

PROJECT NO. 22187

RULEMAKING TO ESTABLISH	§	PUBLIC UTILITY COMMISSION
TERMS AND CONDITIONS OF	§	
TRANSMISSION AND	§	OF TEXAS
DISTRIBUTION UTILITIES' RETAIL	§	
DISTRIBUTION SERVICE	§	

ORDER ADOPTING AN AMENDMENT TO §25.214

The Public Utility Commission of Texas (commission) adopts an amendment to §25.214, relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities with changes to the proposed text as published in the March 23, 2001 *Texas Register* (26 TexReg 2271). The amendment is necessary to promote consistency between the delivery service agreement form (Tariff for Retail Delivery Service, Appendix A, Section II) and section 4.11.1 of the Tariff for Retail Delivery Service. This amendment was adopted under Project Number 22187.

The commission received timely filed comments on the proposed amendment from TXU Energy Services Company (TXU) and from a conglomerate of the following investor owned utilities: Reliant Energy, Texas-New Mexico Power Company, AEP Central Power & Light Company, AEP Southwestern Electric Power Company, AEP West Texas Utilities Company, TXU Electric Company (as future transmission and distribution utility), Entergy Gulf States Utilities, and Southwestern Public Service Company (collectively, IOUs).

All of the comments received were in response to the Tariff for Retail Delivery Service (pro-forma tariff or tariff) adopted by reference in subsection (d) of the proposed rule. As a result of changes to the pro-forma tariff, the commission modifies subsection (d) to reflect the new effective date of the revised pro-forma tariff.

TXU REP stated that this rulemaking should be limited to the specific purpose stated in the *Texas Register* notice, i.e., revising the delivery service agreement to correct a mistake that was made in failing to conform it to the tariff language approved by the commission on December 13, 2000, and that this rulemaking should not be used to reconsider the merits of expanding a REP's options in the handling of outage calls. TXU REP stated that it fully agrees with the current proposal and that the commission should act expeditiously on this matter.

The IOUs proposed that the reference to "service requests" in the title of tariff section 4.11 be changed to refer to requests for "Discretionary Services other than Construction Services." They stated that the term "Discretionary Services" more precisely identifies the types of services to which the section applies and reinforces the distinction that the tariff as a whole seeks to make between Delivery System Services, Discretionary Services and Construction Services. Further, the IOUs proposed that the three options in tariff section 4.11.1 should apply separately to outage reporting and requests for Discretionary Services, i.e., a Competitive Retailer should be allowed to choose one of the three options for outage reporting and a different one of the three options for requesting Discretionary Services. They stated that this would provide flexibility for Competitive Retailers and was suggested by

several parties during recent implementation workshops dealing with outages. They suggested model language to achieve the two proposals in their comments.

The commission believes that the IOUs' first proposal entails a language change to tariff section 4.11.1 that falls outside the scope of this rulemaking. Although the IOUs' proposal might serve to emphasize the desired distinction between the noted three types of services, this rulemaking was initiated for a simpler purpose of conforming the language/options of the tariff's delivery service agreement form to the language/options previously adopted in tariff section 4.11.1. Other parties were not invited to comment on broader changes to the tariff, and REPs might not have understood that broader changes would be considered. Therefore, the commission declines to adopt this proposed change. However, the IOUs' second proposed change does not materially alter the language/options initially adopted in tariff section 4.11.1 and merely provides greater flexibility to competitive retailers within the framework of the three options already adopted. In this case, all of the investor-owned utilities have suggested a change that would give the REPs greater flexibility. Therefore, the commission adopts the IOUs' second proposed change and appropriately amends the tariff.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

The commission also adopts this rule pursuant to PURA §39.203, which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice, and comparable rates for open access for all retail electric utilities offering customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.104, and 39.203.

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

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a retail customer at transmission voltage, provided by a transmission and distribution utility (TDU). A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those retail customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all retail customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to retail customers and to ensure reliability of the delivery systems, customer safeguards, and services.
- (b) **Application.** This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all transmission and distribution utilities in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.
- (c) **Tariff.** Each TDU in Texas shall file with the Public Utility Commission of Texas (commission) a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual

utility characteristics and rates, in accordance with commission rules and procedures to change a tariff. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written; these chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4 and 5, the provision found in Chapters 1, 3, 4 and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4 and 5.

- (d) **Pro-forma Retail Delivery Tariff.** The commission adopts by reference the form "Tariff for Retail Delivery Service," effective date of May 8, 2001. This form is available in the commission's Central Records division and on the commission's website at www.puc.state.tx.us.

This agency hereby certifies that the rule amendment, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that this amendment to §25.214, relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities, and the pro-forma tariff, Tariff for Retail Delivery Service, are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 10th DAY OF MAY 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Brett A. Perlman