

**PROJECT NO. 42029**

**PUC RULEMAKING RELATED TO § PUBLIC UTILITY COMMISSION**  
**THE IMPLEMENTATION §**  
**OF PURA §39.107(k) § OF TEXAS**

**ORDER ADOPTING NEW §25.44 AND NEW §25.500  
AS APPROVED AT THE APRIL 17, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.44, relating to Privacy of Advanced Metering System Information, and new §25.500, relating to Privacy of Advanced Metering System Information, with changes to the proposed text as published in the January 3, 2014 issue of the *Texas Register* (39 TexReg 21).

The new rules implement Public Utility Regulatory Act (PURA) §39.107(k), which prohibits electric utilities, including transmission and distribution utilities (TDUs), from selling, sharing, or disclosing information from an advanced metering system (AMS) or meter information network, including information used to calculate charges for service, historical load data, and any other customer information, except in certain circumstances. The provision in PURA was included in House Bill 1600 in the 2013 Regular Legislative Session. The new sections are adopted under Project Number 42029.

A public hearing on the proposed rules was held at commission offices on February 10, 2014, at 10:00 a.m. Representatives from the 9-12 Association (9-12) and Thelma and Nick Taormina attended and provided comments at the hearing.

The commission received written comments on the proposed new sections from the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery LLC (Oncor); and the Retail Electric

Provider Coalition (REP Coalition). The REP Coalition was composed of Alliance for Retail Markets (ARM); Reliant Energy Retail Services, LLC; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. The participating members of ARM were: Constellation NewEnergy Inc; Direct Energy, LP; and Green Mountain Energy Company. The participating members of TEAM were: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy.

Oncor, OPUC, and the REP Coalition supported the adoption of the proposed new rules. OPUC stated the proposed rules effectively implement the relevant PURA statutory provision. Oncor commented that the legislative mandate is specific, and the proposed rules are essentially a verbatim copy of the legislative directive set out in PURA §39.107(k). Oncor supported adoption of the rules as proposed without modification, as they appropriately reflect the legislative language, and neither narrow nor expand the specific directive given to the commission by the Legislature. The REP Coalition agreed stating that, in principle, the REP Coalition supported the adoption of the proposed rules, which repeat the statutory language in PURA §39.107(k) almost verbatim.

9-12 expressed concerns that the proposed rules were too vague and open-ended. They recommended that the rule be more concise, and not be left open to interpretation, and stressed that customer information should not be sold to companies under any circumstances.

The REP Coalition recommended two clarifications to the rules to more accurately track the language of the statute. First, PURA §39.107(k) imposes a blanket prohibition against the sale of this type of customer information by an electric utility, including a TDU. The REP Coalition pointed out that the exception in the new statutory provision applies only to the sharing (and similarly, the disclosure) of such information with an electric utility's affiliate or another third-party entity and not to its sale. Accordingly, the REP Coalition recommended that the commission clarify that the proposed rules do not alter the prohibition against the sale of such information.

Second, PURA §39.107(k) also states that the sharing of such information shall be allowed if the information is to be used either for the purpose of providing electric utility service to the customer or for other customer-approved services. The REP Coalition commented that the proposed rule language did not sufficiently clarify that the phrase "if the information is to be used only for", modifies both "electric utility service" and "other customer-approved services."

### *Commission Response*

**The commission agrees with 9-12 and the REP Coalition that the rules should be clarified. The modifications proposed by the REP Coalition more closely track the statutory language of PURA §39.107(k). Therefore, the commission modifies both rules in accordance with this recommendation of the REP Coalition.**

9-12 commented that the rule lacks specificity as to how a TDU or retail electric provider (REP) should notify the customer that the information will be shared. They added they would like to

see the commission list the types of entities that REPs and TDUs are entitled to share information with. 9-12 stated that customers should have to affirmatively give permission for the information to be shared. They compared this occurrence to use of emails by companies such as when a customer accepts one email, a customer then receives many notices from sister companies. This should not happen in this realm with the use of AMS data. 9-12 stated that currently REPs and TDUs are allowed to choose with whom they may share the information.

