

PROJECT NO. 45078

RULEMAKING RELATED TO	§	PUBLIC UTILITY COMMISSION
DISTRIBUTED GENERATION	§	
INTERCONNECTION	§	OF TEXAS
AGREEMENTS	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §25.211
AS APPROVED AT THE JUNE 9, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.211, relating to Interconnection of On-site Distributed Generation. Amendments are made solely to the Agreement for Interconnection and Parallel Operation of Distributed Generation (Interconnection Agreement or IA). The amendments allow the end-use customer to be a party to the IA or otherwise elect to have an entity who owns the distributed generation (DG) facility but is not the end-use customer (DG owner), a person who by contract is assigned ownership rights to energy produced by the DG facility, or the owner of the premises at which the DG facility is located, to be a party to the IA rather than the end-use customer.

David Smithson, Engineering Specialist, has determined that for each year of the first five-year period the amendments will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Mr. Smithson has determined that for each year of the first five years the amendments will be in effect, the anticipated public benefits as a result of the amendments will be improved clarity regarding which type of entity may enter into an IA with a utility. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments.

Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Mr. Smithson has also determined that for each year of the first five years the amendments will be in effect, there should be no effect on a local economy, 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 at 9:00 A.M. on Tuesday, August 16, 2016. The request for a public hearing must be received by Friday, July 29, 2016.

Initial 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, not later than Friday, July 29, 2016. Reply comments may be submitted not later than Friday, August 12, 2016. Sixteen copies of initial comments and reply comments are required to be filed pursuant to 16 Tex. Admin. Code §22.71(c). Comments shall be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 45078.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the Public Utility

Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §31.002 (20), which defines transmission service to include transmission over distribution facilities; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §35.004(b), which requires the commission to ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities and transmission and distribution utilities; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §39.101(b)(3), which requires the commission to ensure that customers have access to on-site distributed generation and to providers of energy generation by renewable energy resources; §39.554, which addresses the interconnection of distributed renewable generation with an electric utility subject to PURA Chapter 39, Subchapter L; and §39.916, which addresses the interconnection of distributed renewable generation.

Cross reference to statute: Public Utility Regulatory Act §§ 14.001, 14.002, 31.002, 32.101, 35.004, 36.003, 38.001, 39.101, 39.554, and 39.916.

§25.211. Interconnection of On-Site Distributed Generation (DG).

(a)-(o) (No change.)

(p) **Agreement for Interconnection and Parallel Operation of Distributed Generation.**

Figure: 16 TAC §25.211(p)

(q) (No change.)

Figure: 16 TAC §25.211(p)

**AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION
OF DISTRIBUTED GENERATION**

This Interconnection Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by _____, (“Company”), and _____ (“Customer”), a _____ [specify whether an individual or a corporation, and if a corporation, name state, municipal corporation, cooperative corporation, or other], each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.” ~~In consideration of the mutual covenants set forth herein, the Parties agree as follows:~~

Place a single check mark in one of the four spaces below to indicate the type of entity entering into this Agreement:

Option 1: For purposes of this Agreement, the end-use customer will act as a Party to this Agreement.

Option 2: For purposes of this Agreement, the entity other than the end-use customer that owns the distributed generation facility (also referred to as “Generator”) will act as a Party to this Agreement.

Option 3: For purposes of this Agreement, the entity other than the end-use customer that owns -the premises upon which the distributed generation Facility will be located (also referred to as “Premises Owner”) will act as a Party to this Agreement.

Option 4: For purposes of this Agreement, an entity who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the premises of the end-use customer on the end-use customer's side of the meter, will act as a Party to this Agreement.

Notwithstanding any other provision herein, the entity referred to as "Customer" herein shall refer to the entity defined in the option selected above by the end-use customer.

If any option other than Option 1 as outlined above is selected, the end-use customer must sign, print his or her name, and date this Agreement below:

"I affirm that I am the end-use customer for the distributed generation facility addressed by this Agreement, and that I have selected either Option 2, Option 3, or Option 4 above. I acknowledge that, by selecting one of these options, I am authorizing the entity listed in the option selected to act as a Party to this Agreement."

