

PROJECT NO. 36536

RULE MAKING TO AMEND P.U.C.	§	PUBLIC UTILITY COMMISSION
SUBST. R. §25.214 AND §25.474 TO	§	
ELIMINATE REQUIREMENT FOR	§	OF TEXAS
SWITCH NOTIFICATION NOTICES	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.214 AND §25.474
AS APPROVED AT THE JANUARY 29, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff for Retail Delivery Service), and §25.474, relating to Selection of Retail Electric Provider. The amendments will facilitate more rapid switches from one retail electric provider (REP) to another if a customer decides to switch retail providers. The amendments will eliminate the requirement for a registration agent, upon receipt of a move-in or switch request from a REP, to send a switch notification to the customer and will require transmission and distribution utilities to process meter reads for customers who are switching retail electric providers within six days of receiving the request for the meter read. The amendments will also require REPs to request switches consistent with the customer's request. The commission has recently adopted new §25.475, relating to General Retail Electric Provider (REP) Requirements and Information Disclosures to Residential and Small Commercial Customers, that requires REPs to notify customers of the termination of a term contract for electric service at least 14 days before the termination date. The changes proposed in the Tariff for Retail Delivery Service and §25.475 will require the registration agent, TDUs and REPs to implement a shorter switching timeline and allow customers to be served by their chosen

provider more quickly. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 36536 is assigned to this proceeding.

David B. Smithson, Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Smithson has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be faster processing of customer requests for electric service when a customer is switching to a new REP. There have been instances in which customers' fixed-price contracts have expired at a time when prices are rising, and they have encountered delays in moving to other low-cost retail products, because of the lengthy standard switching timeline. With these amendments, customers that are able to identify a low-cost product will be able to switch quickly to the provider offering that product. The shorter switching timeline should result in lower electricity costs and greater predictability in costs for residential and small commercial customers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments. The amendments to §25.475 will require REPs, some of which are small or micro-businesses, to change their internal procedures and contract documents. The changes associated with implementing the proposed amendments to §25.474 are not expected to increase the impact on small and micro-businesses. Therefore, no regulatory flexibility analysis is required. There may be economic cost to persons who are required to comply with these amendments, but these costs

will vary by organization and are not possible to quantify. The benefits to customers resulting from adoption of these amendments are expected to outweigh the costs. In addition, the proposed amendments include a provision that may permit transmission and distribution utilities to recover the additional costs resulting from its adoption. The commission requests that interested persons provide comments on the costs and benefits of adopting the amendments.

Although the commission concludes that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments, Mr. Smithson has prepared an economic impact statement and regulatory flexibility analysis pursuant to Texas Government Code §2006.002. In another rulemaking proceeding, the commission concluded that there are approximately 130 REPs, and that approximately 30 REPs are small or micro businesses. About half of the small and micro businesses are not currently serving customers. The small and micro businesses that are serving customers represent about \$25 million in combined annual revenues and about 0.53% of annual ERCOT load. One of the organizations that filed comments in the other rulemaking proceeding contended that there are more than 30 REPs that qualify as micro businesses.

The principal impact of these amendments on small REPs is that they may need to modify their electronic communications and internal procedures concerning customer switches. Many of the small REPs purchase back-office service, including electronic communications capability, from third party service providers. To the extent that a number of REPs use these third party providers, the costs of compliance with the rule will be lower, because each REP will not have to

modify its electronic communications. Instead, the third party service providers will make the modifications and provide the revised services to many REPs.

The commission considered alternatives to the rule such as using the existing out-of-cycle switches as the means of expediting customer switches. The largest TDUs are in the process of implementing advanced metering systems that will permit quicker customer switching, remote meter reading, and other service improvements. These TDUs will be able to reduce the staffing levels for their meter reading technicians as they deploy advanced meters on a widespread basis. In an effort to minimize the additional labor and other costs that the TDUs will incur in connection with these amendments and to minimize the TDUs' challenge of managing the meter reading function, the commission has proposed an expedited switch timeline that is much shorter than the current standard switch timeline but is somewhat longer than the timeline for out-of-cycle switches. The principal objective of the proposed amendments is to improve customers' service by allowing them to switch more quickly to more favorable rates. The commission has determined that the benefits accruing to the public from applying the rule to small and micro businesses will substantially outweigh any adverse economic impacts on small and micro businesses.

Mr. Smithson has also determined that for each year of the first five years the amendments are in effect some TDU's may need to hire additional personnel or use additional contract services, but there should be no effect on a local economy owing to the small number of employees or contractors that would be required, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, March 23, 2009, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Reply comments are due within 30 days after publication. Sixteen copies of comments on the amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule and tariff. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 36536.

In addition to comments on the proposed amendments, the commission requests interested persons to file comments in response to the following questions:

1. What additional customer protections need to be added to PUC rules to address the removal of the "ERCOT postcard"?

2. What changes to PUC rules or ERCOT protocols need to be made to address “slamming” and a speedy switch back to the original REP at no additional cost to the retail customer?
3. What is the most appropriate means for TDUs to seek to recover significant increases in meter-related costs associated with expedited meter reads?

The commission staff will conduct a workshop on this project at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, March 6, 2009, at 9:00 a.m.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supplement 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers; §14.001, which gives the commission the general power to regulate and supervise the business of each public utility within its jurisdiction; §32.101, which requires an electric utility to file its tariff with the commission; and §36.003, which requires the commission to ensure that electric utility rates are just and reasonable.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.004, 32.101, 36.003, and 39.101.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a)-(c) (No change.)

