

PROJECT NO. 38676

FORM FOR CRITICAL CARE	§	PUBLIC UTILITY COMMISSION
CUSTOMERS, RELATED STANDARD	§	
ELECTRIC DELIVERY TARIFF	§	OF TEXAS
AMENDMENTS, AND OTHER	§	
IMPLEMENTATION MATTERS	§	

**ORDER ADOPTING AMENDMENTS TO §25.214 AND §25.272
AS APPROVED AT THE DECEMBER 16, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff), and §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, with changes to the proposed text as published in the October 15, 2010 issue of the *Texas Register* (35 TexReg 9200). The amendment to the Tariff makes changes to conform the Tariff to new §25.497, relating to Critical Care Customers, adopted by the commission in Project Number 37622, *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*. The amendment to §25.272 allows an electric utility to submit customer information upon request of the Texas Division of Emergency Management. The amendment to §25.497 provides additional protections to customers who have been designated as critical load customers, chronic condition residential customers, or critical care residential customers. The amendments are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). The amendments are adopted under Project Number 38676.

The commission received comments on the proposed amendments from One Voice Texas (One Voice); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston

Electric, LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (Joint TDUs); the Retail Electric Provider Coalition, which consists of the Alliance for Retail Markets (ARM), CPL Retail Energy LP, Direct Energy LP, Reliant Energy Retail Services LLC, Texas Energy Association for Marketers (TEAM), TXU Energy Retail Company LLC, and WTU Retail Energy LP; and Texas Industrial Energy Consumers (TIEC). The members of ARM that participated in the comments were Direct Energy LP, First Choice Power, Green Mountain Energy Company, Gexa Energy, LP, and Stream Energy. The members of TEAM that participated in the comments were Accent Energy, Amigo Energy, Bounce Energy, Cirro Energy, Green Mountain Energy Company, Hudson Energy Services, Just Energy, StarTex Power, Stream Energy, Tara Energy, and TriEagle.

The commission solicited comments on a question concerning the release of information to first responders. The Order Adopting the Repeal of §25.497 and New §25.497 in Project No. 37622, *Rulemaking Related to Critical Care Customers*, states:

“the commission concludes that the process for turning lists over to first responders should be more thoroughly considered in the compliance project, to be opened following adoption of this rulemaking. The commission is concerned that the current substantive rules addressing proprietary customer information, most notably §25.272(g)(1), relating to privacy of customer information, may prohibit a Transmission and Distribution Utility (TDU) from providing the list. Therefore, the commission finds that the upcoming project to develop the critical care form shall address these issues, as well as the Joint TDUs’ concerns relating to how this information would be provided to the correct people.”

The amendment to §25.272 in the current project allows the electric utility to provide customer information to a public safety first responder. The commission posed the following question in connection with the amendments:

1. *Are there any hurdles in commission rules, the Public Utility Regulatory Act, or other law that would prevent a utility from sharing this information to a First Responder, even with customer consent?*

TIEC recommended that critical load industrial customers should be excluded from the changes to §25.272(g)(1)(E). TIEC commented that it is unclear whether the commission intended to include critical load industrial customers. TIEC pointed out that the amendment and the question stem from comments presented by OPC and Texas One Voice, and the intent is to provide additional protections to residential customers. TIEC argued that the reasoning does not apply to critical load industrial facilities. TIEC further explained that critical load industrial facilities operate under extensive regulatory requirements and have telemetry and other systems in place to deal with emergencies involving power outages. TIEC concluded that including industrial customers in the changes is unnecessary and inappropriate. TIEC added that allowing proprietary information from critical load industrial customers to be released without stringent controls and safeguards could compromise the security of these facilities. The Joint TDUs agreed with TIEC on this issue.

Commission Response

The commission agrees with TIEC and the Joint TDUs that critical load industrial customers should be removed from the language in §25.272(g)(1)(E) and changes that subparagraph accordingly so that it applies only to critical care residential customers.

The REP Coalition noted that there may be compelling policy reasons supporting the utility's release of information to first responders. The REP Coalition stated that it is important to analyze the applicability of other law to determine whether a utility could share medical or health information with a first responder. Further, the REP Coalition pointed out that even if PURA and the commission's rules would appear to allow the release of such information with customer consent, other statutes that more directly address medical and health information could potentially act to prohibit such release.

The REP Coalition did not argue that utilities should be prohibited from releasing pertinent information to first responders. The REP Coalition highlighted the potential regulatory complexities raised by the preamble question. The REP Coalition commented that §159.002(c) of the Texas Occupations Code provides that a person who receives information from a confidential communication or record (*i.e.*, a communication between a physician and a patient) may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained. The REP Coalition stated that as applied in this context, the information contained on the application, which is completed by the customer and his physician, could arguably be used only for purposes of determining critical care or chronic condition eligibility.

The Joint TDUs recommended against revising the application to ask customers whether they want their information provided to first responders. Joint TDUs opined that while at first blush this sounds like a positive idea, the difficult issues associated with implementation, the uncertainty with regard to whether first responders need or want the information, and the cost

and potential liability for the TDU overshadow any potential benefit. They argued that it is inappropriate to burden the TDU with a costly task that is unrelated to the provision of electric delivery service that can better be performed by public service agencies.

The Joint TDUs provided several reasons for their opposition. First, Joint TDUs argued it should not be assumed that the release of information will be a simple, ministerial task that can easily be performed in conjunction with the other responsibilities assigned to them with regard to critical care customers. TDUs will be required to establish separate databases and will have to add the capability for putting an electronic flag on the account indicating whether the customer has opted in or opted out. Joint TDUs explained this will be a manual process and the TDU will incur costs in setting up this new system and for the ongoing staff time to maintain it.

