

PROJECT NO. 24376

IMPLEMENTATION OF HB 472,	§	PUBLIC UTILITY COMMISSION
RELATING TO THE REGULATION	§	
OF TELEMARKETING	§	OF TEXAS
SOLICITATION AND PROVIDING	§	
PENALTIES	§	

**ORDER ADOPTING REPEAL OF EXISTING §25.484 AND NEW §25.484,
RELATING TO THE TEXAS ELECTRIC NO-CALL LIST,
AS APPROVED AT THE MAY 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §25.484, relating to Do Not Call List, and new §25.484, relating to the Texas Electric No-Call List with changes to the proposed text as published in the April 5, 2002 *Texas Register* (27 TexReg 2671). The rule implements provisions of House Bill 472 (HB 472), 77th Legislature, later codified as the Texas Business and Commerce Code Annotated §43.103 (Bus. & Com. Code) (Vernon 1998 & Supplement 2002) relating to Rules, Customer Information, Isolated Violation. The new section also implements the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2002) (PURA) §39.1025, relating to Limitations on Telephone Solicitation. This new section is adopted under Project Number 24376.

The creation of the Texas electric no-call list assists electricity customers in limiting the number of telemarketing calls received relating to a customer's choice of retail electric providers (REPs). This rule prescribes how customers will be notified of the availability of the Texas electric no-call list, the procedures for disseminating the list to REPs, and violations of this section. As provided in the Bus. &

Com. Code §43.101 relating to Commission to Establish Texas No-call Lists, the state has contracted with a private vendor to maintain and administer the Texas electric no-call database. The no-call program is self-funding in that costs of the vendor contract will be offset by the fees paid by customers to register for the list and telemarketers to subscribe to the list.

After the proposed repeal and new rule were published in the *Texas Register*, the commission received written comments from the following: the affiliated retail electric providers of American Electric Power Company, Inc. - CPL Retail Energy, WTU Retail Energy, and AEP Retail Energy (AEP REPs); Entergy Solutions Select Ltd., Entergy Solutions Essentials Ltd, and Entergy Solutions Ltd. (Entergy REPs); the Office of Public Utility Counsel (OPC); Reliant Resources, Incorporated (RRI); and TXU Energy Retail Company LP (TXU Energy).

A public hearing on the proposed section was held at commission offices on May 6, 2002 at 1:30 p.m. Representatives from AT&T Communications of Texas, L.P. (AT&T), MCI Worldcom, Inc. (MCI), OPC, the State of Texas - Office of the Attorney General (OAG), Southwestern Bell Telephone Company (SWBT), and TXU Energy attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

General comments

Entergy REPs and OPC indicated they generally support the adoption of the proposed rules. RRI suggested minor changes throughout the rule in order to harmonize the provisions in this section with the provision in §26.37, Texas no-call list. RRI also maintained that the changes would clarify that the Texas no-call list and the Texas electric no-call list are two different lists and are based on two different databases. In general RRI suggested changes such as adding "Texas" before the terms electric no-call database and electric no-call registrant (formerly electric no-call subscriber).

The commission disagrees that adding the word "Texas" before the terms electric no-call database and electric no-call registrant serves to enhance the distinction between the two rules and declines to make that particular change. The rules relating to the Texas no-call list and the Texas electric no-call list are in separate chapters of the commission's substantive rules, and are therefore clearly distinguishable. Furthermore, the definitions contained in subsection (c) of each section clearly distinguish the lists and databases from one another. Accordingly, the commission declines to make the clarifying changes suggested by RRI.

Specific comments to the rule language

Subsection (c) contains definitions of terms used in this rule. TXU Energy asserted that the definition of "established business relationship," as proposed, implies that consumer business relationships are developed only through personal contacts or face-to-face meetings and fails to recognize relationships developed by mail, facsimile or over the Internet. TXU suggested deleting the phrase "between a

person and a consumer" in subsection (c)(5). In its reply comments, OPC indicated that it did not find the phrase confusing, and emphasized that the definitions of "person" in the commission's substantive rules (§25.5(42) and §26.5(153), relating to Definitions) are not limited to a natural person. MCI indicated that the definition of person in the substantive rules appears to resolve TXU Energy's concern.