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.

Figure: [16 TAC §25.214\(d\)\(1\)](#) (amendment on pg. 79 of 84)

(2) (No change.)

6.1.2 DISCRETIONARY CHARGES

6.1.2.1 STANDARD DISCRETIONARY SERVICES

i. Charges Billed by Company to Competitive Retailer

Out-of-Cycle Meter Read Charges

Out-of-Cycle Meter Read Charges	
<p>Re-Reads Applicable to requests to re-read Retail Customer's Meter to verify the accuracy of Company's Meter Reading. The re-read shall be completed within five Business Days of Company's receipt of the request.</p> <p style="margin-left: 40px;">i. Meter Reading found to be in error ii. Meter Reading found to be accurate</p>	<p>\$0.00 \$x.xx</p>
<p>Out-of-cycle Meter Read for the Purpose of a Switch Applicable to requests to read Retail Customer's Meter on a date other than Company's regularly scheduled monthly Meter Reading date for the purpose of switching Retail Customer's account to a new Competitive Retailer. Company shall perform the Meter Read on the Competitive Retailer's requested date, provided the Company receives the request on a Business Day that is not later than two Business Days prior to the requested date. Notices received after 5:00 PM CPT, or on a day that is not a Business Day, will be considered received on the next Business Day. If the requested date is not a Business Day, the out-of-cycle Meter Read will be scheduled for the first Business Day following the requested date. The meter read shall be performed in accordance with Section 4.3.4, CHANGING OF DESIGNATED COMPETITIVE RETAILER.</p>	<p>\$x.xx</p>
<p><u>Expedited Meter Read for the Purpose of a Switch</u> <u>Applicable to requests to read Retail Customer's Meter on a date other than Company's regularly scheduled monthly Meter Reading date for the purpose of switching Retail Customer's account to a new Competitive Retailer. Company shall perform a Meter Reading or Estimated Meter Reading within six calendar days of the first available switch date received from the Registration Agent. The</u></p>	

<p><u>Meter Reading shall be performed in accordance with Section 4.3.4, CHANGING OF DESIGNATED COMPETITIVE RETAILER.</u></p>	<p><u>\$0.00</u></p>
<p>Out-of-Cycle Meter Estimation for the Purpose of a Switch due to denial of Access by Retail Customer</p>	<p>\$ x.xx</p>
<p>Out-of-Cycle Estimate for the Purpose of a Mass Transition charges for estimation shall be charged to the exiting Competitive Retailer.</p>	<p>\$x.xx</p>

§25.474. Selection of Retail Electric Provider.

(a) - (j) (No change.)

- (k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP shall submit a move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. A REP shall submit an applicant's switch request to the registration agent as an expedited meter read or an out of cycle meter read if the applicant requests a specific date for a switch. The A REP may submit an applicant's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section, provided that if the customer makes a timely request to cancel service the REP shall take action to ensure that the switch is canceled or the customer is promptly returned to its chosen REP without inconvenience or additional cost to the customer. ~~Additionally, the REP shall submit the move in or switch request to the registration agent so that the move in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative.~~ The applicant shall be informed of the approximate scheduled date that the applicant will begin receiving electric service from the REP, and of any delays in meeting that date, if known by the REP.

(1) **Duty of the registration agent.** ~~When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with the protocols.~~

(1) When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with this section and ~~it~~the protocols, to the extent that the protocols are consistent with this section.

Switches. ~~The registration agent shall send a switch notification notice that shall:~~

~~(A) be sent in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);~~

~~(B) identify the REP that initiated the switch request;~~

~~(C) inform the applicant that the applicant's REP will be switched unless the applicant requests the registration agent to cancel the switch by the date stated in the notice;~~

~~(D) provide a cancellation date by which the applicant may request a switch to be cancelled, no less than seven calendar days after the applicant receives the notice; and~~

~~(E) provide instructions for the applicant to request that the switch be cancelled. These instructions shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent. The registration agent shall take appropriate actions to process an applicant's timely request for cancellation.~~

(2) The registration agent shall direct the transmission and distribution utility to implement any switch, move-in, or transfer to the affiliated REP or the POLR in

accordance with this section and its protocols ~~established by the registration agent,~~
~~unless the applicant makes a timely request to cancel the transaction.~~

(m) (No change.)

(n) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests an out-of-cycle meter read for the purpose of a switch ~~a switch that does not conform with the normal meter reading and billing cycle.~~ The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. To the extent that the transmission and distribution utility assesses a REP a properly tariffed charge for connection of service, out of cycle switch requests, service order cancellations or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP.

(o) **TDU cost increases.** If a TDU can demonstrate that performing expedited meter reads for the purpose of a switch have resulted in a significant increase in its meter-related costs, it may seek to recover those costs through a surcharge. The surcharge shall not be used to retroactively recover costs and shall not be reconciled, and the TDU shall not create a regulatory asset for the costs. The commission may amend the surcharge. The TDU shall provide reports on the surcharge as required by commission staff. The surcharge shall be eliminated upon completion of a general base rate proceeding.

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

**ISSUED IN AUSTIN, TEXAS ON THE 2nd DAY OF FEBRUARY 2009 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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