Second, Joint TDUs pointed out that it is unclear what, if any, actual use will be made of this information, and it is unknown whether first responders would ever seek to use it. Outside of a hurricane in the Gulf Coast region, it is hard to conceive of any event that would occasion agencies to want this type of information, and a hurricane, flood, or tornado with this type of wide impact is a rare event. Third, because transferring the information from the application to the database (and possibly setting the flag) will be a manual process, human error could lead to incorrect assignment of the customer. Joint TDUs suggested this could result in liability for the TDU associated with giving out information that should have remained private or with failing to give out information regarding a customer who needed help.

Joint TDUs offered an alternative solution. They suggested that language could be added to the letter informing the customer of the designation and recommending that those applying for critical care status for purposes of their electric service consider calling the 2-1-1 Texas/United Way Helpline to register for available emergency services. This approach would provide the customer with information on an existing process for obtaining emergency assistance and is more appropriate than developing and setting up an entirely new process.

The Joint TDUs did not support the idea of providing electric customer information to first responders, either with or without customer consent. However, they added that if the commission determines that the information should be provided, the better approach is to allow the TDU to provide the entire critical care list, without asking for customer consent. This would limit the need for the TDU to develop and maintain a system for tracking customer consent. It would also decrease the TDU's potential liability for providing or not providing the correct information. In order to allow the TDU to provide the information without customer consent, §25.272(g)(1)(E) should be adopted but with the reference to the customer's consent removed.

The Joint TDUs explained that the TDU should not be required to make its own determination of the appropriate individuals or agencies to receive the list or in which events it should be released. Joint TDUs further argued that the categories of proposed recipients of the list, "state, federal, or local government Agency," are too broad. Joint TDUs commented that they are not equipped to make these kinds of decisions and should not be required to be the gatekeeper for deciding who gets the information and in what circumstances.

One Voice urged the commission to coordinate with the Texas Division of Emergency Management to share the list of Critical Care and Chronic Condition residential customers with disaster first responders in order to ensure their needs are met during a disaster. One Voice explained when there is a disaster, government agencies and nonprofit responders are coordinated through the Texas Division of Emergency Management. For people with disabilities and other health issues in need of assistance, first responders from the Texas Department of State Health Services, the Texas Department of Family and Protective Services (Adult Protective Services), and local emergency responders are deployed to assist with medical needs, food, and evacuation to safe areas.

The Joint TDUs responded that the suggestion by One Voice may be the better approach. They maintained that in either instance, the TDU should provide the information only upon the request of the agency or office, and customer authorization should not be required. Joint TDUs recommended that contact information for the Division of Emergency Management be added to the letter informing a customer of its critical care designation and a statement be included encouraging the customer to sign up for available services, and the TDU not be required to provide lists of critical care customers. This would mean that §25.272 need not be amended. If the commission does not agree with this recommendation, then the Joint TDUs recommended that §25.272 be amended to allow the TDU to provide information to the Division of Emergency Management, upon request, and without customer authorization.

Commission Response

The commission agrees that there would be additional administrative responsibility placed on the Joint TDU in tracking customer consent for critical care residential customers if information release were subject to customer or patient approval. The commission concludes that the recommendation by the Joint TDUs regarding the reference to the 2-1-1 Texas/United Way Helpline is reasonable and should be added in the letter sent to the customers by the TDU. The commission further concludes that the Joint TDUs should not be prohibited by commission rules from releasing critical care residential customer information to the Division of Emergency Management, if it is requested. The commission changes §25.272(g)(1)(E) accordingly.

*Section 25.214(d)**Tariff section 4.3.9.1(1)*

The REP Coalition proposed that this section be clarified to state that the TDU will notify the Competitive Retailer and Retail Customer of “the designation and any change in Retail Customer’s designation.” This change would make it clear that the customer and the REP are informed of an initial designation, a new REP is informed of the customer’s designation if the customer switches providers, and the customer and REP are informed of any changes in designation.

Commission Response

The commission agrees with the REP Coalition’s proposal and changes the section accordingly.

Tariff section 5.2.5

Joint TDUs pointed out that this section does not make it clear that an application for designation as critical care must be made following the procedures in §25.497, and a customer might assume that another method could be used to “notify the TDU” that it believes it qualifies for critical care status. The Joint TDUs requested that this subsection be changed to make it clear that customers must follow the procedures in §25.497.

Commission Response

The commission agrees with the Joint TDUs recommendation and changes the section accordingly.

Tariff section 5.3.7.4

Joint TDUs pointed out an additional issue in section 5.3.7.4(1)(E) and suggested clarification. As written, (1)(E) applies to any disconnection or suspension other than one “related to dangerous conditions, clearance requests, or move-out requests.” It mandates that in all other instances, the procedures in §25.497 and §25.483 must be followed prior to disconnecting or suspending service to a critical care customer. The procedures in §25.483, however, are only applicable to disconnections for failure to pay, and there are no additional procedures mandated in §25.497. Joint TDUs concluded that section 5.3.7.4(1)(E) appears to conflict with §25.483 when it purports to make the procedures applicable to any type of suspension or disconnection of service other than dangerous conditions, clearance, or move out. As other sections of the tariff make clear, however, the instances in which the TDU may need to interrupt or suspend service are much broader than “dangerous conditions”. For example, Tariff sections 4.3.8.1 and 5.3.7.1

allow the TDU not only to suspend service for a dangerous condition but also if authorized by Applicable Legal Authorities, as would be the case, for example, if ERCOT ordered rolling blackouts. If required to follow the procedures established for a disconnection for non-payment (DNP) before interrupting service in these circumstances, the TDU's hands would be tied. Joint TDUs therefore recommended that section 5.3.7.4(1)(E) be changed so that it does not appear that the procedures in §25.497 and §25.483 are applicable in all circumstances other than a "dangerous condition," a clearance, or move-out request. Joint TDUs stated that instead, this section should make clear that the DNP procedures must be followed only when the disconnection is authorized by the REP as a DNP.