9-12 added that technology is rapidly changing and noted the Google acquisition of Nest. They explained that one does not know the path that information may take, or in whose hands the information will end up. 9-12 stated that REPs and TDUs should make it very clear on bills to customers and the websites that sharing may occur, with specifics as to who may receive the information.

Commenting on customer electric bills, 9-12 recommended the commission limit the type of companies that billing information should be shared with. 9-12 recommended the commission specify the requirements for the bills by the utility and REPs, including the font size and color of text on the front of the bill. 9-12 recommended that the disclosure language be displayed prominently to alert customers and give them the choice on whether the information is shared or not. If information is to be shared by the REP or the TDU, 9-12 recommended that customers be informed ahead of time, and receive multiple notices in advance of information being shared. The notice should be clear, and should include the option to OPT-OUT or OPT-IN in large print. 9-12 commented that companies might assert that this process would be too expensive, but responded that they feel it is too expensive for customers to lose their freedom.

*Commission Response*

PURA §39.107(k) addresses a utility's sharing of information from an advanced metering system or metering information network (AMS information). It does not address information sharing by a REP. Therefore, the rules that the commission is adopting in this rulemaking are limited to information sharing by a utility.

PURA §39.107(k) prohibits a utility from selling a customer's AMS information. The provision also prohibits a utility from disclosing (making public) the information. On the other hand, the provision *requires* that the commission permit a utility to share a customer's AMS information for electric utility service or other services that the customer has approved. The provision limits information sharing to companies providing customer-approved services; the provision does not allow the commission to further limit the information sharing to specific categories of companies, as proposed by 9-12. In addition, 9-12's proposal to give a customer the right to opt-out of a TDU's sharing of information is unworkable. A customer's TDU must share the AMS information with the customer's REP and with the independent organization, the Electric Reliability Council of Texas (ERCOT). Allowing a customer to opt-out of this sharing of AMS information would mean that the REP would be unable to provide the electric service that the customer had requested from the REP. Under PURA §39.151(a)(4), an independent organization such as ERCOT is required to accurately account for the electric energy and ancillary services purchased by the REP in the wholesale market in order that the REP can be accurately billed for those services. ERCOT needs the customer's AMS information to perform this function.

**The commission has existing rules that address sharing of, and notice regarding, proprietary customer information, including AMS information. Section 25.272(g) places restrictions on a utility's sharing of proprietary customer information and generally prohibits a utility from sharing proprietary customer information without the customer's authorization. In addition, §25.475(h)(6)(F) requires that a REP include in the "Your Rights as a Customer" document that it provides to its customer information concerning the customer's privacy rights pursuant to §25.472. Although persons have expressed generalized concerns to the commission about a utility sharing proprietary customer information, the records of the commission's Customer Protection Division do not show any customer complaint that a utility has improperly disclosed the customer's proprietary information. Therefore the commission declines to make changes to the rules in response to the comments of 9-12.**

OPUC stated that clearly prohibiting any sharing, selling, or otherwise disclosing customers' metering information without a customer's explicit consent prior to the sharing of that data is crucial to effectively implementing data privacy protections. OPUC explained that it has worked with PUC staff and stakeholders throughout the public process for the advanced metering implementation, and has emphasized the importance of safeguarding customer information. Throughout the public process, stakeholders have sought to balance data privacy with the innovations and process improvements advanced meters provide to the market. OPUC added that these new technologies continue to yield opportunities for energy-saving appliances as well as programs and tools to allow customers to better manage their energy usage and control costs. Historical usage information is important in assessing energy needs and potential areas for

reducing usage and overall electricity costs, but this information must be safeguarded and provided to third parties only after a customer provides express and informed consent. OPUC continued that the Legislature has clearly stated that metering data, including consumption information, is owned by the customer but that the customer may authorize access to the data under rules established by the commission.

*Commission Response*

**The commission agrees with OPUC that AMS information provides a customer greater ability to better manage energy use and control costs. See PURA §39.107(i) (“it is the intent of the legislature that net metering and advanced meter information networks be deployed as rapidly as possible to allow customers to better manage energy usage and control costs, and facilitate demand response initiatives.”) The commission has adopted safeguards for the protection of a customer’s AMS information as part of the implementation of AMS. Section 25.130(j) of the commission’s AMS rule requires a utility to provide a customer, the customer’s REP, and other entities authorized by the customer read-only access to the customer’s advanced meter data. In addition, the provision requires that the access be convenient and secure.**

OPUC commented that both of the rules balance an electric utility’s need for metering information with a customer’s right to privacy. OPUC added that in the competitive electric areas of the state, where the customer receives service from a REP, the customer agrees, through terms of service contracts, to provide advanced meter data necessary for the REP to provide the contracted service. OPUC added that while some customers may opt to maintain data privacy

from unaffiliated third parties offering optional services to the market, the proposed rule and the statute recognize that other customers may choose to give access to their data to provide unaffiliated third parties the opportunity to market their services to the customer. OPUC noted that the rule's use of the term "customer-approved services" is identical to that used in the statute; however, OPUC stated that the rule should clarify when a service is considered "customer-approved." OPUC also suggested either as part of this rulemaking or in a subsequent rulemaking regarding data privacy, that the commission clarify the appropriate manner in which a customer provides consent for release of their data. OPUC suggested that including an additional definition would better protect customers against unauthorized or uninformed release of their data.

*Commission Response*

**The commission declines to add provisions to address the manner in which a customer consents to the utility's sharing of AMS information. OPUC did not make a specific proposal. In addition, the commission's existing rules provide that a utility cannot share a customer's AMS information with a company not in the retail electric service chain unless the customer authorizes the sharing. These rules have been effective.**

The REP Coalition recommended that the adoption of the proposed rules not alter the status quo in terms of when an electric utility shares customer information generated, provided, or otherwise collected from an advanced metering system or meter information network for the purpose of providing electric or other customer-approved services. The REP Coalition stressed that the new rules should not impact current practices by which an electric utility provides this

customer information to a REP for the purpose of calculating charges for retail electric service or by which it provides historical load data to a REP for purposes related to the provision of retail electric service or other customer-approved services.

*Commission Response*

**The adopted rules affirm that a utility may not sell or disclose a customer's AMS information, and that a utility's sharing of AMS information is limited to services approved by the customer. The adopted rules affirm these requirements without imposing additional requirements.**

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

The new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (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, §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; and PURA §39.107(k), which requires the commission to adopt rules applicable to electric utilities and transmission and distribution utilities regarding the protection and privacy of customer data and other information.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.107.

**§25.44. Privacy of Advanced Metering System Information.**

An electric utility shall not sell, share, or disclose information generated, provided, or otherwise collected from an advanced metering system or meter information network, including information used to calculate charges for service, historical load data, and any other customer information; except the utility may share such information with an affiliated corporation as defined in §25.5 of this title (relating to Definitions), or other third-party entity, if the information is to be used only for the purpose of:

- (1) Providing electric utility service to the customer; or
- (2) Other customer-approved services.

**§25.500. Privacy of Advanced Metering System Information.**

A transmission and distribution utility shall not sell, share, or disclose information generated, provided, or otherwise collected from an advanced metering system or meter information network, including information used to calculate charges for service, historical load data, and any other customer information; except the transmission and distribution utility may share such information with an affiliated corporation as defined in §25.5 of this title (relating to Definitions), or other third-party entity, if the information is to be used only for the purpose of:

- (1) Providing electric utility service to the customer; or
- (2) Other customer-approved services.

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 new §25.44, relating to Privacy of Advanced Metering System Information, and new §25.500, relating to Privacy of Advanced Metering System Information are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of \_\_\_\_\_ 2014.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**