

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS**

**Subchapter O. UNBUNDLING AND MARKET POWER.**

**DIVISION 1. UNBUNDLING.**

**§25.343. Competitive Energy Services.**

- (a) **Purpose.** The purpose of this section is to identify competitive energy services, as defined in §25.341 of this title (relating to Definitions), that shall not be provided by affected electric utilities.
- (b) **Application.** This section applies to electric utilities, as defined by the Public Utility Regulatory Act (PURA) §31.002(6), which include transmission and distribution utilities as defined by PURA §31.002(19). This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period. This section shall not apply to an electric utility subject to PURA §39.402 until customer choice begins in the utility's service area.
- (c) **Competitive energy service separation.** An electric utility shall not provide competitive energy services, except for the administration of energy efficiency programs as specifically provided elsewhere in this chapter, and except as provided in subsections (f) and (g) of this section.
- (d) **Petitions relating to the provision of competitive energy services.**
  - (1) **Petition by an electric utility to provide a competitive energy service.** A utility may petition the commission to provide on an unbundled-tariffed basis a competitive energy service that is not widely available to customers in an area. The utility has the burden to prove to the commission that the service is not widely available in an area. The utility's petition may be filed jointly with an affected person or with commission staff.
    - (A) **Review of petition.** In reviewing an electric utility's petition to provide a competitive energy service, the commission may consider, but is not limited to, the following:
      - (i) geographic and demographic factors;
      - (ii) number of vendors providing a similar or closely related competitive energy service in the area;
      - (iii) whether an affiliate of the electric utility offers a similar or closely-related competitive energy service in the area;
      - (iv) whether the approval of the petition would create or perpetuate a market barrier to entry for new providers of the competitive energy service.
    - (B) **Petition deemed approved.** A petition shall be deemed approved without further commission action on the effective date specified in the petition if no objection to the petition is filed with the commission and adequate notice has been completed at least 30 days prior to the effective date. The specified effective date must be at least 60 days after the date the petition is filed with the commission. Notice shall be provided to all entities that have requested notice of petitions by filing such request in a project to be established by the commission, to all retail electric providers in Texas that are certified at the time of the petition, and through a newspaper publication once a week for two consecutive weeks in a newspaper in general circulation throughout the service area for which the petition is requested. Such notice shall state in plain language:
      - (i) the purpose of the petition;
      - (ii) the competitive energy service that is the subject of the petition; and
      - (iii) the date on which the petition will be deemed approved if no objection is filed with the commission.

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**§25.343(d)(1) continued**

- (C) **Approval of petition.**
- (i) If a petition under this paragraph is granted, the utility shall provide the petitioned service pursuant to a fully unbundled, embedded cost-based tariff.
  - (ii) The utility's petition to offer the competitive energy service terminates three years from the date the petition is granted by the commission, unless the commission approves a new petition from the utility to continue providing the competitive energy service.
  - (iii) The costs associated with providing this service shall be tracked separately from other transmission and distribution utility costs.
- (2) **Petition to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service.** An affected person or the commission staff may petition the commission to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service. The commission may consider factors including, but not limited to, the factors in paragraph (1) of this subsection (where applicable) when reviewing a petition under this paragraph.
- (e) **Filing requirements.**
- (1) An electric utility shall file the following as part of its business separation plan pursuant to §25.342 of this title (relating to Electric Business Separation):
    - (A) descriptions of each competitive energy service provided by the utility;
    - (B) detailed plans for completely and fully separating competitive energy services; and
    - (C) petitions, if any, with associated unbundled tariffs to provide a competitive energy service(s) pursuant to subsection (d)(1) of this section. As part of this filing, affected utilities shall provide all supporting workpapers and documents used in the calculation of the charges for the petitioned services.
  - (2) An electric utility shall file complete cost information related to paragraph (1) of this subsection pursuant to §25.344 of this title (relating to Cost Separation Proceedings) and the Unbundled Cost of Service Rate Filing Package (UCOS-RFP).
- (f) **Exceptions related to certain competitive energy services.** An electric utility may not own, operate, maintain or provide other services related to equipment of the type described in §25.341(3)(F) of this title, except in any of the following instances or as otherwise provided in this subchapter or by commission order.
- (1) An electric utility may provide equipment, maintenance, and repair services in an emergency situation as set forth in subsection (g) of this section.
  - (2) An electric utility may provide maintenance service to high-voltage protection equipment and other equipment located on the customer's side of delivery point that is an integral part of the utility's delivery system. For purposes of this subsection, the point of delivery means the point at which electric power and energy leave a utility's delivery system.
  - (3) An electric utility may own equipment located on the customer's side of the point of delivery that is necessary to support the operation of electric-utility-owned facilities, including, but not limited to, billing metering equipment, batteries and chargers, system protection apparatus and relays, and system control and data acquisition equipment.

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- (4) Until the earlier of January 1, 2008, or the date the commission grants a petition by an affected person to discontinue facilities-rental service provided by an electric utility under this subsection, an electric utility may, pursuant to a commission-approved tariff, continue to own and lease to a customer distribution-voltage facilities on the customer's side of the point of delivery, if the customer was receiving facilities-rental service under a commission-approved tariff prior to September 1, 2000, and the customer elects to continue to lease the facilities. Facilities-rental service shall be provided in accordance with the following requirements.
- (A) If the customer elects to continue to lease the facilities from the electric utility, the customer will retain the options of purchasing the rented facilities, renting additional facilities at that same point of delivery, or terminating the facilities-rental arrangement.
- (B) Once all of the facilities formerly leased by the electric utility to the customer have been removed from the customer's side of the point of delivery or have been acquired by the customer, the electric utility may no longer offer facilities-rental service at that point of delivery.
- (C) The electric utility may continue to operate and maintain the leased facilities pursuant to a commission-approved tariff.
- (D) No later than March 1, 2007, an electric utility that provides facilities-rental service shall file with the commission a report on the status of affected facilities and market conditions for this service. At that time, the electric utility shall also file either a plan to discontinue providing facilities-rental service or a petition pursuant to subsection (d)(1) of this section to continue such service.
- (E) An affected person or the commission staff may file a petition under subsection (d)(2) of this section to have facilities-rental service classified as a competitive energy service. If the commission grants such a petition, the affected electric utility shall discontinue facilities-rental service pursuant to a schedule determined by the commission.
- (5) An electric utility may operate and maintain a distribution system located behind the electric utility's point of delivery on a military base, whether that distribution system is owned by the military base or a third party. In addition, an electric utility may own such a distribution system. For purposes of this subsection, "point of delivery" means the point at which electric power and energy are metered. The provision of such services by an electric utility shall be considered discretionary services and shall not be considered competitive energy services.
- (g) **Emergency provision of certain competitive energy services.**
- (1) **Emergency situation.** Notwithstanding subsection (c) of this section, in an emergency situation, an electric utility may provide transformation and protection equipment and transmission and substation repair services on customer facilities. For purposes of this subsection, an "emergency situation" means a situation in which there is a significant risk of harm to the health or safety of a person or damage to the environment. In determining whether to provide the competitive energy service in an emergency situation, the utility shall consider the following criteria:
- (A) whether the customer's facilities are impaired or are in jeopardy of failing, and the nature of the health, safety, or environmental hazard that might result from the impairment or failure of the facilities; and

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- (B) whether the customer has been unable to procure, or is unable to procure within a reasonable time, the necessary transformation and protection equipment or the necessary transmission or substation repair services from a source other than the electric utility.
    - (C) whether provision of the emergency service to the customer would interfere with the electric utility's ability to meet its system needs.
  - (2) **Notification and due diligence.** Prior to providing an emergency service as set forth in paragraph (1) of this subsection, the electric utility shall inform the customer that the requested service is a competitive energy service and that the utility is not permitted to provide the service unless it is an emergency situation. The utility must determine, based on information provided from the customer or by other methods, whether the situation is an emergency situation, as defined in paragraph (1) of this subsection.
  - (3) **Record keeping and reporting.**
    - (A) Not later than three business days after the determination of an emergency situation, the electric utility shall attempt to obtain from the customer a written statement explaining the emergency situation and indicating that the customer is aware that the service provided by the utility is a competitive energy service.
    - (B) The electric utility shall maintain for a period of three years a record of correspondence between the customer and the utility pertaining to the emergency provision of a competitive energy service in accordance with this subsection, including the statement required by subparagraph (A) of this paragraph.
    - (C) The electric utility shall include in a clearly identified manner the following information for the prior calendar year (January 1 through December 31) in its service quality report filed under §25.81 of this title (relating to Service Quality Reports):
      - (i) the number of instances in which the utility provided a competitive energy service pursuant to this subsection in the prior calendar year; and
      - (ii) a brief description of each event, excluding any customer-specific information, and the utility's action to respond to the emergency situation.
  - (4) **Discretionary service charge for provision of competitive energy services in emergency situation.** The charge for providing service pursuant to this subsection shall be based on a fully unbundled, embedded cost-based discretionary service tariff. An electric utility that seeks to provide emergency service under this subsection shall file with the commission an updated discretionary service rate schedule to implement this subsection. Notwithstanding other provisions in this chapter, an electric utility may directly bill the requesting entity for emergency service provided under this subsection.
  - (5) **Commission review.** Upon request, an electric utility shall make available to the commission all required records regarding the provision of competitive energy services pursuant to this subsection.
- (h) **Evaluation of competitive energy services.** Every two years beginning in October 2005 or as otherwise determined by the commission, the commission shall evaluate the degree of competition for the competitive energy services described in §25.341 of this title to determine if they are widely available in areas throughout Texas.
- (i) **Sale of non-roadway security lighting assets.** Prior to the execution of a sale of an electric utility's non-roadway security lighting assets described in §25.341(3)(J)(i) and (ii) of this title, the electric utility shall provide the commission reasonable notice of the proposed transaction.