Commission Response

The commission agrees with the Joint TDUs that this section should be clear that DNP procedures must be followed only when the disconnection is authorized by the REP as a DNP. The commission changes the section accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the amendments, the commission makes other changes for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission 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; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101(a), which requires that the commission ensure customers have safe, reliable, and reasonably priced electricity, including protection from disconnection in cases of medical emergency; §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to the termination of service; and §39.203, which directs the commission to establish terms and conditions for transmission and distribution service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.101(a), 39.101(e), 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), and to standardize the terms of service among TDUs. 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 TDUs 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 commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified. 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; however the only modifications the TDU may make to 6.1.2.1 are to insert the commission-approved rates. Additionally, in Company specific discretionary service filings, Company shall propose timelines for discretionary services to the extent applicable and practical. 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.

Tariff for Retail Delivery Service.

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4.2.5 EMERGENCIES AND NECESSARY INTERRUPTIONS

Company may curtail, reduce voltage, or interrupt Delivery Service in the event of an emergency arising anywhere on the Company's Delivery System or the interconnected systems of which it is a part, when the emergency poses a threat to the integrity of its Delivery System or the systems to which it is directly or indirectly connected if, in its sole judgment, such action may prevent or

alleviate the emergency condition. Company may interrupt service when necessary, in the Company's sole judgment, for inspection, test, repair, or changes in the Delivery System, or when such interruption will lessen or remove possible danger to life or property, or will aid in the restoration of Delivery Service.

Company shall provide advance notice to Competitive Retailer of such actions, if reasonably possible. Such notice may be provided by electronic notice to all certificated Competitive Retailers operating within the Company's service territory with specific identification of location, time and expected duration of the outage. Notice shall also be provided, if reasonably possible, to those Retail Customers designated as critical care residential customers, chronic condition residential customers, critical load industrial customers, or critical load public safety customers.

Nothing herein shall prevent the Company from being liable if found to be grossly negligent or to have committed intentional misconduct with respect to its exercise of its authority in this Tariff.

The operation of Broadband over Powerline (BPL) shall not interfere with or diminish the reliability of Company's Delivery System. Should a disruption in the provision of Delivery Service occur due to BPL, Company shall prioritize restoration of Delivery Service prior to restoration of BPL-related systems.

4.3.8 SUSPENSION OF DELIVERY SERVICE

4.3.8.1 SUSPENSIONS WITHOUT PRIOR NOTICE

Company may, without prior notice, intentionally suspend Delivery Service to a Competitive Retailer's Retail Customer where a known dangerous condition exists for as long as the condition exists, provided that such suspension does not result in other dangerous or life-threatening conditions. Company shall notify, as soon as practicably possible, the affected Retail Customer's Competitive Retailer of suspensions for the above reason.

Company may also suspend service without prior notice when such suspension is authorized by Applicable Legal Authorities.

If suspensions or interruptions are conducted pursuant to Section 4.2.5, EMERGENCIES AND NECESSARY INTERRUPTIONS and advance notice was not able to be reasonably provided, the Company shall provide notice as soon as reasonably possible after the suspension. Such notice may be provided by electronic notice to all certificated Competitive Retailers operating within Company's service territory, specifically identifying the location, time and expected duration of the outage.

Nothing in this section is intended to take precedence over the timely restoration of service.

4.3.9 CRITICAL CARE/CHRONIC CONDITON/CRITICAL LOAD CUSTOMER DESIGNATION

4.3.9.1 CRITICAL CARE OR CHRONIC CONDITION RESIDENTIAL CUSTOMER STATUS

Upon receipt of an application for eligibility for critical care or chronic condition residential status, Company shall:

- (1) Follow the procedures outlined in P.U.C. SUBST. R. 25.497 for processing the application and designating a Retail Customer as a critical care residential customer or chronic condition residential customer and for notifying the Competitive Retailer and Retail Customer of any designation and any change in Retail Customer's designation;
- (2) Follow the requirements under P.U.C. SUBST. R. 25.497 for sending renewal notices to a Retail Customer designated as a critical care residential customer or chronic condition residential customer; and
- (3) Ensure ESI IDs are properly identified for critical care or chronic condition status in Company systems and on applicable Retail Market transactions.

4.3.9.2 CRITICAL LOAD INDUSTRIAL CUSTOMER OR CRITICAL LOAD PUBLIC SAFETY

Upon receipt of a request for designation as a critical load industrial customer or critical load public safety customer Company shall:

- (1) Follow the Company-established process for evaluating the request for Critical Load status in collaboration with the Retail Customer's Competitive Retailer and Retail Customer and determine Retail Customer's eligibility for the appropriate Critical Load designation within one month of Company's receipt of the application;
- (2) Follow the Company-established process for appeal and notify the Competitive Retailer and Retail Customer of any change in qualification based on the appeal; and
- (3) Ensure ESI IDs are properly identified for critical load status in Company systems and on applicable Retail Market transactions.

5.2.5 EMERGENCIES AND NECESSARY INTERRUPTIONS

Company may curtail, reduce voltage, or interrupt Delivery Service in the event of an emergency arising anywhere on the Delivery System or the interconnected systems of which it is a part, when the emergency poses a threat to the integrity of its system or the systems to which it is directly or indirectly connected if, in its sole judgment, such action may prevent or alleviate the emergency condition. Company may interrupt service when necessary, in Company's sole judgment, for inspection, test, repair, or changes in Company's Delivery System, or when such interruption will lessen or remove possible danger to life or property, or will aid in the restoration of Delivery Service.