The commission agrees with the reply comments of OPC and MCI and declines to alter the definition of "established business relationship." The definition is neither confusing nor restrictive in the manner purported by TXU Energy.

OPC proposed altering the definition of "telephone call" by adding the phrase "but not limited to" after the word "including." OPC contended that by doing so, the rule would clearly pertain to any other types of telephone contact made with future technological advances.

The commission agrees that the clarification proposed by OPC will better reflect the commission's intent with respect to potential technological advances not specifically contemplated in the rule, and adopts the recommended language.

Subsection (d), relating to the requirement of REPs, establishes the required time frame within which REPs must remove newly-registered telephone numbers on the electric no-call list from their internal telemarketing call lists. Entergy REPs, RRI, AEP REPs and TXU Energy generally disagreed with the time limit of five days set in the proposed rule and indicated it would be difficult to comply. The

commenters indicated that the amount of time should be consistent with §26.37, relating to Texas No-Call List, which provides a 60-day grace period for telemarketers. Entergy REPs and RRI asserted that harmonizing this requirement in the two rules is especially important given that REPs will be subject to both rules. They stated that there is no reason that REPs engaged in telemarketing should be held to a harsher standard than other telemarketers. AEP REPs further indicated that incorporating the same timeframe will eliminate unnecessary confusion; thereby facilitating compliance with both rules. RRI suggested the commission distinguish between business or calendar days. In its reply comments, OPC indicated it opposed any additional time allowance.

In former §25.484 relating to Do Not Call List, REPs were required to remove customer names within five calendar days. The Bus. & Com. Code §43.102 relating to Telemarketing of Persons on Texas No-Call List; Enforcement; Penalties, specifically indicates that a telemarketer may not make a telemarketing call to a telephone number that has been published on the Texas no-call list more than 60 days after the telephone number appears on the then-current list. However, PURA §39.1025 does not specify a time limit after which REPs can no longer make telemarketing calls to electric no-call registrants. Therefore, to maintain consistency between proposed §25.484 and proposed §26.37, the commission adopts the suggested revision. The commission also adopts RRI's recommendation by specifying calendar days.

Entergy REPs, RRI, AEP REPs and TXU Energy recommended clarifying the precise date triggering the 60-day, formerly five-day, compliance period addressed in subsection (d). The commenters

contended that as proposed, it is unclear as to whether the 60-day compliance period starts when a customer registers a telephone number on the electric no-call list or when the telephone number is published on the list. AEP REPs recommended that the commission clarify that the 60-day compliance period begins after the REP receives the most recent version of the list from the database administrator. RRI suggested that the addition of the word "published" would help clarify this provision.

The commission makes the requested clarification, but disagrees that the 60-day compliance period begins after the REP receives the most recent version of the list from the commission. Such wording implies that the 60-day compliance period would not begin until the REP took the time to obtain the quarterly published list, and would seriously complicate the enforcement process. As noted above, the Bus. & Com. Code §43.102 clearly references a telephone number that has been "published" on the list.

Subsection (e) relating to exemptions excludes certain types of telephone calls from the requirements of this section. In its written comments, TXU Energy suggested that the introductory phrase "In response to a call" be added to subsection (e)(1). TXU Energy contended that the added language is necessary to clarify that telemarketing calls made by a REP at the request of an individual is not a violation of this section even if that individual's telephone number appears on the electric no-call list. Likewise, AEP REPs suggested adding similar language that would accomplish the same result. AEP REPs contend that a telephone call made by the REP responding to a request by an electric no-call registrant would be reasonable, consistent with the requestor's wishes, and not a violation of this section.

The commission disagrees with TXU Energy's characterization that its suggested language does not alter the meaning of the rule. The rule, as published, and in full accord with the enabling statute, specifically refers to a call made by a customer. Furthermore, the definition of telemarketing call specifically references an unsolicited telephone call. The commission is not persuaded that the additional exemption is necessary or serves any clarifying purpose.

TXU Energy also recommended adding a new subsection (e)(4), allowing a REP acting as a telemarketer to call a business, unless the business has previously informed the REP that it does not wish to receive such calls. TXU Energy asserted that the change would be consistent with the language in proposed §26.37(e)(3) relating to exemptions to the Texas No-Call List.

