

PROJECT NO. 26418

**PUC RULEMAKING TO ADDRESS § PUBLIC UTILITY COMMISSION
COMPETITIVE ENERGY §
SERVICES § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF §§25.341 – 25.343 AND 25.346 AS
APPROVED AT THE MAY 9, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.341, relating to Definitions; §25.342, relating to Electric Business Separation; §25.343, relating to Competitive Energy Services; and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities. The proposed amendments address issues that have arisen in the area of competitive energy services since the initial adoption of these rules in 2000, and allow for a fairer treatment of all parties concerned with competitive energy services. Project Number 26418 is assigned to this proceeding.

The Public Utility Regulatory Act, Texas Utilities Code Annotated §39.051(a) (Vernon 1998, Supplement 2003) (PURA) requires that on or before September 1, 2000, each electric utility shall separate from its regulated utility activities any customer energy services business activities that are already widely available in the competitive market. To implement PURA §39.051(a), the commission adopted §25.343, which prescribes the manner in which an electric utility must separate its competitive energy services and prohibits the regulated utility from providing competitive energy services, as defined in §25.341, after September 1, 2000. The proposed amendments clarify certain definitions of competitive energy services in §25.341, modify the petition process under §25.343 for an electric utility to change the designation of competitive energy services it is authorized

to provide, and allow a utility to provide certain competitive energy services in an emergency situation.

In particular, proposed §25.341 clarifies the parameters of what is a competitive energy service that an electric utility cannot provide with regard to non-roadway, outdoor security lighting, transformation and protection equipment, and power quality diagnostic services. In addition, the proposed amendments delete certain definitions in §25.341 that are duplicative of those contained in §25.5, relating to Definitions. The proposed amendments to §25.342 and §25.346 make non-substantive changes to correct cross-references, modify the timelines for business-separation filings by utilities for which customer choice has been delayed, and make several changes related to metering services in areas without competitive metering. The proposed amendments to §25.343 modify the petition process and extend the period that a utility may provide a petitioned service from two years to three years. In addition, proposed §25.343 adds a new subsection (f) regarding the provision of transformation and protection equipment and transmission and substation repair services by a utility in an emergency situation.

Sally Talberg, Chief Policy Analyst, Policy Development Division has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Talberg has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved regulatory oversight of electric utilities, enhanced competition in the provision of energy-related services, and greater certainty for customers in the provision of services for which there is no competition. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Talberg has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022.

If requested pursuant to the Administrative Procedure Act §2001.029, the commission staff will conduct a public hearing on this rulemaking on Tuesday, July 8, 2003 at 10:00 a.m. at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments

may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts. All comments should refer to Project Number 26418.

In addition to comments on the proposed amendments, the commission seeks comments on the following three questions:

1. Should an electric utility that is located in an area where customer choice has been delayed by the commission pursuant to PURA §39.103 be exempt from the commission's competitive energy services rules until customer choice begins in the utility's service area? When responding to this question, parties should explain the legal and policy reasons that support their position, as well as the market conditions for competitive energy services in the particular areas.

2. Should the commission provide a “grandfather” exception to proposed §25.341(4)(F) to allow an electric utility to own, operate, or maintain transformation equipment on the customer’s side of the delivery point that was installed prior to September 1, 2000 and is still owned by the utility?
 - a) Should this exception extend to situations in which a retail customer has entered into a contract with a utility to purchase such equipment, but has not yet completed the purchase? If so, what options should be available to such a retail customer on a going-forward basis (e.g., purchase existing facilities, continue renting facilities, or terminate the rental agreement)?
 - b) On what basis should such an exception be granted? When responding to this question, please provide detailed information on the availability of competitive energy services providers for this type of service in the relevant areas.

3. Proposed §25.343(d)(1) allows an electric utility that files a petition to provide a competitive energy service that is not widely available in an area to file jointly with an affected person or with commission staff. Should commission staff, end-use customers, or other affected persons be able to petition, independently from the utility, for the commission to allow a utility to provide a competitive energy service that the utility is otherwise prohibited from providing? If so, should the petition process, including the notice requirements, burden of proof, and standard of review, be modified in any manner? Would the utility have to agree to provide the petitioned service if the petitioner demonstrated that the service was not widely available in an area?