Company shall provide advance notice to Retail Customer's Competitive Retailer, if reasonably possible. Such notice may be made by electronic notice to all certificated Competitive Retailers operating within Company's service territory, specifically identifying the location, time and expected duration of outage. Notice shall also be provided, if reasonably possible, to those Retail Customers designated as critical care residential customers, chronic condition residential customers, critical load industrial customers, or critical load public safety customers. If Retail

Customer believes it qualifies for designation as a critical care residential customer, chronic condition residential customer, critical load industrial customer, or critical load public safety customers under P.U.C. SUBST. R. 25.497, Retail Customer may apply for designation as provided in P.U.C. SUBST. R. 25.497.

5.3.7 SUSPENSION OF SERVICE

5.3.7.1 SUSPENSIONS WITHOUT PRIOR NOTICE

Company may, without prior notice, intentionally suspend Delivery Service to Retail Customer where a known dangerous condition exists and for as long as it exists, provided that such suspension does not result in another dangerous or life-threatening condition. Where reasonable, given the nature of the hazardous condition, Company shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each Retail Customer as soon as possible after service has been disconnected.

Company may also suspend service when such suspension is authorized by Applicable Legal Authorities.

Where Company expects that large numbers of Retail Customers will be affected by a suspension for a significant amount of time, Company will notify Retail Customers about the suspension through the use of door hangers, letters, personal canvassing, news media, or other appropriate methods.

If Retail Customer believes it qualifies for designation as a critical care residential customer, chronic condition residential customer, critical load industrial customer, or critical load public safety customer under P.U.C. SUBST. R. 25.497, Retail Customer may apply for designation as provided in P.U.C. SUBST. R. 25.497. Notice of a suspension of service shall be provided to Retail Customers currently designated as critical care, or chronic condition, or critical load if reasonably possible.

Nothing in this section is intended to take precedence over the timely restoration of service.

5.3.7.4 PROHIBITED SUSPENSION OR DISCONNECTION

- (1) Except in the case of suspensions of service related to dangerous conditions, clearance requests, or move-out requests, Company shall not disconnect or suspend Delivery Service to Retail Customer in the following situations:
- (A) On a day, or on a day immediately preceding a day, when personnel of Company are not available to the public for the purpose of reconnecting Delivery Service;
 - (B) For delinquency of payment to Company by Retail Customer's Competitive Retailer;
 - (C) During "extreme weather conditions" as defined in the Commission's customer protection rules;
 - (D) At a permanent, individually metered dwelling unit of a Retail Customer for non-payment of amounts billed directly to Retail Customer by Company pursuant to the Company's Tariff, when that Retail Customer establishes that disconnection of Delivery Service will cause some person residing at that residence to become seriously ill or more seriously ill.
 - (i) Each time a Retail Customer seeks to avoid disconnection of Delivery Service under subsection (D), the Retail Customer must accomplish all of the following by the stated date of disconnection:
 - (I) have the subject person's attending physician (for purposes of this subsection the term "physician" shall mean any public health official, including, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the Company by the date of the disconnection;
 - (II) have the subject person's attending physician submit a written statement to Company; and
 - (III) enter into a deferred payment plan.
 - (ii) The prohibition against Delivery Service disconnection provided by subsection (D) shall last 63 days from the issuance of the bill by Company or a shorter period as agreed upon by Company and Retail Customer or subject person's physician; or

- (E) When the disconnection is authorized by the REP as a disconnection for nonpayment of electric service and Retail Customer is designated as a critical care residential customer, unless all of the procedures required by Company pursuant to P.U.C. SUBST. R. 25.497 and P.U.C. SUBST. R. 25.483 have been completed; or when the disconnection is authorized by the REP as a disconnection for nonpayment of electric service and Retail Customer is designated as a critical load industrial customer or a critical load public safety customer, unless all Company-established processes are followed. If Retail Customer believes it qualifies for designation as a critical care residential customer, critical load industrial customer, or critical load public safety customer under P.U.C. SUBST. R. 25.497, Retail Customer may apply for designation as provided in P.U.C. SUBST. R. 25.497.

§25.272. Code of Conduct for Electric Utilities and Their Affiliates.

(a) **Purpose.** The provisions of this section establish safeguards to govern the interaction between utilities and their affiliates, both during the transition to and after the introduction of competition, to avoid potential market-power abuses and cross-subsidization between regulated and unregulated activities.

(b) **Application.**

(1) **General application.** This section applies to:

(A) electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002(6), and transactions or activities between electric utilities and their affiliates, as defined in PURA §11.003(2); and

(B) transmission and distribution utilities operating in a qualifying power region in the State of Texas as defined in PURA §31.002(19) upon commission certification of a qualifying power region pursuant to PURA §39.152, and transactions or activities between transmission and distribution utilities and their affiliates, as defined in PURA §11.003(2).

(2) **No circumvention of the code of conduct.** An electric utility, transmission and distribution utility, or competitive affiliate shall not circumvent the provisions or the intent of PURA §39.157 or any rules implementing that section by using any affiliate to provide information, services, products, or subsidies between a competitive affiliate and an electric utility or a transmission and distribution utility.

- (3) **Notice of conflict and/or petition for waiver.** Nothing in this section is intended to affect or modify the obligation or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission (FERC) or the Securities and Exchange Commission (SEC). A utility shall file with the commission a notice of any provision in this section that conflict with FERC or SEC orders or regulations. A utility that is subject to statutes or regulations in any state that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause.
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Arm's length transaction --** The standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm's length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction.
- (2) **Competitive affiliate --** An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.
- (3) **Confidential information --** Any information not intended for public disclosure and considered to be confidential or proprietary by persons privy to such information. Confidential information includes but is not limited to information relating to the interconnection of customers to a utility's transmission or

distribution systems, proprietary customer information, trade secrets, competitive information relating to internal manufacturing processes, and information about a utility's transmission or distribution system, operations, or plans for expansion.