End-use customer name (print): _____

End-use customer signature: _____

Date: _____

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. **Scope of Agreement** -- This Agreement is applicable to conditions under which Company and Customer agree that one or more generating facility or facilities of ten megawatts or less and related interconnecting facilities to be interconnected at less than 60 kilovolts ("Facilities") may be interconnected to Company's facilities, as described in Exhibit A. If Customer is not the end-use customer, Customer affirms that the end-use customer has approved of the design and location of the Facilities.

2. **Establishment of Point(s) of Interconnection** -- Company and Customer agree to interconnect Facilities at the locations specified in this Agreement, in accordance with Public Utility Commission of Texas (“Commission”) Substantive Rules 25.211, relating to Interconnection of Distributed Generation, and 25.212, relating to Technical requirements for Interconnection and Parallel Operation of On-Site Distributed Generation (16 Texas Administrative Code §25.211 and §25.212) (the “Rules”) or any successor rule addressing distributed generation and as described in the attached Exhibit A (the “Point(s) of Interconnection”).

3. **Responsibilities of Company and Customer** -- Customer shall, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, Facilities specified on Exhibit A. Customer shall conduct operations of Facilities in compliance with all aspects of the Rules, and Company shall conduct operations on its facilities in compliance with all aspects of the Rules, and as further described and mutually agreed to in the applicable Facility Schedule. Maintenance of Facilities shall be performed in accordance with the applicable manufacturer’s recommended maintenance schedule. Customer agrees to cause Facilities to be constructed in accordance with specifications equal to or greater than those provided by the National Electrical Safety Code, approved by the American National Standards Institute, in effect at the time of construction.

Each Party covenants and agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of, its facilities so as to reasonably minimize the likelihood of a disturbance, originating in the facilities of one Party, affecting or impairing the facilities of the other Party, or other facilities with which Company is interconnected.

Company shall notify Customer if there is evidence that operation of Facilities causes disruption or deterioration of service to other utility customers or if the operation of Facilities causes damage to Company’s facilities or other facilities with which Company is interconnected. Company and Customer shall work cooperatively and promptly to resolve the problem.

Customer shall notify Company of any emergency or hazardous condition or occurrence with Facilities which could affect safe operation of Company's facilities or other facilities with which Company is interconnected.

Customer shall provide Company at least 14 days' written notice of a change in ownership or cessation of operations of one or more Facilities, [or any circumstance necessitating a change of Parties to this Agreement.](#)

4. Limitation of Liability and Indemnification

- a. Notwithstanding any other provision in this Agreement, with respect to Company's provision of electric service to [the end-use customer](#) ~~Customer~~ other than the interconnections service addressed by this Agreement, Company's liability to [the end-use customer](#) ~~Customer~~ shall be limited as set forth in _____ of Company's Commission-approved tariffs, which are incorporated herein by reference.**
- b. Neither Company nor Customer shall be liable to the other for damages for anything that is beyond such Party's control, including an act of God, labor disturbance, act of a public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, or regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or the making of necessary repairs upon the property or equipment of either party.**
- c. Notwithstanding Paragraph 4.b of this Agreement, Company shall assume all liability for and shall indemnify Customer for any claims, losses, costs, and expenses of any kind or character to the extent that they result from Company's negligence in connection with the design, construction, or operation of its Facilities as described on Exhibit A; provided, however, that Company shall have no obligation to indemnify Customer for claims brought by claimants who cannot recover directly from Company. Such indemnity shall include, but is not limited to, financial responsibility for: (a) Customer's monetary losses; (b) reasonable costs and expenses of defending an action or claim made by a third person; (c) damages related to the death or injury of a third person; (d) damages to the property of Customer; (e) damages to the property of a third person; (f) damages for the disruption of the business of a third person. In no event shall Company**

be liable for consequential, special, incidental, or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of production. The Company does not assume liability for any costs for damages arising from the disruption of the business of Customer or for Customer's costs and expenses of prosecuting or defending an action or claim against Company. This paragraph does not create a liability on the part of Company to Customer or a third person, but requires indemnification where such liability exists. The limitations of liability provided in this paragraph do not apply in cases of gross negligence or intentional wrongdoing.