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.002(a), 14.001, 14.002, 38.022, 39.001, and 39.051 (Vernon 1998, Supplement 2003) (PURA). Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the commission to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 39.001 states the legislative policy and purpose for a competitive electric power industry. Section 39.051 requires that on or before September 1, 2000, each electric utility shall separate from its regulated utility activities any customer energy services business activities that are already widely available in the competitive market.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 38.022, 39.001, and 39.051.

§25.341. Definitions.

The following words and terms, when used in Division ~~1~~^F of this subchapter (relating to Unbundling and Market Power), shall have the following meanings, unless the context clearly indicates otherwise:

- ~~(1) **Above market purchased power costs**—Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.~~
- ~~(2) **Affected utilities**—A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with the Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:~~
- ~~(A) a municipal corporation;~~
 - ~~(B) a qualifying facility;~~
 - ~~(C) a power generation company;~~
 - ~~(D) an exempt wholesale generator;~~
 - ~~(E) a power marketer;~~
 - ~~(F) a corporation described by the Public Utility Regulatory Act (PURA) §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;~~

- ~~(G) — an electric cooperative;~~
- ~~(H) — a retail electric provider;~~
- ~~(I) — this state or an agency of this state; or~~
- ~~(J) — a person not otherwise an electric utility who:
 - ~~(i) — furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;~~
 - ~~(ii) — owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or~~
 - ~~(iii) — owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.~~~~

~~(1)(3)~~ **Advanced metering** — Includes any metering equipment or services that are not transmission and distribution utility metering system services as defined in this section.

~~(2)(4)~~ **Additional retail billing services** — Retail billing services necessary for the provision of services as prescribed under [Public Utility Regulatory Act \(PURA\)](#) ~~PURA~~ §39.107(e) but not included in the definition of

transmission and distribution utility billing system services under this section.

~~(5) **Competition transition charge (CTC)** — Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.~~

~~(3)~~**(6) Competitive energy services** — Customer energy services business activities ~~that which~~ are capable of being provided on a competitive basis in the retail market. Examples of competitive energy services include, but are not limited to the marketing, sale, design, construction, installation, or retrofit, financing, operation and maintenance, warranty and repair of, or consulting with respect to:

- (A) energy-consuming, customer-premises ~~customer-premise~~ equipment;
- (B) the provision of energy efficiency services, the ~~and~~-control of dispatchable load management services, and other load-management services;
- (C) the provision of technical assistance relating to any customer-premises process or device that consumes electricity, including energy audits;
- (D) customer or facility specific energy efficiency, energy conservation, power quality, and reliability equipment and related diagnostic services provided, however, that this does not include reasonable diagnostic actions by an electric utility when responding to service complaints;
- (i) reasonable diagnostic actions include actions necessary to determine if a power quality problem resides with the customer's equipment or with the utility's equipment and to notify the customer that the problem has been attributed to either the utility or the customer;
- (ii) reasonable diagnostic actions do not include recommendations or actions to correct problems related to equipment on the customer's side of the delivery point that is owned by the customer or by a third-party entity that is not an electric utility;

- (E) the provision of anything of value other than tariffed services to trade groups, builders, developers, financial institutions, architects and engineers, landlords, and other persons involved in making decisions relating to investments in energy-consuming equipment or buildings on behalf of the ultimate retail electricity customer;
- (F) ~~customer premises~~ transformation equipment, power-generation equipment, protection equipment, or other electric apparatus and infrastructure on the customer's side of the delivery point that is owned by the customer or by a third-party entity that is not an electric utility and related services;
- (i) This includes services related to such equipment, except in an emergency situation as set forth in §25.343 of this title (relating to Competitive Energy Services);
- (ii) An electric utility is not permitted to own such equipment on the customer's side of the delivery point, except as otherwise provided in this subchapter;
- (G) the provision of information relating to customer usage other than as required for the rendering of a monthly electric bill, including electrical pulse service, provided however that the provision of access to pulses from a meter used to measure electric service for billing in accordance with §25.129 of this title (relating to Pulse Metering), shall not be considered a competitive energy service;