- (4) **Corporate support services** -- Services shared by a utility, its parent holding company, or a separate affiliate created to perform corporate support services, with its affiliates of joint corporate oversight, governance, support systems, and personnel. Examples of services that may be shared, to the extent the services comply with the requirements prescribed by PURA §39.157(d) and (g) and rules implementing those requirements, include human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development unrelated to marketing activity and/or business development for the competitive affiliate regarding its services and products, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning. Examples of services that may not be shared include engineering, purchasing of electric transmission facilities and service, transmission and distribution system operations, and marketing, unless such services are provided by a utility, or a separate affiliate created to perform such services, exclusively to affiliated regulated utilities and only for provision of regulated utility services.
- (5) **Proprietary customer information** -- Any information compiled by an electric utility on a customer in the normal course of providing electric service that makes

possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

- (6) **Similarly situated** -- The standard for determining whether a non-affiliate is entitled to the same benefit a utility offers, or grants upon request, to its competitive affiliate for any product or service. For purposes of this section, all non-affiliates serving or proposing to serve the same market as a utility's competitive affiliate are similarly situated to the utility's competitive affiliate.
- (7) **Transaction** -- Any interaction between a utility and its affiliate in which a service, good, asset, product, property, right, or other item is transferred or received by either a utility or its affiliate.
- (8) **Utility** -- An electric utility as defined in PURA §31.002(6) or a transmission and distribution utility as defined in PURA §31.002(19). For purposes of this section, a utility does not include a river authority operating a steam generating plant on or before January 1, 1999, or a corporation authorized by Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717p, Vernon's Texas Civil Statutes). In addition, with respect to a holding company exempt under the Public

Utility Holding Company Act (PUHCA) §3(a)(2), the term "utility," as used in this section, means the division or business unit through which the holding company conducts utility operations and not the holding company as a legal entity.

(d) **Separation of a utility from its affiliates.**

- (1) **Separate and independent entities.** A utility shall be a separate, independent entity from any competitive affiliate.
- (2) **Sharing of employees, facilities, or other resources.** Except as otherwise allowed in paragraphs (3), (4), (5), or (7) of this subsection, a utility shall not share employees, facilities, or other resources with its competitive affiliates unless the utility can prove to the commission prior to such sharing that the sharing will not compromise the public interest. Such sharing may be allowed if the utility implements adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.
- (3) **Sharing of officers and directors, property, equipment, computer systems, information systems, and corporate support services.** A utility and a competitive affiliate may share common officers and directors, property, equipment, computer systems, information systems, and corporate support services, if the utility implements safeguards that the commission determines are

adequate to preclude employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

- (4) **Employee transfers and temporary assignments.** A utility shall not assign, for less than one year, utility employees engaged in transmission or distribution system operations to a competitive affiliate unless the employee does not have knowledge of confidential information. Utility employees engaged in transmission or distribution system operations, including persons employed by a service company affiliated with the utility who are engaged in transmission system operations on a day-to-day basis or have knowledge of transmission or distribution system operations and are transferred to a competitive affiliate, shall not remove or otherwise provide or use confidential property or information gained from the utility or affiliated service company in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of non-affiliated electric suppliers. Movement of an employee engaged in transmission or distribution system operations, including a person employed by a service company affiliated with the utility who is engaged in transmission or distribution system operations on a day-to-day basis or has knowledge of transmission or distribution system operations from a utility to a competitive affiliate or vice versa, may be accomplished through either the employee's termination of employment with one company and acceptance of employment

with the other, or a transfer to another company, as long as the transfer of an employee from the utility to an affiliate results in the utility bearing no ongoing costs associated with that employee. Transferring employees shall sign a statement indicating that they are aware of and understand the restrictions and penalties set forth in this section. The utility also shall post a conspicuous notice of such a transfer on its Internet site or other public electronic bulletin board within 24 hours and for at least 30 consecutive calendar days. The exception to this provision is that employees may be temporarily assigned to an affiliate or non-affiliated utility to assist in restoring power in the event of a major service interruption or assist in resolving emergency situations affecting system reliability. Consistent with §25.84(h) of this title, however, within 30 days of such a deviation from the code of conduct, the utility shall report this information to the commission and shall conspicuously post the information on its Internet site or other public electronic bulletin board for 30 consecutive calendar days.

- (5) **Sharing of office space.** A utility's office space shall be physically separate from that of its competitive affiliates, where physical separation is accomplished by having office space in separate buildings or, if within the same building, by a method such as having offices on separate floors or with separate access, unless otherwise approved by the commission.
- (6) **Separate books and records.** A utility and its affiliates shall keep separate books of accounts and records, and the commission may review records relating to a transaction between a utility and an affiliate.

- (A) In accordance with generally accepted accounting principles or state and federal guidelines, as appropriate, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.
 - (B) A utility shall prepare financial statements that are not consolidated with those of its affiliates.
 - (C) A utility and its affiliates shall maintain sufficient records to allow for an audit of the transactions between the utility and its affiliates. At any time, the commission may, at its discretion, require a utility to initiate, at the utility's expense, an audit of transactions between the utility and its affiliates performed by an independent third party.
- (7) **Limited credit support by a utility.** A utility may share credit, investment, or financing arrangements with its competitive affiliates if it complies with subparagraphs (A) and (B) of this paragraph.
- (A) The utility shall implement adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.
 - (B) The utility shall not allow an affiliate to obtain credit under any arrangement that would include a specific pledge of any assets in the rate base of the utility or a pledge of cash reasonably necessary for utility operations. This subsection does not affect a utility's obligations under

other law or regulations, such as the obligations of a public utility holding company under §25.271(c)(2) of this title (relating to Foreign Utility Company Ownership by Exempt Holding Companies).

