

PROJECT NO. 49794

**RULEMAKING FOR BROKER
REGISTRATIONS**

§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF NEW §25.112 and NEW §25.486
AS APPROVED AT THE NOVEMBER 14, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.112, relating to Registration of Brokers, and new 16 TAC §25.486, relating to Customer Protections for Brokerage Services. The proposed rules will implement the requirements of Public Utility Regulatory Act (PURA) §39.3555 enacted by the 86th Texas Legislature.

Growth Impact Statement

The commission provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The commission has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed rules will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the commission;

(4) the proposed rules will not require an increase and will not require a decrease in fees paid to the commission;

(5) the proposed rules will create new regulations to implement PURA §39.3555 as enacted by the 86th Texas Legislature;

(6) the proposed rules will not limit an existing regulation;

(7) the proposed rules will not increase the number of individuals subject to the rules' applicability; and

(8) the proposed rules will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

James Kelsaw, Senior Utility Analyst, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the rules.

Public Benefits

Mr. Kelsaw has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit expected as a result of the adoption of the proposed rule will be the implementation of PURA §39.3555. There may be economic costs to affected entities required to comply with the rules under Texas Government Code §2001.024(a)(5), but those costs are necessary to implement PURA §39.3555 as enacted by the 86th Texas Legislature.

Local Employment Impact Statement

For each year of the first five years the proposed rules are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking, because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested, in accordance with 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 Friday, January 17, 2020 at 9:00 a.m. The request for a public hearing must be received by Monday, January 13, 2020. If no request for a public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Initial comments on the proposed rules may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78711-3326, no later than January 6, 2020. Sixteen copies of comments on the proposed rules are required to be submitted under 16 TAC §22.71(c). Reply comments may be submitted in the same manner no later than January 13, 2020. 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 rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to project number 49794.

Statutory Authority

These rules are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code (PURA), which provides the commission with the authority to make and enforce rules reasonably

required in the exercise of its powers and jurisdiction, and §39.3555, which requires entities that provide brokerage services in this state to register as brokers with the commission and to comply with customer protection provisions established by the commission and Chapters 17 and 39 of PURA and which requires the commission to adopt rules as necessary to implement the section.

Cross reference to statutes: Public Utility Regulatory Act §§ 14.002 and 39.3555.

§25.112 Registration of Brokers.

- (a) **Registration required.** A person must not provide brokerage services, including brokerage services offered online, in this state for compensation or other consideration unless the person is registered with the commission as a broker. A retail electric provider (REP) is not permitted to register as a broker and must not knowingly provide bids or offers to a person who provides brokerage services in this state for compensation or other consideration and is not registered as a broker. A REP may rely on the publicly available list of registered brokers posted on the commission's website to determine whether a broker is registered with the commission.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise:
- (1) **Broker** -- A person that provides brokerage services.
 - (2) **Brokerage services** -- Providing advice or procurement services to, or acting on behalf of, a retail electric customer regarding the selection of a REP, or a product or service offered by a REP.
- (c) **Requirements for a person seeking to register as a broker.** A person seeking to register under this section must provide the information listed in this subsection.
- (1) All business names of the registrant limited to five business names;
 - (2) The mailing address, telephone number, and email address of the principal place of business of the registrant;
 - (3) The name, title, business mailing address, telephone number, and email address for the registrant's regulatory contact person;

- (4) The name, title, business mailing address, telephone number, and email address of the registrant's customer service contact person;
 - (5) The name, title, business mailing address, telephone number, and email address of the registrant's commission complaint contact person;
 - (6) The form of business being registered (e.g., corporation, partnership, or sole proprietor); and
 - (7) An affidavit from the owner, partner, or officer of the registrant affirming that the registrant is authorized to do business in Texas under all applicable laws and is in good standing with the Texas Secretary of State; that all statements made in the application are true, correct, and complete; that any material changes in the information will be provided in a timely manner; and that the registrant understands and will comply with all applicable law and rules.
- (d) **Registration procedures.** The following procedures apply to a person seeking to register as a broker:
- (1) A registration application must be made on the form approved by the commission, verified by notarized oath or affirmation, and signed by an owner, partner, or officer of the registrant. The form may be obtained from the central records division of the commission or from the commission's Internet site. Each registrant must file its registration application form with the commission's filing clerk in accordance with the commission's procedural rules.
 - (2) The registrant may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Registering entities may not designate the entire registration application as confidential. Information

designated as proprietary or confidential will be treated in accordance with the confidentiality requirements in the Public Utility Regulatory Act (PURA), Tex. Gov't Code Chapter 552, and commission rules. If a public information act request is received for information designated as confidential, the registrant has the burden to establish that the requested information is proprietary or confidential.