- (H) communications services related to any energy service not essential for the retail sale of electricity;
- (I) home and property security services;
- (J) non-roadway, outdoor security lighting; however, an electric utility may, pursuant to an approved fully unbundled, embedded-cost tariff, continue to provide such service, including, but not limited to, new or replacement lamps, for lighting facilities installed prior to September 1, 2000 and for lighting facilities installed as a petitioned service by the utility as of October 1, 2003, except for the provision of service until January 1, 2002 to customers that were receiving such service on September 1, 2000;
- (K) building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;
- (L) hedging and risk management services;
- (M) propane and other energy-based services;
- (N) retail marketing, selling, demonstration, and merchant activities;
- (O) facilities operations and management;
- (P) controls and other premises energy management systems, environmental control systems, and related services;
- (Q) customer-premises premise-energy or fuel storage facilities;
- (R) performance contracting (commercial, institutional, and industrial);

- (S) indoor air quality products (including, but not limited to air filtration, electronic and electrostatic filters, and humidifiers);
- (T) duct sealing and duct cleaning;
- (U) air balancing;
- (V) customer-premise metering equipment and related services other than as required for the measurement of electric energy necessary for the rendering of a monthly electric bill or to comply with the rules and procedures of an independent organization; and
- (W) other activities authorized ~~identified~~ by the commission by rule or order.

~~(4)(7)~~ **Discretionary service** — Service that is related to, but not essential to, the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with a retail customer or other third-party ~~third party~~ facilities.

~~(5)(8)~~ **Distribution** — For purposes of §25.344(g)(2)(C) of this title (relating to Cost Separation Proceedings), distribution relates to system and discretionary services associated with facilities below 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third-party ~~third party~~ electric grid facilities, to the point of interconnection with a retail customer or other third-party ~~third party~~ facilities, and related processes necessary to perform such transformation and movement. Distribution does not

include activities related to transmission and distribution utility billing services, additional billing services, transmission and distribution utility metering services, and transmission and distribution customer services as defined by this section.

~~(6)~~⁽⁹⁾ **Electrical pulse (or pulse)** — The impulses or signals generated by pulse metering equipment, indicating a finite value, such as energy, registered at a point of delivery as defined in the Tariff for Retail Delivery Service.

~~(7)~~⁽¹⁰⁾ **Electrical pulse service** — Use of pulses for any purpose other than for billing, settlement, and system operations and planning.

~~(8)~~⁽¹¹⁾ **Electronic data interchange** — The computer-application-to-computer-application ~~computer application to computer application~~ exchange of business information in a standard format.

~~(9)~~⁽¹²⁾ **Energy service** — As defined in §25.223 of this title (relating to Unbundling of Energy Service).

~~(13)~~ ~~**Existing purchased power contract** — A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.~~

~~(10)~~⁽¹⁴⁾ **Generation** — For purpose of §25.344(g)(2)(A) of this title, generation includes assets, activities, and processes necessary and related to the production of electricity for sale. Generation begins with the acquisition of fuels and their conversion to electricity and ends where the generation company's facilities tie into the facilities of the transmission and distribution system.

~~(15) **Generation assets** — All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.~~

~~(16) **Market value** — For non-nuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under PURA §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.~~

~~(17) **Power generation company** — A person that:~~

~~(A) — generates electricity that is intended to be sold at wholesale;~~

~~(B) — does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PURA §31.002(6); and~~

~~(C) — does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.~~

~~(11)(18) **Pulse metering equipment** — Any device, mechanical or electronic, connected to a meter, used to measure electric service for billing, which initiates pulses, the number of which are proportional to the~~

quantity being measured, and which may include external protection devices. Except as otherwise provided in §25.311 of this title (relating to Competitive Metering Services), pulse ~~Pulse~~-metering equipment shall be considered advanced metering equipment that shall be owned, installed, operated, and maintained by a transmission and distribution utility and such ownership, installation, operation and maintenance shall not be a competitive energy services~~services~~.