d. *Please check the appropriate box.*

Private Entity

Notwithstanding Paragraph 4.b of this Agreement, Customer shall assume all liability for and shall indemnify Company for any claims, losses, costs, and expenses of any kind or character to the extent that they result from Customer's negligence in connection with the design, construction, or operation of Facilities as described on Exhibit A; provided, however, that Customer shall have no obligation to indemnify Company for claims brought by claimants who cannot recover directly from Customer. Such indemnity shall include, but is not limited to, financial responsibility for: (a) Company's monetary losses; (b) reasonable costs and expenses of defending an action or claim made by a third person; (c) damages related to the death or injury of a third person; (d) damages to the property of Company; (e) damages to the property of a third person; (f) damages for the disruption of the business of a third person. In no event shall Customer be liable for consequential, special, incidental, or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of production. The Customer does not assume liability for any costs for damages arising from the disruption of the business of Company or for Company's costs and expenses of prosecuting or defending an action or claim against Customer. This paragraph does not create a liability on the part of Customer to Company or a third person, but requires indemnification where such liability exists. The limitations of liability provided in this paragraph do not apply in cases of gross negligence or intentional wrongdoing.

Federal Agency

Notwithstanding Paragraph 4.b of this Agreement, the liability, if any, of Customer relating to this Agreement, for injury or loss of property, or personal injury or death shall be governed exclusively by the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346, and 2671-2680). Subject to applicable federal, state, and local laws, each Party's liability to the other for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement shall be limited to the amount of direct damages actually incurred, and in no event shall either Party be liable to the other for any indirect, special, consequential, or punitive damages.

e. Company and Customer shall each be responsible for the safe installation, maintenance, repair, and condition of their respective facilities on their respective sides of the Points of Interconnection. Company does not assume any duty of inspecting Customer's Facilities.

f. For the mutual protection of Customer and Company, only with Company prior authorization are the connections between Company's service wires and Customer's service entrance conductors to be energized.

5. Right of Access, Equipment Installation, Removal & Inspection -- Upon reasonable notice, Company may send a qualified person to the premises of Customer at or immediately before the time Facilities first produce energy to inspect the interconnection, and observe Facilities' commissioning (including any testing), startup, and operation for a period of up to three days after initial startup of Facilities.

Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, Company shall have access to Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

If Customer is not the owner of the Facility, then Customer hereby warrants that it has obtained from the Generator such access by Company to the Facility as necessary or appropriate for Company to exercise its rights under this Agreement. If Customer does not own the premises upon which the Facility is located, then Customer also hereby warrants that it has obtained from the Premises Owner such access to the Facility by Company as is necessary or appropriate for Company to exercise its rights under this Agreement.

6. Disconnection of Facilities -- Customer retains the option to disconnect from Company's facilities. Customer shall notify Company of its intent to disconnect by giving Company at least thirty days' written notice. Such disconnection shall not be a termination of this Agreement unless Customer exercises rights under Section 7.

Customer shall disconnect Facilities from Company's facilities upon the effective date of any termination under Section 7.

Subject to Commission Rule, for routine maintenance and repairs of Company's facilities, Company shall provide Customer with seven business days' notice of service interruption.

Company shall have the right to suspend service in cases where continuance of service to Customer will endanger persons or property. During the forced outage of Company's facilities serving Customer, Company shall have the right to suspend service to effect immediate repairs of Company's facilities, but Company shall use its best efforts to provide Customer with reasonable prior notice.

7. Effective Term and Termination Rights -- This Agreement becomes effective when executed by both Parties and shall continue in effect until terminated. The Agreement may be terminated for the following reasons: (a) Customer may terminate this Agreement at any time, by giving Company sixty days' written notice; (b) Company may terminate upon failure by Customer to generate energy from Facilities in parallel with Company's facilities within twelve months after completion of the interconnection; (c) either Party may terminate by giving the other Party at least

sixty days' written notice that the other Party is in default of any of the material terms and conditions of the Agreement, so long as the notice specifies the basis for termination and there is reasonable opportunity to cure the default; or (d) Company may terminate by giving Customer at least sixty days' written notice if possible in the event that there is a material change in an applicable rule or statute that necessitates termination of this Agreement. If Customer is not the end-use customer, then should the end-use customer terminate retail electric service from Company for premises containing the point of common coupling, this Agreement shall continue to remain in full force and effect.