(e) **Transactions between a utility and its affiliates.**

(1) **Transactions with all affiliates.** A utility shall not subsidize the business activities of any affiliate with revenues from a regulated service. In accordance with PURA and the commission's rules, a utility and its affiliates shall fully allocate costs for any shared services, including corporate support services, offices, employees, property, equipment, computer systems, information systems, and any other shared assets, services, or products.

(A) **Sale of products or services by a utility.** Unless otherwise approved by the commission and except for corporate support services, any sale of a product or service by a utility shall be governed by a tariff approved by the commission. Products and services shall be made available to any third party entity on the same terms and conditions as the utility makes those products and services available to its affiliates.

(B) **Purchase of products, services, or assets by a utility from its affiliate.** Products, services, and assets shall be priced at levels that are fair and reasonable to the customers of the utility and that reflect the market value of the product, service, or asset.

(C) **Transfers of assets.** Except for asset transfers implementing unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued

under PURA, Chapter 39, Subchapter G, assets transferred from a utility to its affiliates shall be priced at levels that are fair and reasonable to the customers of the utility and that reflect the market value of the assets or the utility's fully allocated cost to provide those assets.

(D) **Transfer of assets implementing restructuring legislation.** The transfer from a utility to an affiliate of assets implementing unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G will be reviewed by the commission pursuant to the applicable provisions of PURA, and any rules implementing those provisions.

(2) **Transactions with competitive affiliates.** Unless otherwise allowed in this subsection, transactions between a utility and its competitive affiliates shall be at arm's length. A utility shall maintain a contemporaneous written record of all transactions with its competitive affiliates, except those involving corporate support services and those transactions governed by tariffs. Such records, which shall include the date of the transaction, name of affiliate involved, name of a utility employee knowledgeable about the transaction, and a description of the transaction, shall be maintained by the utility for three years. In addition to the requirements specified in paragraph (1) of this subsection, the following provisions apply to transactions between utilities and their competitive affiliates.

(A) **Provision of corporate support services.** A utility may engage in transactions directly related to the provision of corporate support services

with its competitive affiliates. Such provision of corporate support services shall not allow or provide a means for the transfer of confidential information from the utility to the competitive affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the competitive affiliate.

- (B) **Purchase of products or services by a utility from its competitive affiliate.** Except for corporate support services, a utility may not enter into a transaction to purchase a product or service from a competitive affiliate that has a per unit value of \$75,000 or more, or a total value of \$1 million or more, unless the transaction is the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title (relating to Contracts Between Electric Utilities and Their Competitive Affiliates).
- (C) **Transfers of assets.** Except for asset transfers facilitating unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G, any transfer from a utility to its competitive affiliates of assets with a per unit value of \$75,000 or more, or a total value of \$1 million or more, must be the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title.

(f) **Safeguards relating to provision of products and services.**

(1) **Products and services available on a non-discriminatory basis.** If a utility makes a product or service, other than corporate support services, available to a competitive affiliate, it shall make the same product or service available, contemporaneously and in the same manner, to all similarly situated entities, and it shall apply its tariffs, prices, terms, conditions, and discounts for those products and services in the same manner to all similarly situated entities. A utility shall process all requests for a product or service from competitive affiliates or similarly situated non-affiliated entities on a non-discriminatory basis. If a utility's tariff allows for discretion in its application, the utility shall apply that provision in the same manner to its competitive affiliates and similarly situated non-affiliates, as well as to their respective customers. If a utility's tariff allows no discretion in its application, the utility shall strictly apply the tariff. A utility shall not use customer-specific contracts to circumvent these requirements, nor create a product or service arrangement with its competitive affiliate that is so unique that no competitor could be similarly situated to utilize the product or service.

(2) **Discounts, rebates, fee waivers, or alternative tariff terms and conditions.** If a utility offers its competitive affiliate or grants a request from its competitive affiliate for a discount, rebate, fee waiver, or alternative tariff terms and conditions for any product or service, it must make the same benefit contemporaneously available, on a non-discriminatory basis, to all similarly

situated non-affiliates. The utility shall post a conspicuous notice on its Internet site or public electronic bulletin board for at least 30 consecutive calendar days providing the following information: the name of the competitive affiliate involved in the transaction; the rate charged; the normal rate or tariff condition; the period for which the benefit applies; the quantities and the delivery points involved in the transaction (if any); any conditions or requirements applicable to the benefit; documentation of any cost differential underlying the benefit; and the procedures by which non-affiliates may obtain the same benefit. The utility shall maintain records of such information for a minimum of three years, and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party. A utility shall not create any arrangement with its competitive affiliate that is so unique that no competitor could be similarly situated to benefit from the discount, rebate, fee waiver, or alternative tariff terms and conditions.

- (3) **Tying arrangements prohibited.** Unless otherwise allowed by the commission through a rule or tariff prior to a utility's unbundling pursuant to PURA §39.051, a utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate.

(g) **Information safeguards.**

- (1) **Proprietary customer information.** A utility shall provide a customer with the customer's proprietary customer information, upon request by the customer. Unless a utility obtains prior affirmative written consent or other verifiable

authorization from the customer as determined by the commission, or unless otherwise permitted under this subsection, it shall not release any proprietary customer information to a competitive affiliate or any other entity, other than the customer, an independent organization as defined by PURA §39.151, or a provider of corporate support services for the sole purpose of providing corporate support services in accordance with subsection (e)(2)(A) of this section. The utility shall maintain records that include the date, time, and nature of information released when it releases customer proprietary information to another entity in accordance with this paragraph. The utility shall maintain records of such information for a minimum of three years, and shall make the records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party. When the third party requesting review of the records is not the customer, commission, or Office of Public Utility Counsel, the records may be redacted in such a way as to protect the customer's identity. If proprietary customer information is released to an independent organization or a provider of corporate support services, the independent organization or entity providing corporate support services is subject to the rules in this subsection with respect to releasing the information to other persons.