~~(19) **Purchased power market value** — The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.~~

~~(20) **Retail electric provider** — A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.~~

~~(21) **Retail stranded costs** — Part of net stranded cost associated with the provision of retail service.~~

~~(22) **Standard meter** — The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.~~

~~(23) **Stranded costs** — The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the~~

~~electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.~~

~~(12)~~(24) **Stranded cost charges** — Competition transition charges as defined in §25.5 of this title (relating to Definitions) ~~this section~~ and transition charges established pursuant to PURA §39.302(7).

~~(13)~~(25) **System service** — Service that is essential to the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facility, to the point of interconnection with a retail customer or other third-party ~~third party~~ facility. System services include, but are not limited to, the following:

- (A) the regulation and control of electricity in the transmission and distribution system;
- (B) planning, design, construction, operation, maintenance, repair, retirement, or replacement of transmission and distribution facilities, equipment, and protective devices;
- (C) transmission and distribution system voltage and power continuity;

- (D) response to electric delivery problems, including outages, interruptions, and voltage variations, and restoration of service in a timely manner;
- (E) commission-approved public education and safety communication activities specific to transmission and distribution that do not preferentially benefit an affiliate of a utility~~the utility's affiliate(s)~~;
- (F) transmission and distribution utility standard metering and billing services as defined by this section;
- (G) commission-approved administration of energy savings incentive programs in a market-neutral, nondiscriminatory manner, through standard offer programs or limited, targeted market transformation programs; and
- (H) line safety, including tree trimming.

~~(14)(26)~~ **Transmission** — For purposes of §25.344(g)(2)(B) of this title, transmission relates to system and discretionary services associated with facilities at or above 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third-party ~~third-party~~ electric grid facilities, to the point of interconnection with distribution, retail customer or other third-party ~~third party~~ facilities, and related processes necessary to perform such transformation and movement. Transmission does not include activities related to transmission and distribution utility billing system services, additional billing services, transmission and distribution utility metering

system services, and transmission and distribution utility customer services as defined by this section.

~~(27) **Transmission and distribution utility** — A person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PURA §31.002(6), in a qualifying power region certified under PURA §39.152, but does not include a municipally owned utility or an electric cooperative.~~

(15)(28) **Transmission and distribution utility billing system services** —

For purposes of §25.344(g)(2)(E) of this title, transmission and distribution utility billing system services relate ~~Services related~~ to the

production and remittance of a bill to a retail electric provider for the transmission and distribution charges applicable to the retail electric provider's customers as prescribed by PURA §39.107(d), and billing for wholesale transmission service to entities that qualify for such service.

Transmission and distribution utility billing system services may include, but are not limited to, the following:

- (A) generation of billing charges by application of rates to customer's meter readings, as applicable;
- (B) presentation of charges to retail electric providers for the actual services provided and the rendering of bills;

- (C) extension of credit to and collection of payments from retail electric providers;
- (D) disbursement of funds collected;
- (E) customer account data management;
- (F) customer care and call center activities related to billing inquiries from retail electric providers;
- (G) administrative activities necessary to maintain retail electric provider billing accounts and records; and
- ~~(H) an operating billing system; and~~
- ~~(H)(4)~~ error investigation and resolution.

~~(16)(29)~~ **Transmission and distribution utility customer services service**

— For purposes of §25.344(g)(2)(G) of this title, transmission and distribution customer services relate ~~service relates~~ to system and discretionary services associated with the utility's energy efficiency programs, demand-side management programs, public safety advertising, tariff administration, economic development programs, community support, advertising, customer education activities, and any other customer services.