(3) The registrant must promptly inform the commission of any material change in the information provided in the registration application while the application is being processed.

(4) An application will be processed as follows:

(A) Commission staff will review the submitted form for completeness. Within 20 working days of receipt of an application, the commission staff will notify the registrant by mail or e-mail of any deficiencies in the application. The registrant will have ten working days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten working days, commission staff will notify the registrant that the registration application is rejected without prejudice.

(B) Commission staff will determine whether to accept or reject the application within 60 days of the receipt of a complete application.

(C) An applicant may contest commission staff's rejection of its application by filing a petition for formal review of the registration application in accordance with the commission's procedural rules. The registrant has the burden of proof to establish that its application meets the requirements of PURA and commission rules.

- (e) **Registration Renewal.** A broker registration expires three years after the date of the assignment of a broker registration number. Each registrant must submit the information required to renew its registration with the commission not less than 90 days prior to the expiration date of the current registration. An expired registration is no longer valid and the broker will be removed from the broker list on the commission's website.
- (f) **Registration Amendment.** A broker must amend its registration to reflect any changes in the information previously submitted, including business name, mailing address, email address, or telephone number within 30 calendar days from the date of the change.
- (g) **Suspension and Revocation of Registration and Administrative Penalty.** The commission may impose an administrative penalty for violations of PURA or commission rules. The commission may also suspend or revoke a broker's registration for significant violations of PURA or commission rules. 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 practices;
 - (3) a pattern of failure to meet the requirements of PURA, commission rules, or commission orders;
 - (4) failure to respond to commission inquiries or customer complaints in a timely fashion;
 - (5) switching or causing to be switched the REP of a customer without first obtaining the customer's authorization; or
 - (6) billing an unauthorized charge or causing an unauthorized charge to be billed to a customer's retail electric service bill.

§25.486 Customer Protections for Brokerage Services

- (a) **Applicability.** This section applies to all brokers.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise:
- (1) **Broker** -- As defined in §25.112 of this title (relating to Registration of Brokers).
 - (2) **Brokerage services** -- As defined in §25.112 of this title.
 - (3) **Client** -- A person who receives or solicits brokerage services from a broker.
 - (4) **Client agent** -- A broker who has the legal right and authority to act on behalf of a client regarding the selection of, enrollment for, or contract execution of a product or service offered by a retail electric provider (REP), including electric service.
 - (5) **Proprietary client information** -- Any information that is compiled by a broker on a client that makes possible the identification of any individual client by matching such information with the client's name, address, retail electric account number, type or classification of retail electric service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual retail electric or brokerage services contract terms and conditions, price, current charges, billing records, or any information that the client has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the client to whom the information relates does not constitute proprietary client information.
- (c) **Voluntary Alteration of Customer Protections.** A client other than a residential or small commercial class customer or applicant, or a non-residential customer or applicant whose load is part of an aggregation in excess of 50 kilowatts, may agree to a different level of

customer protections than is required by this section. Any agreements containing a different level of protections from those required by this section must be memorialized on paper or electronically and provided to the client. Copies of such agreements must be provided to commission staff upon request.

(d) Broker Communications.

(1) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, and billing statements produced by a broker must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

(A) Stating, suggesting, implying or otherwise leading a client to believe that receiving brokerage services will provide a customer with more reliable service from a transmission and distribution utility (TDU);

(B) Falsely suggesting, implying or otherwise leading a client to believe that a person is a representative of a TDU, REP, aggregator, or another broker;

(C) Falsely stating or suggesting that brokerage services are being provided without compensation; and

(D) Falsely claiming to be the client agent of a customer.

(2) All printed advertisements, electronic advertising over the Internet, and websites must include the broker's registered name.

(e) Language Requirements. A broker must provide customer service and any information required by this section to a client in the language used to market the broker's products and services to that client.

(f) Required Disclosures. A broker must inform a client of the following prior to the initiation of brokerage services:

- (1) The broker's registered name, business mailing address, and contact information;
- (2) The broker's commission registration number;
- (3) The registered name of any REP that is an affiliate of the broker;
- (4) A clear description of the services the broker will provide for the client. If the broker will provide services for the client that have not been identified prior to the initiation of brokerages services, the broker must provide a description of those services to the client before the client is obligated to provide compensation for the provision of those services;
- (5) The duration of the agreement to provide brokerage services, if applicable;
- (6) A description of how the broker will be compensated for providing brokerage services and by whom. If the broker is compensated directly by the client, the broker must disclose the details of the compensation;
- (7) How the client can terminate the agreement to provide brokerage services, if applicable;
- (8) The amount of any fee or other cost the client will incur for terminating the agreement to provide brokerage services, if applicable; and
- (9) The commission's telephone number and email address for complaints and inquiries.