(A) **Exception for law, regulation, or legal process.** A utility may release proprietary customer information to another entity without customer authorization where authorized or requested to do so by the commission or where required to do so by law, regulation, or legal process.

- (B) **Exception for release to governmental entity.** A utility may release proprietary customer information without customer authorization to a federal, state, or local governmental entity or in connection with a court or administrative proceeding involving the customer or the utility; provided, however, that the utility shall take all reasonable actions to protect the confidentiality of such information, including, but not limited to, providing such information under a confidentiality agreement or protective order, and shall also promptly notify the affected customer in writing that such information has been requested.
- (C) **Exception to facilitate transition to customer choice.** In order to facilitate the transition to customer choice, a utility may release proprietary customer information to its affiliated retail electric provider or providers of last resort without authorization of those customers only during a period prescribed by the commission.
- (D) **Exception for release to providers of last resort.** On or after January 1, 2002, a utility may provide proprietary customer information to a provider of last resort without customer authorization for the purpose of serving customers who have been switched to the provider of last resort.
- (E) **Exception for release to State of Texas' Division of Emergency Management.** Beginning January 1, 2011, a utility may provide proprietary customer information to the State of Texas' Division of Emergency Management, upon that agency's request for purposes of identifying the customer as a critical care residential customer pursuant to

§25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers).

- (2) **Nondiscriminatory availability of aggregate customer information.** A utility may aggregate non-proprietary customer information, including, but not limited to, information about a utility's energy purchases, sales, or operations or about a utility's energy-related goods or services. However, except in circumstances solely involving the provision of corporate support services in accordance with subsection (e)(2)(A) of this section, a utility shall aggregate non-proprietary customer information for a competitive affiliate only if the utility makes such aggregation service available to all non-affiliates under the same terms and conditions and at the same price as it is made available to any of its affiliates. In addition, no later than 24 hours prior to a utility's provision to its competitive affiliate of aggregate customer information, the utility shall post a conspicuous notice on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days, providing the following information: the name of the competitive affiliate to which the information will be provided, the rate charged for the information, a meaningful description of the information provided, and the procedures by which non-affiliates may obtain the same information under the same terms and conditions. The utility shall maintain records of such information for a minimum of three years, and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party.

- (3) **No preferential access to transmission and distribution information.** A utility shall not allow preferential access by its competitive affiliates to information about its transmission and distribution systems.
 - (4) **Other limitations on information disclosure.** Nothing in this rule is intended to alter the specific limitations on disclosure of confidential information in the Texas Utilities Code, the Texas Government Code, Chapter 552, or the commission's substantive and procedural rules.
 - (5) **Other information.** Except as otherwise allowed in this subsection, a utility shall not share information, except for information required to perform allowed corporate support services, with competitive affiliates unless the utility can prove to the commission that the sharing will not compromise the public interest prior to any such sharing. Information that is publicly available, or that is unrelated in any way to utility activities, may be shared.
- (h) **Safeguards relating to joint marketing and advertising.**
- (1) **Utility name or logo.** Before September 1, 2005, a utility shall not allow the use of its corporate name, trademark, brand, or logo by a competitive affiliate, on employee business cards or in any written or auditory advertisements of specific services to existing or potential residential or small commercial customers located within the utility's certificated service area, whether through radio or television, Internet-based, or other electronic format accessible to the public, unless the competitive affiliate includes a disclaimer with its use of the utility's corporate name, trademark, brand, or logo. Such disclaimer of the corporate name,

trademark, brand, or logo in the material distributed must be written in a bold and conspicuous manner or clearly audible, as appropriate for the communication medium, and shall state the following: “{Name of competitive affiliate} is not the same company as {name of utility} and is not regulated by the Public Utility Commission of Texas, and you do not have to buy {name of competitive affiliate}’s products to continue to receive quality regulated services from {name of utility}.”

(2) **Joint marketing, advertising, and promotional activities.**

(A) A utility shall not:

- (i) provide or acquire leads on behalf of its competitive affiliates;
- (ii) solicit business or acquire information on behalf of its competitive affiliates;
- (iii) give the appearance of speaking or acting on behalf of any of its competitive affiliates;
- (iv) share market analysis reports or other types of proprietary or non-publicly available reports, including, but not limited to, market forecast, planning, or strategic reports, with its competitive affiliates;
- (v) represent to customers or potential customers that it can offer competitive retail services bundled with its tariffed services; or
- (vi) request authorization from its customers to pass on information exclusively to its competitive affiliate.

- (B) A utility shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:
- (i) acting or appearing to act on behalf of a competitive affiliate in any communications and contacts with any existing or potential customers;
 - (ii) joint sales calls;
 - (iii) joint proposals, either as requests for proposals or responses to requests for proposals;
 - (iv) joint promotional communications or correspondence, except that a utility may allow a competitive affiliate access to customer bill advertising inserts according to the terms of a commission-approved tariff so long as access to such inserts is made available on the same terms and conditions to non-affiliates offering similar services as the competitive affiliate that uses bill inserts;
 - (v) joint presentations at trade shows, conferences, or other marketing events within the State of Texas; and
 - (vi) providing links from a utility's Internet web site to a competitive affiliate's Internet web site.
- (C) At a customer's unsolicited request, a utility may participate in meetings with a competitive affiliate to discuss technical or operational subjects

regarding the utility's provision of transmission or distribution services to the customer, but only in the same manner and to the same extent the utility participates in such meetings with unaffiliated electric or energy services suppliers and their customers. The utility shall not listen to, view, or otherwise participate in any way in a sales discussion between a customer and a competitive affiliate or an unaffiliated electric or energy services supplier.