~~(17)(30)~~ **Transmission and distribution utility metering system services**

— For purposes of §25.344 of this title, services ~~Services~~ that relate to the installation, maintenance, and polling of an end-use customer's standard meter. Transmission and distribution utility metering system services may include, but are not limited to, the following:

- (A) ownership of standard meter equipment and meter parts;
- (B) storage of standard meters and meter parts not in service;
- (C) measurement or estimation of the electricity consumed or demanded by a retail electric consumer during a specified period limited to the customer usage necessary for the rendering of a monthly electric bill;
- (D) meter calibration and testing;
- (E) meter reading, including non-interval, interval, and remote meter reading;
- (F) individual customer outage detection and usage monitoring;
- (G) theft detection and prevention;
- ~~(H) customer account maintenance;~~
- ~~(H)(4)~~ installation or removal of metering equipment;
- ~~(I) the operation of meters and provision of information to an independent organization, as required by its rules and protocols;~~
~~and~~
- ~~(J) an operating metering system; and~~
- ~~(J)(K)~~ error investigation and re-reads.

§25.342. Electric Business Separation.

(a) **Purpose.** The purpose of this section is to identify the competitive electric industry business activities that must be separated from the regulated transmission and distribution utility and performed by a power generation company (PGC), a retail electric provider (REP), or some other business unit pursuant to the Public Utility Regulatory Act (PURA) §39.051. This section establishes procedures for the separation of such business activities.

(b) **Application.** This section shall apply to electric affected utilities, as defined in §25.5 of this title (relating to Definitions).

(c) **Compliance and timing.**

~~(1) — Electric utilities must file a business separation plan on or before January 10, 2000, pursuant to PURA §39.051(e).~~

~~(1)(2) The commission shall prescribe a schedule for the filing of~~
~~Notwithstanding any other provision in this section, an electric utility not~~
~~subject to this section until the expiration of the exemption set forth in~~
~~PURA §39.102(c), must file a business separation plan on or before 260~~
~~days prior to the introduction of customer choice for an electric utility.~~
~~An expiration of the exemption. — Notwithstanding any other provision in~~
~~this section, on or before the expiration of the exemption set forth in~~
~~PURA §39.102(e), such an electric utility for which customer choice was~~
~~not introduced in 2002 shall separate from its regulated utility activities its~~

customer energy services business activities and shall separate its business activities ~~in accordance with from one another into the three units described in~~ subsection (d)~~(2)~~ of this section.

~~(2)(3)~~ Upon review of the filing, the commission shall adopt the electric utility's plan for business separation, adopt the plan with changes, or reject the plan and require the electric utility to file a new plan.

(d) **Business separation.**

(1) An electric utility may not offer competitive energy services ~~after September 1, 2000~~; however, an electric utility may petition the commission pursuant to §25.343(d) of this title (relating to Competitive Energy Services) for authority to provide to its Texas customers or some subset of its customers any service otherwise identified as a competitive energy service.

(2) ~~Each Not later than January 1, 2002, each~~ electric utility shall separate its business activities and related costs into the following units: power generation company; retail electric provider; and transmission and distribution utility company. An electric utility may accomplish this separation either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission utility and distribution utility companies.

- (3) Each electric utility, subject to PURA §39.157(d), shall comply with this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with PURA §39.157(d) and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).
- (4) All transfers of assets and liabilities to separate affiliated or nonaffiliated companies, a power generation company, retail electric provider, or a transmission and distribution utility company during the initial business separation process shall be recorded at book value.
- (5) For an electric utility for which customer choice was not introduced in 2002, the commission, in approving a plan under subsection (c) of this section, may prescribe dates for the discontinuation of competitive energy services and the separation of business activities.
- (e) **Business separation plans.** ~~Each On or before January 10, 2000, each~~ electric utility subject to PURA §39.051(e) that has not separated its business functions shall file a business separation plan with the commission according to a commission-approved Business Separation Plan Filing Package (BSP-FP) on a date prescribed by the commission.
- (1) The business separation plan shall include, but shall not be limited to, the following:
- (A) A description of the financial and legal aspects of the business separation, the functional and operational separations, physical

separation, information systems separation, asset transfers during the initial unbundling, separation of books and records, and compliance with §25.272 of this title both during and after the transition period.

- (B) A description of all services provided by the corporate support services company, as well as any corporate support services provided by another separate affiliate including pricing methodologies.
- (C) A proposed internal code of conduct that addresses the requirements in §25.272 of this title and the spirit and intent of PURA §39.157. The internal code of conduct shall address each provision of §25.272 of this title, and shall provide detailed rules and procedures, including employee training, enforcement, and provisions for penalties for violations of the internal code of conduct.
- (D) A description of each competitive energy service provided within Texas by the electric utility, including a detailed plan for completely and fully separating these competitive energy services ~~on or before September 1, 2000~~, as set forth in §25.343 of this title.
- (E) Descriptions of all system services, discretionary services, and other services pursuant to subsection (f) of this section to be provided within Texas by the transmission and distribution utility.

- (2) To the extent that not all of the detailed information required to be filed on the date prescribed by the commission January 10, 2000 is available, the electric utility shall provide a firm schedule for supplemental filings. The commission shall approve only portions of the business separation plan for which complete information is provided.
- (f) **Separation of transmission and distribution utility services.**
- (1) **Classification of services.** Each service offered, or potentially offered, by a transmission and distribution utility shall be classified as one of the following:
- (A) **System service.** The costs associated with providing system service are system-wide costs ~~that which~~ are borne by the retail electric provider serving all transmission and distribution customers.
- (B) **Discretionary service.**
- (i) The cost associated with each discretionary service is customer-specific and should be borne only by the retail electric provider serving the transmission and distribution customer who purchases the discretionary service.
- (ii) Each discretionary service shall be provided by the transmission and distribution utility on a nondiscriminatory basis pursuant to a commission-approved embedded cost-based tariff.

- (iii) The costs associated with providing discretionary services are tracked separately from costs associated with providing system services.
 - (iv) A discretionary service is not a competitive energy service as defined by §25.341~~(6)~~ of this title (relating to Definitions).
- (C) **Petitioned service.** Service in which a petition to provide a specific competitive energy service has been granted by the commission pursuant to §25.343(d)(1) of this title.
- (D) **Other service.**
- (i) The offering of any other services shall be limited to those services which:
 - (I) maximize the value of transmission and distribution system service facilities; and
 - (II) are provided without additional personnel and facilities other than those essential to the provision of transmission and distribution system services.
 - (ii) If the transmission and distribution utility offers a service under clause (i) of this subparagraph, the transmission and distribution utility shall:
 - (I) track revenues and to the extent possible the costs for each service separately;

- (II) offer the service on a non-discriminatory-basis, and if the commission determines that it is appropriate, pursuant to a commission-approved tariff, and;
- (III) credit all revenues received from the offering of this service during the test year after known and measurable adjustments are made to lower the revenue requirement of the transmission and distribution utility on which the rates are based.

- (2) **Competitive energy services.** A transmission and distribution utility shall not provide competitive energy services as defined by §25.341~~(6)~~ of this title ~~(relating to Definitions)~~ except as permitted pursuant to §25.343~~(d)(1)~~ of this title.

§25.343. Competitive Energy Services.

- (a) **Purpose.** The purpose of this section is to identify ~~all~~ competitive energy services, as defined in §25.341 of this title (relating to Definitions), that which shall not be provided by affected electric utilities ~~after September 1, 2000~~.
- (b) **Application.** This section applies to electric utilities, as defined by the Public Utility Regulatory Act (PURA) §31.002(6), which include and transmission and distribution utilities as defined by PURA §31.002(19) ~~that provide service in Texas. This section does not apply to municipally owned utilities or electric cooperatives.~~ 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 ~~Affected utilities~~ shall not provide competitive energy services, ~~after September 1, 2000~~ except for the administration of energy efficiency programs as specifically provided elsewhere in this chapter, and except as provided in subsection (f) of this section, relating to emergency provision of certain competitive energy services.
- (d) **Petitions relating to the provision of competitive energy services.**
- (1) **Petition by an electric ~~affected~~ 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 which~~ 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 affected~~ 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 ~~closely related~~ competitive energy service in the area;
- (iii) whether an affiliate of the ~~electric affected~~ 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 ~~thirty~~ days prior to the effective date. The specified effective date must be at least 60 ~~sixty~~ days after the date the petition is filed with

the commission. Notice shall be provided 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 ~~newspaper~~-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.