(g) Client Agent Requirements.

- (1) An agreement between a broker and a client that authorizes the broker to act as a client agent for the client must be memorialized on paper or electronically.

- (2) In addition to the requirements of subsection (f) of this section, a broker that acts as a client agent for the client must inform the client of the following:
- (A) A clear description of the actions the broker is authorized to take on the client's behalf;
 - (B) The duration of the agency relationship;
 - (C) How the client can terminate the agency agreement;
 - (D) The amount of any fee or other cost the client will incur for terminating the agency agreement; and
 - (E) How the client's customer data and account access information will be used, protected, and retained by the broker and disposed of at the conclusion of the agency relationship.
- (3) A broker that is authorized to act as a client agent for the client must provide evidence of that authority upon request of the client, commission staff, or a REP with which the broker seeks to enroll the client.
- (h) **Broker Enrollments.** A broker that is not an agent of a REP under §25.471(d)(10) of this title (relating to General Provisions of Customer Protection Rules) may enter into an agreement with a REP to assume all or part of the REP's responsibilities under §25.474 of this title (relating to Selection of Retail Electric Provider) for the purpose of enrolling applicants or customers for retail electric service. A broker that assumes the responsibilities of a REP under §25.474 must comply with the requirements of §25.474. A REP that enters into an agreement with a broker to assume all or part of the REP's responsibilities under §25.474 remains accountable under §25.107(a)(3) of this title (relating to Certification of Retail Electric Providers) for compliance with all applicable

laws and commission rules for all activities conducted by the broker related to those responsibilities. An agreement between a REP and a broker under this subsection must be memorialized on paper or electronically and provided to the commission upon request.

(i) **Discrimination Prohibited.** A broker must not refuse to provide brokerage services or otherwise discriminate in the provision of brokerage services to any client because of race, creed, color, national origin, ancestry, sex, marital status, source or level of income, disability, or familial status; or refuse to provide brokerage services to a client because the client is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services; or otherwise unreasonably discriminate on the basis of the geographic location of a client.

(j) **Proprietary Client Information.**

(1) A broker must not release proprietary client information to any person unless the client authorizes the release in writing on paper or electronically. This prohibition does not apply to the release of such information to:

(A) the commission;

(B) the Office of Public Utility Counsel, upon request under PURA §39.101(d);

or

(C) a REP or TDU as necessary to complete a required market transaction, under terms approved by the commission.

(2) A broker is not permitted to sell, make available for sale, or authorize the sale of any client-specific information or data obtained unless the client authorizes the sale in writing on paper or electronically.

(k) **Customer Service and Complaint Handling.**

(1) **Client Access.** Each broker must ensure that clients have reasonable access to its service representatives to make inquiries and complaints, discuss charges on bills, terminate service, and transact any other pertinent business. A broker must promptly investigate client complaints and advise the complainant of the results. A broker must inform the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(2) **Complaint Handling.** A client has the right to make a formal or informal complaint to the commission. A broker may not use a written or verbal agreement with a client to impair this right for a client that is a residential or small commercial customer. A broker must not require a client that is a residential or small commercial customer to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

(3) **Informal Complaints.**

(A) A person may file an informal complaint with the commission by contacting the commission at: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-

mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(B) A complaint should include the following information, as applicable:

(i) The complainant's name, billing and service address, telephone number and email address, if any;

(ii) The name of the broker;

(iii) The broker's registration number;

(iv) The name of any relevant REP;

(v) The customer account number or electric service identifier;

(vi) An explanation of the facts relevant to the complaint;

(vii) The complainant's requested resolution; and

(viii) Any documentation that supports the complaint.

(C) The commission will forward the informal complaint to the broker.

(D) The broker must investigate each informal complaint forwarded to the broker by the commission and advise the commission in writing on paper or electronically of the results of the investigation within 21 days after the complaint is forwarded to the broker by the commission.

(E) The commission will review the complaint information and the broker's response and notify the complainant of the results of the commission's investigation.

(F) The broker must keep a record for two years after receiving notification by the commission that the complaint has been closed. This record must show

the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

(4) **Formal Complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. Formal complaints will be docketed as provided in the commission's procedural rules.

(1) **Record Retention.**

(1) A broker must establish and maintain records and data that are sufficient to:

(A) Verify its compliance with the requirements of any applicable commission rules; and

(B) Support any investigation of customer complaints.

(2) All records required by this section must be retained for no less than two years, unless otherwise specified.

(3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter must be provided to the commission within 15 calendar days of its request.

This agency 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 14TH DAY OF NOVEMBER 2019 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**