

PROJECT NO. 37981

RULEMAKING RELATING TO THE	§	PUBLIC UTILITY COMMISSION
OBLIGATIONS OF ELECTRIC	§	
SERVICE PROVIDERS UNDER THE	§	OF TEXAS
TEXAS PROMPT PAYMENT ACT	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.33 AND §25.482
AS APPROVED AT THE MARCH 11, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.33 and §25.482 relating to the Prompt Payment Act. The rules will ensure that customers that are “governmental entities” under TEX. GOV’T CODE §2251.001-055 (Vernon 2007 and Supp. 2009) (Prompt Payment Act or PPA) are billed by electric utilities (utilities), aggregators, and retail electric providers (REPs) in compliance with the PPA. Project Number 37981 is assigned to this proceeding.

Janis Ervin, Senior Utility Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ervin has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure that utilities, aggregators, and REPs comply with the PPA.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these rules. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the rules as a result of the rules’

requirement that utilities, aggregators, and REPs inquire of all applicants whether they are governmental entities as defined in the PPA and, for existing customers for which a utility, aggregator, or REP does not know whether they are governmental entities as defined in the PPA, that the utility, aggregator, or REP shall inquire within six months of the effective date of these rules whether the customers are governmental entities. These costs will vary from business to business, and are difficult to ascertain. However, this requirement is necessary to ensure compliance with the PPA by utilities, aggregators, and REPs.

Ms. Ervin has also determined that for each year of the first five years these rules are 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), TEX. GOV'T CODE §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, May 20, 2010 at 9:00 a.m. CST. The request for a public hearing must be received within 31 days after publication.

Comments on the new rules may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Initial comments may be submitted by April 26, 2010 (within 31 days after publication), and reply comments may be submitted by May 10, 2010 (within 45 days after publication). Comments should be organized in a manner consistent with the organization of the rules. The commission invites

specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rules. The commission will consider the costs and benefits in deciding whether to adopt the rules. All comments should refer to Project Number 37981.

The new sections are proposed under the Public Utility Regulatory Act, TEX. UTIL. CODE Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §§14.101, 17.004, 39.101, 39.352, and 39.353, which authorize the Commission to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices by utilities, aggregators, and REPs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.004, 39.101, 39.352, and 39.353.

§25.33. Prompt Payment Act.

- (a) **Application.** This section applies to billing by an electric utility (utility) to a “governmental entity” as defined in TEX. GOV’T CODE, Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent they conflict.
- (b) **Bill due date.** A bill issued by a utility to a governmental entity shall be due as provided in the PPA.
- (c) **Disputed bills.** If there is a billing dispute between a governmental entity and a utility about any bill for utility service, the dispute shall be resolved as provided in the PPA.
- (d) **Penalty on delinquent bills for retail service.** Any penalty for delinquency of payment for utility billing to a governmental entity shall be in accordance with the PPA.
- (e) **Disclosure.** A utility shall disclose to all governmental entities that they will be billed in accordance with the PPA.
- (f) **Inquiry.** A utility shall inquire of all applicants for service whether they are governmental entities as defined in the PPA. For existing customers for whom a utility does not know whether they are governmental entities as defined in the PPA, the utility shall inquire within six months of the effective date of this section whether such customers are governmental entities.

§25.482. Prompt Payment Act.

- (a) **Application.** This section applies to billing by an aggregator or a retail electric provider (REP) to a “governmental entity” as defined in TEX. GOV’T CODE, Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.
- (b) **Bill due date.** A bill issued by an aggregator or a REP to a governmental entity shall be due as provided in the PPA.
- (c) **Disputed bills.** If there is a billing dispute between a governmental entity and an aggregator or a REP about any bill for aggregator or REP service, the dispute shall be resolved as provided in the PPA.
- (d) **Penalty on delinquent bills for retail service.** Any penalty for delinquency of payment for aggregator or REP billing to a governmental entity shall be in accordance with the PPA.
- (e) **Disclosure.** Aggregators and REPs shall disclose to all governmental entities that they will be billed in accordance with the PPA.
- (f) **Inquiry.** Aggregators and REPs shall inquire of all applicants for service whether they are governmental entities as defined in the PPA. For existing customers for whom an aggregator or REP does not know whether they are governmental entities as defined in the PPA, the aggregator or REP shall inquire within six months of the effective date of this section whether such customers are governmental entities, except that an aggregator

is not required to make this inquiry for customers for which REPs bill for the aggregator's services.

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

**ISSUED IN AUSTIN, TEXAS ON THE 12th DAY OF MARCH 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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