(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 ~~two~~-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 Office of Regulatory Affairs~~ 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 ~~is not~~ limited to, the factors in pursuant to paragraph (1) of this subsection (where applicable) when reviewing a petition under this paragraph.

(e) **Filing requirements.**

(1) ~~An electric utility Affected utilities~~ shall file the following as part of its ~~their~~ business separation plan plans 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 ~~Affected utilities~~ 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) **Emergency provision of certain competitive energy services.**

- (1) **Emergency situation.** In an emergency situation, an electric utility may provide transformation and protection equipment and transmission and substation repair services on customer facilities described in §25.341(3)(F) of this title. For purposes of this subsection, an “emergency situation” means a situation in which there is a likely risk of serious injury to health, safety, or the environment or a likely risk of a significant interruption to the customer’s business activities. 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, are in jeopardy of failing, or present a safety hazard; and

(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.

- (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 a emergency situation, as defined in paragraph (1) of this section.

(3) Record keeping and reporting.

(A) Not later than 48 hours after the determination of an emergency situation, the electric utility shall obtain from the customer a 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. Within 30 days of the effective date of this section, an electric utility shall file with the commission a tariff to implement 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.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

- (a) **Purpose.** The purpose of this section is to identify and separate electric utility metering and billing service activities and costs for the purposes of unbundling.
- (b) **Application.** This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002. This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period.
- (c) **Separation of transmission and distribution utility billing system service costs.**
- (1) Transmission and distribution billing system services shall include costs related to the billing services described in §25.341~~(28)~~ of this title (relating to Definitions).
- (2) Charges for transmission and distribution billing system services shall not include any additional capital costs, operation and maintenance expenses, and any other expenses associated with billing services as prescribed by PURA §39.107(e).
- (d) **Separation of transmission and distribution utility billing system service activities.**

- (1) Transmission and distribution utility billing system services as defined ~~described~~ in §25.341(28) of this title shall be provided by the transmission and distribution utility.
- (2) The transmission and distribution utility may provide additional retail billing services pursuant to PURA §39.107(e).
- (3) Additional retail billing services pursuant to PURA §39.107(e) shall be provided on an unbundled discretionary basis pursuant to a commission-approved embedded cost-based tariff.
- (4) The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).

(e) **Uncollectibles and customer deposits.**

- (1) The retail electric provider is responsible for collection of its charges from retail customers and measures to secure payment ~~retail customer uncollectibles and deposits~~.
- (2) For the purposes of functional cost separation in §25.344 of this title (relating to Cost Separation Proceedings), retail customer uncollectibles and deposits shall be assigned to the unregulated function, as prescribed by §25.344(g)(2)(I) of this title.

(f) **Separation of transmission and distribution utility metering system service costs.** Transmission and distribution utility metering system services shall include costs related to the transmission and distribution utility metering system services as defined in §25.341~~(30)~~ of this title.

(g) **Separation of transmission and distribution utility metering system service activities.**

(1) **Metering services before the introduction of customer choice.**

(A) An electric utility ~~Affected utilities~~ shall continue to provide metering services pursuant to commission rules and regulations, but shall ~~provided that affected utilities do~~ not engage in the provision of competitive energy services as defined by §25.341~~(6)~~ of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services).

(B) An electric utility ~~Affected utilities~~ may continue to use metering equipment installed, operated, and maintained by the affected utility prior to the introduction of customer choice~~effective date of this section~~, but may not use the information gained from its provision of the meter or metering services as defined in §25.341~~(3)(6)~~(G) of this title except as permitted in §25.341~~(7)(10)~~ of this title.

(C) When requested by the end-use customer, an electric affected utility shall charge the end-use customer the incremental cost for

the replacement of an end-use customer's meter with an advanced meter owned, operated, and maintained by the electric affected utility.

