)-(4) on or before the 21st day prior to commencing retail electric service in Texas.
 - (3) If any of the following events occur, the holder of a REP certificate must be prepared, if necessary, for re-certification by the commission and shall notify the commission :
 - (A) within 30 days of a material change in any of the technical conditions presented pursuant to subsection (g) of this section as the basis for the approval of the applicant's initial certification; or,
 - (B) within ten days of a material change in any of the financial requirements presented pursuant to subsection (f) of this section as the basis for approval of the applicant's initial certification, with a material financial change defined as the loss of investment grade or a 5.0% decline in either the \$50 million equity standard or the \$100,000 cash standard;
 - (4) All REP certificate holders shall file updated information set forth in this subsection on an annual basis on a report form approved by the commission. The annual report is due on June 1 each year for the preceding calendar year. A company's first annual report is due in the year following the calendar year in which it is awarded a certificate. The following information, at a minimum, shall be reported annually:
 - (A) Any changes in addresses, telephone numbers, authorized contacts, and other information necessary for contacting the certificate holder.
 - (B) If certificated for a service area defined by geography, identification of areas where the REP is providing retail electric service to customers in Texas compiled by zip code.

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- (C) For 36 months after retail competition begins, the result of the calculation and proof of threshold residential service requirements and the amount paid into the system benefit fund, if applicable, pursuant to subsection (e)(3) of this section.
 - (D) A list of aggregators with whom the REPs have conducted business in the reporting period, including commission registration verification for each.
 - (E) A sworn affidavit that the certificate holder is not in material violation of any of the requirements of its certificate.
- (5) The holder of a REP certificate shall file with the commission notice of changes to the organizational structure or to the material facts represented in its application, including, but not limited to any change in name, service area, facilities ownership or affiliation upon which the commission relied in approving the REP's application. The commission may require the REP to file an amendment to its certificate if it determines that the changes warrant a reevaluation of the REP's basis for certification.
 - (6) The holder of a REP certificate for a service area defined by specific customers may amend its certificate to add additional specified customers by submitting to the commission the affidavit required by subsection (d)(2) of this section from the additional customers on or before the commencement of electric service to those customers.
 - (7) A REP certificate shall not be transferred without prior commission approval. Approval for transfer shall be obtained by petition to the commission. The transferee must complete and file with the commission an application form for certification that demonstrates the transferee's financial and technical fitness to render service under the transferred certificate.
 - (8) No REP certificate holder shall cease operations as a REP without prior notice to the commission, to each of the REP's customers to whom the REP is providing service on the proposed date of cessation of business operations, and other affected persons, including the independent operator, transmission and distribution utilities, electric distribution cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. The REP shall file with the commission proof of refund of any monies owed to customers. Upon the effective cessation date, a REP's certificate will be deemed suspended. If, within 24-months of cessation, a REP demonstrates compliance with certification requirements, the certificate will be reinstated.
 - (9) If a REP files a petition in bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, it shall notify the commission within ten days of this event and shall provide the commission a brief summary of the nature of the proceedings. The commission shall have the right to proceed against any financial resources that the REP relied on in obtaining its certificate, to satisfy unpaid administrative penalties or payments owed to customers.
- (j) **Suspension and revocation.** Pursuant to PURA §39.356, certificates granted pursuant to this section are subject to suspension and revocation for significant violations of PURA, commission rules, or reliability standards adopted by an independent organization. The commission may also amend the certificate or impose an administrative penalty for a significant violation. The commission or any affected person may bring a complaint seeking to suspend or revoke a REP's certificate. Significant violations include, but are not limited to, the following:
- (1) Providing false or misleading information to the commission;
 - (2) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive business practices or unlawful discrimination;

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§25.107(j) continued

- (3) Switching, or causing to be switched, the retail electric provider 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 its customers pursuant to this section;
- (6) Failure to maintain the minimum level of financial resources set out in subsection (f) of this section;
- (7) Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;
- (8) Failure to timely remit payment for invoiced charges to a transmission and distribution utility pursuant to the terms of the statewide standardized tariff adopted by the commission;
- (9) Failure to observe any scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the 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) Conviction of a felony by the certificate holder or principal employed by the certificate holder, of any crime involving fraud, theft or deceit related to the certificate holder's service;
- (13) Not providing retail electric service to customers within 24 months of the certificate being granted by the commission;
- (14) Failure to serve as a provider of last resort if required to do so by the commission pursuant to PURA §39.106(f); and
- (15) Failure, or a pattern of failures to meet the conditions of this section or other commission rules or orders.