- (3) **Requests for specific competitive affiliate information.** If a customer or potential customer makes an unsolicited request to a utility for information specifically about any of its competitive affiliates, the utility may refer the customer or potential customer to the competitive affiliate for more information. Under this paragraph, the only information that a utility may provide to the customer or potential customer is the competitive affiliate's address and telephone number. The utility shall not transfer the customer directly to the competitive affiliate's customer service office via telephone or provide any other electronic link whereby the customer could contact the competitive affiliate through the utility. When providing the customer or potential customer information about the competitive affiliate, the utility shall not promote its competitive affiliate or its competitive affiliate's products or services, nor shall it offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider.
- (4) **Requests for general information about products or services offered by competitive affiliates and their competitors.** If a customer or potential

customer requests general information from a utility about products or services provided by its competitive affiliate or its affiliate's competitors, the utility shall not promote its competitive affiliate or its affiliate's products or services, nor shall the utility offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider. The utility may direct the customer or potential customer to a telephone directory or to the commission, or provide the customer with a recent list of suppliers developed and maintained by the commission, but the utility may not refer the customer or potential customer to the competitive affiliate except as provided for in paragraph (3) of this subsection.

(i) **Remedies and enforcement.**

- (1) **Internal codes of conduct for the transition period.** During the transition to competition, including the period prior to and during utility unbundling pursuant to PURA §39.051, each utility shall implement an internal code of conduct consistent with the spirit and intent of PURA §39.157(d) and with the provisions of this section. Such internal codes of conduct are subject to commission review and approval in the context of a utility's unbundling plan submitted pursuant to PURA §39.051(e); however, such internal codes of conduct shall take effect, on an interim basis, on January 10, 2000. The internal codes of conduct shall be developed in good faith by the utility based on the extent to which its affiliate relationships are known by January 10, 2000, and then updated as necessary to ensure compliance with PURA and commission rules. A utility exempt from PURA Chapter 39 pursuant to PURA §39.102(c) shall adopt an internal code of

conduct that is consistent with its continued provision of bundled utility service during the period of its exemption.

- (2) **Ensuring compliance for new affiliates.** A utility and a new affiliate are bound by the code of conduct immediately upon creation of the new affiliate. Upon the creation of a new affiliate, the utility shall immediately post a conspicuous notice of the new affiliate on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days. Within 30 days of creation of the new affiliate, the utility shall file an update to its internal code of conduct and compliance plan, including all changes due to the addition of the new affiliate. The utility shall ensure that any interaction with the new affiliate is in compliance with this section.
- (3) **Compliance Audits.** No later than one year after the utility has unbundled pursuant to PURA §39.051, and, at a minimum, every third year thereafter, the utility shall have an audit prepared by independent auditors that verifies that the utility is in compliance with this section. The utility shall file the results of each audit with the commission within one month of the audit's completion. The cost of the audits shall not be charged to utility ratepayers.
- (4) **Informal complaint procedure.** A utility shall establish and file with the commission a complaint procedure for addressing alleged violations of this section. This procedure shall contain a mechanism whereby all complaints shall be placed in writing and shall be referred to a designated officer of the utility. All complaints shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees

involved, and the specific claim. The designated officer shall acknowledge receipt of the complaint in writing within five working days of receipt. The designated officer shall provide a written report communicating the results of the preliminary investigation to the complainant within thirty days after receipt of the complaint, including a description of any course of action that will be taken. In the event the utility and the complainant are unable to resolve the complaint, the complainant may file a formal complaint with the commission. The utility shall notify the complainant of his or her right to file a formal complaint with the commission, and shall provide the complainant with the commission's address and telephone number. The utility and the complainant shall make a good faith effort to resolve the complaint on an informal basis as promptly as practicable. The informal complaint process shall not be a prerequisite for filing a formal complaint with the commission, and the commission may, at any time, institute a complaint against a utility on its own motion.

- (5) **Enforcement by the commission.** A violation or series or set of violations of this section that materially impairs, or is reasonably likely to materially impair, the ability of a person to compete in a competitive market shall be deemed an abuse of market power.

(A) In addition to other methods that may be available, the commission may enforce the provisions of this rule by:

- (i) seeking an injunction or civil penalties to eliminate or remedy the violation or series or set of violations;

- (ii) suspending, revoking, or amending a certificate or registration as authorized by PURA §39.356; or
 - (iii) pursuing administrative penalties under PURA, Chapter 15, Subchapter B.
- (B) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the violation or series or set of violations.
- (C) In assessing penalties, the commission shall consider the following factors:
 - (i) the utility's prior history of violations;
 - (ii) the utility's efforts to comply with the commission's rules, including the extent to which the utility has adequately and physically separated its office, communications, accounting systems, information systems, lines of authority, and operations from its affiliates, and efforts to enforce these rules;
 - (iii) the nature and degree of economic benefit gained by the utility's competitive affiliate;
 - (iv) the damages or potential damages resulting from the violation or series or set of violations;
 - (v) the size of the business of the competitive affiliate involved;
 - (vi) the penalty's likely deterrence of future violations; and

- (vii) such other factors deemed appropriate and material to the particular circumstances of the violation or series or set of violations.
- (6) **No immunity from antitrust enforcement.** Nothing in these affiliate rules shall confer immunity from state or federal antitrust laws. Sanctions imposed by the commission for violations of this rule do not affect or preempt antitrust liability, but rather are in addition to any antitrust liability that may apply to the anti-competitive activity. Therefore, antitrust remedies also may be sought in federal or state court to cure anti-competitive activities.
- (7) **No immunity from civil relief.** Nothing in these affiliate rules shall preclude any form of civil relief that may be available under federal or state law, including, but not limited to, filing a complaint with the commission consistent with this subsection.
- (8) **Preemption.** This rule supersedes any procedures or protocols adopted by an independent organization as defined by PURA §39.151, or similar entity, that conflict with the provisions of this rule.

This agency hereby certifies that the adoption 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 §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, and §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, are hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS this the 17th day of DECEMBER 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER