

PROJECT NO. 50406

**RULEMAKING TO AMEND 16 TAC
§25.471**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.471
AS APPROVED AT THE JANUARY 16, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.471, relating to general provisions of customer protection rules. The proposed amendments will clarify that, where specifically stated, Chapter 25, Subchapter R, General Provisions of Customer Protection Rules applies to brokers. The proposed amendments will modify §25.471 to reflect new sections that are proposed in Project No. 49794, Rulemaking for Broker Registrations. The proposed amendments will also make other minor changes.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability;
- and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Cliff Crouch, Manager of Licensing and Compliance, Customer Protection Division, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Crouch has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be clarification of the applicability of Chapter 25, Subchapter R and there will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on February 20, 2020. The request for a public hearing must be received by February 14, 2020. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Comments on the proposed amendment may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, by February 14, 2020. Sixteen copies of comments to the proposed amendment are required to be filed by §22.71(c) of 16 Texas Administrative Code. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to project number 50406.

Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §39.3555, which requires entities that register as brokers with the commission to comply with customer protection provisions, disclosure requirements, and marketing guidelines established by the commission.

Cross reference to statutes: Public Utility Regulatory Act §§ 14.002 and 39.3555.

§25.471. General Provisions of Customer Protection Rules.

(a) **Application.** This subchapter applies to aggregators and retail electric providers (REPs).

In addition, where specifically stated, these rules ~~shall~~ apply to transmission and distribution utilities (TDUs), the registration agent, brokers and power generation companies. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

(1)-(2) (No change.)

(3) The rules in this subchapter are minimum, mandatory requirements that must ~~shall~~ be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), and §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules must ~~shall~~ be reduced to writing and provided to the customer. Additionally, copies of such agreements must ~~shall~~ be provided to the commission upon request.

(4)-(5) (No change.)

(b) **Purpose.** The purposes of this subchapter are to:

(1)-(3) (No change.)

- (4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, ~~and~~ REPs, and brokers in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.
- (c) (No change.)
- (d) **Definitions.** For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly indicates otherwise:
- (1)-(9) (No Change.)
- (10) **Retail electric provider (REP)**--Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. An agent of the REP may perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP will ~~shall~~ be responsible for the actions of the agent.
- (11) **Small commercial customer**--A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12- month period.
- (12)-(13) (No change.)

This agency 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 16th DAY OF JANUARY 2020 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**