- (2) **Metering services on and after the introduction of customer choice until metering services become competitive.** On the introduction of customer choice in a service area, metering services as described by §25.341~~(17)(30)~~ of this title for the area shall continue to be provided by the transmission and distribution utility affiliate (or successor in interest) of the electric utility that was serving the area before the introduction of customer choice, but the transmission and distribution provided that the affected utility shall does not engage in the provision of competitive energy services as defined by §25.341~~(6)~~ of this title and prescribed by §25.343 of this title.

(A) Standard meter.

- (i) The standard meter shall be owned, installed, and maintained by the transmission and distribution utility except as prescribed by §25.311 of this title (relating to Competitive Metering Services)~~PURA §39.107(a) and PURA §39.107(b).~~
- (ii) The transmission and distribution utility shall bill a retail electric provider for non-bypassable charges based upon the measurements obtained from each end-use customer's standard meter.

- (iii) If the retail electric provider requests the replacement of the standard meter with an advanced meter, the transmission and distribution utility shall charge the retail electric provider the incremental cost for the replacement of the standard meter with an advanced meter owned, operated, and maintained by the transmission and distribution utility.
 - (iv) Without authorization from the retail electric provider, the transmission and distribution utility's use of advanced meter data shall be limited to that energy usage information necessary for the calculation of transmission and distribution charges in accordance with that end-use customer's transmission and distribution rate schedule.
- (B) Meter reading. Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of determining an end-use customer's energy usage.
- (C) End-use customer meters. Nothing in this section precludes the end-use customer or the retail electric provider from owning, installing, and maintaining metering equipment on the customer-premise side of the standard meter.
- (D) Advanced metering services.

- (i) The transmission and distribution utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title.
- (ii) ~~A transmission and distribution utility~~ Affected utilities may continue to use metering equipment installed, operated, and maintained by the transmission and distribution ~~affected~~ utility consistent with the effective date established under paragraph (1)(B) of this subsection, but may not use the data obtained ~~information gained~~ from its provision of the meter or metering services ~~as defined in §25.341(6)(G) of this title~~, except as permitted in subchapter O of this chapter (relating to Unbundling and Market Power) ~~§25.341(10) of this title~~.
- ~~(iii) Without authorization from the retail electric provider, the transmission and distribution utility shall not use any advanced metering data except as prescribed by subparagraph (A)(iv) of this paragraph.~~
- ~~(iii)(iv)~~ The installation of advanced metering equipment on the transmission and distribution utility's standard meter must be performed by transmission and distribution utility personnel or by contractors under the supervision of the utility.

~~(iv)(v)~~ For services relating to clause ~~(iii)(iv)~~ of this subparagraph, the transmission and distribution utility's charges to the retail electric provider for the installation and removal of any advanced metering equipment shall be reasonable and non-discriminatory and made pursuant to a commission-approved embedded cost based tariff. Except as otherwise provided in this section or by a commission order ~~Unless authorized by clause (ii) of this subparagraph or by the commission,~~ the advanced metering equipment shall not be provided by the transmission and distribution utility.

~~(v)(vi)~~ Advanced metering equipment provided to the transmission and distribution utility for installation onto the standard meter shall meet all current industry safety standards and performance codes consistent with §25.121 of this title (relating to Meter Requirements).

~~(vi)(vii)~~ All advanced metering services and related costs shall be borne by the retail electric provider, except for charges for pulse metering equipment, installation and removal, which shall be borne by the entity executing the pulse metering equipment installation agreement.

(h) **Competitive energy services.**

- (1) Nothing in this section is intended to affect the provision of competitive energy services, including those that require access to the customer's meter.
 - (2) An ~~electric affected~~-utility shall not provide any service that is deemed a competitive energy service under §25.341~~(6)~~ of this title except as provided under §25.343~~(d)(1)~~ of this title.
- (i) **Electronic data interchange.**
- (1) **Standards.** All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission or the independent organization.
 - (2) **Settlement.** All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission or the independent organization.
 - (3) **Costs.** Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection, to the extent not collected elsewhere, such as through the Electric Reliability Council of Texas administrative fee~~ERCOT-ISO fee~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 15th DAY OF MAY 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**