8. Governing Law and Regulatory Authority -- *Please check the appropriate box.*

- Private Entity:** This Agreement was executed in the State of Texas and must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.
- Federal Agency:** This Agreement was executed in the State of Texas and, to the extent not inconsistent with all applicable federal law (including, but not limited to: (a) the Anti-Deficiency Acts, 31 USC §§1341, 1342 and 1501-1519; (b) the Tort Claims Act, 28 USC Chapter 171, §§2671-2680, and 28 CFR Part 14; and (c) the Contract Disputes Act of 1978, as amended, 41 USC §§601-613), must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.

9. Amendment -- This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.

10. Entirety of Agreement and Prior Agreements Superseded -- This Agreement, including the attached Exhibit A and Facility Schedules, which are expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof, including without limitation _____ [specify any prior agreements being superseded], and all such agreements and undertakings are agreed by the Parties to no longer be of any force or effect. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

11. Written Notices -- Written notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to Company:

(b) If to Customer:

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other, notwithstanding Section 10.

12. Invoicing and Payment -- Invoicing and payment terms for services associated with this agreement shall be consistent with applicable Substantive Rules of the Commission.

[13. Disclosure of Information to End-Use Customer -- If Customer is not the end-use customer, Company is hereby authorized to provide any information requested by the end-use customer concerning the Facility.](#)

[1413. No Third-Party Beneficiaries](#) -- This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

[1514. No Waiver](#) -- The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties.

[1615. Headings](#) -- The descriptive headings of the various parts of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

[1716. Multiple Counterparts](#) -- This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

[COMPANY NAME]

[CUSTOMER NAME]

BY: _____

BY: _____

PRINTED NAME

PRINTED NAME

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

**AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION
OF DISTRIBUTED GENERATION**

EXHIBIT A

LIST OF FACILITY SCHEDULES AND POINTS OF INTERCONNECTION

Facility Schedule No.

Name of Point of Interconnection

[Insert Facility Schedule number and name for each Point of Interconnection]

FACILITY SCHEDULE NO.

[The following information is to be specified for each Point of Interconnection, if applicable.]

1. Customer Name:

2. Premises Owner Name:

3. Facility location:

4. Delivery voltage:

5. Metering (voltage, location, losses adjustment due to metering location, and other):

6. Normal Operation of Interconnection:

7. One line diagram attached (check one): _____ Yes / _____ No

If Yes, then the one-line drawing should show the most current drawing(s) available as of the signing of this Schedule. Company and Customer agree drawing(s) may be updated to meet as-built or design changes that occur during construction. Customer understands and agrees that any changes that substantially affect the protective or functional requirements required by the Company will need to be reviewed and accepted by Company.

8. Equipment to be furnished by Company:

(This section is intended to generally describe equipment to be furnished by Company to effectuate the interconnection and may not be a complete list of necessary equipment.)

9. Equipment to be furnished by Customer:

(This section is intended to describe equipment to be furnished by Customer to effectuate the interconnection and may not be a complete list of necessary equipment.)

10. Cost Responsibility and Ownership and Control of Company Facilities:

Unless otherwise agreed or prescribed by applicable regulatory requirements or other law, any payments received by Company from Customer will remain the property of Company. Company shall at all times have title and complete ownership and control over facilities installed by Company.

11. Modifications to Customer Facilities.

Customer understands and agrees that, before making any modifications to its Facilities that substantially affect the protective or interconnection parameters or requirements used in the interconnection process (including in an Pre-interconnection Study performed by Company), Customer will both notify Company of, and receive approval by Company for, such modifications. Customer further understands and agrees that, if required pursuant to Commission Substantive Rule 25.211(m)(5), it will submit a new Application for Interconnection and Parallel Operation request for the desired modifications.

12. Supplemental terms and conditions attached (check one): _____ Yes / _____ No

[COMPANY NAME]

[CUSTOMER NAME]

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____