The original legislative authority for placing limitations on telephone solicitation related to a customer's choice of REPs was Senate Bill 7 (SB 7) passed by the 76th legislature. SB 7 was later codified as PURA §39.1025. The statute prohibits the telephone solicitation of an electricity "customer" who has previously advised the commission that he/she does not wish to receive such solicitations. While HB 472 created the general no-call list and specifically exempted business customers from being placed on the list, PURA §39.1025 did not. The commission declines to narrow the scope of applicable customers able to register for the electric no-call database. Pursuant to PURA §39.1025, any customer, residential or business, who objects to receiving telemarketing calls from REPs shall have the opportunity to register for the electric no-call list.

Subsection (f) outlines when the electric no-call list will be updated and published by the administrator. TXU Energy suggested that in subsection (f)(2)(A) the commission should clarify that the administrator must update and publish the "entire" Texas electric no-call list, not merely the most recent additions. TXU Energy asserted that publication of the entire list would lessen the possibility of error when a REP is updating its list. In addition, TXU Energy requested a provision requiring the administrator of the electric no-call database to alert subscribing REPs, via electronic mail, when the updated list is available in order to expedite REP access to the electric no-call list and the updating of REPs' call lists.

TXU Energy also recommended adding new language that clarifies that REPs have 60 days from the publication date to acquire the updated list and incorporate the information into their internal telemarketing databases. Entergy REPs asserted that the electronic internet address for the Texas electric no-call list should be added in order to ease the process of acquiring the electric no-call list for new REPs entering the market.

The commission adopts TXU Energy's suggestion regarding adding the word "entire" to subsection (f)(2)(A). Publication and distribution of the entire electric no-call list each quarter will avoid any variations in the number of names contained on the lists received by subscribing REPs. This precautionary measure will assist in preventing any unintended omissions at the distribution phase. The commission finds that the 60-day compliance period is adequately explained in subsection (d) and declines to reiterate the requirement elsewhere in the rule. Regarding the suggestion that the rule should

recite the Internet address for the electric no-call list, the commission disagrees that such information is appropriate for inclusion in the rule. REPs entering the Texas market are likely to obtain §25.484 and other relevant material from the commission's own website, which also prominently displays the current contact information for the no-call lists. While the commission does not anticipate that this contact information will change frequently, it is a matter of prudent resource planning to avoid including in a rule information that is subject to change and is generally available elsewhere. Similarly, the commission declines to require that the database administrator alert subscribing REPs via electronic mail whenever the list has been updated and is available to REPs. The statute prescribes specific dates for publication and distribution of the electric no-call list. The commission finds that placing an added responsibility upon the administrator when the time frame has already been clearly set serves no beneficial purpose.

In order to clarify a potential misinterpretation regarding the intended uses of the electric no-call database, the commission adds clarifying language to subsection (f)(3)(A). The added language clarifies that a subscribing REP cannot share a purchased electric no-call list with its affiliates. Instead, each affiliate of a parent company that chooses to make telemarketing calls to Texas electric customers must purchase the list; just as each customer that wishes to register more than one telephone number must pay a registration fee for each number. However, the commission notes that this does not preclude a parent company from purchasing numerous copies of the electric no-call list and then disbursing the lists to its affiliates, as long as each affiliate has separately subscribed to, and paid the appropriate fee for, the Texas electric no-call list and agrees to comply with the requirements of this section. The commission also makes other minor clarifications to this subsection.

Subsection (g) relating to notice outlines the requirements for the customer notice provided by REPs. Entergy REPs contended that the notice requirements proposed are burdensome and will cause REPs to incur unnecessary costs. Energy REPs indicated that the only information that should be provided to the customer is the contact information for registration. RRI asserted that the amount of information required for the notice will not fit in the space allowed in a bill message, which is typically limited to three lines of text.

AEP REPs proposed adding clarifying language to subsection (g)(1)(B) by adding the words "from Retail Electric Providers" to the end of the sentence. AEP REPs asserted that the added language is important so that customers are not misled to believe that registering for the electric no-call list will put an end to all telemarketing calls. OPC agreed with the clarification but proposed slightly different language.

RRI also suggested additional language to subsection (g)(1) in order to inform an electric customer how to remove a telephone number from the Texas Electric No-Call List and that a telephone number may be automatically removed if that number changes. OPC also supported this addition.

The commission accepts AEP REPs and OPC's suggested clarification, but notes that subsection (g)(1)(H) is also specifically targeted to alert registrants to the fact that registering for the electric no-call list may not stop other telemarketing calls. The commission rejects RRI's suggested language regarding

Internet information because the addition is not necessary to a customer's initial decision to register for the electric no-call list.

Subsection (g)(2) addressed publication of the notice. RRI raised several questions regarding the intent of the proposed provisions and suggested reorganizing the information for the sake of clarity.

Entergy REPs contend that REPs are already required to distribute the Your Rights as a Customer disclosure annually. REPs electing to provide notification of the Texas electric no-call list to customers in the Your Rights as a Customer disclosure should not be required to provide additional notice.

TXU Energy recommended adding clarifying language outlining that if a REP chooses to include notice in either the Terms of Service document or Your Rights as a Customer disclosure, the notice should be distributed when those documents are normally distributed in compliance with commission rules. TXU Energy suggested the addition of an explicit statement in this subsection indicating that inclusion of the notice in the Terms of Service document does not constitute a material change to that document; thus, would not require an additional distribution. OPC objected to the latter request by TXU stating that if the change is not deemed to be a material change, then existing customers would not receive notice under this rule.

TXU Energy recommended deletion of subsection (g)(2)(B) relating to annual notice to individual customers. Instead, TXU Energy recommended allowing notice via the Terms of Service document,

which would be given to all new customers and to all current customers whenever a material change in terms or conditions of service occurs; and in the Your Rights as a Customer document, which would be provided to new customers and annually to all customers thereafter.

OPC responded to TXU Energy's comments. OPC agreed to annual notice in the Your Rights as a Customer disclosure only if the annual notice is distributed to all of the REP's customers (as opposed to only the new customers) and the distribution occurs between June 1 and August 31 of each year. This would allow customers to be alerted to the right to register for the electric no-call list twice per year. OPC contended that because customers may be added to the electric no-call list four times per year, requiring notice twice per year is not unreasonable.

Subsection (g)(3) relates to the timing of the annual notice and requires REPs to provide such notice between June 1 and August 31 of each year, beginning in 2002. OPC recommended minor clarifying changes adding the words "each of" and "individual" to subsection (g)(3).

Energy REPs recommended that those REPs who have previously notified or will notify customers through the Your Right as a Customer disclosure should be exempt from this specific provision.

TXU Energy asserted that customer education goals regarding the electric no-call list can be achieved without an annual bill message or insert. However, should annual notice remain a requirement, TXU Energy recommended modifying the deadline for the annual notice so that initial notification is not

required until 2003. AEP REPs and TXU Energy contended that the current requirements in subsection (g)(3) and (4) pose a problem with respect to how REPs are to comply during the first year the rule is in effect. AEP REPs are concerned that the proposed time lines allow an insufficient amount of time for REPs to formulate a notice, submit it to the commission for review, and disburse it to customers. AEP REPs indicate that REPs must plan and schedule their bill messages and inserts months in advance.

Furthermore, TXU suggested and RRI supported, that instead of requiring annual notification during specific months, the rule should allow each REP to determine the month in which the notice is sent. OPC opposed this suggestion indicating it would make it more difficult to monitor REP compliance. The deletion of a uniform time for distribution would also reduce the potential for public awareness groups or the media to report on the notice and alert the public.

Regarding subsection (g)(4), Entergy REPs and TXU Energy recommended deleting the requirement regarding commission review of the notice. Entergy REPs assert that the notice requirements have been sufficiently addressed in the rule and further commission review of the notice is unnecessary. In the alternative, TXU Energy suggested that the commission might want to develop a notice template for use by REPs. TXU Energy asserted that developing a template would eliminate the time and work involved in commission staff's review of notices. OPC did not oppose the creation of a template and indicated it would actively participate in any workshop held for such purpose. However, OPC strongly opposed Entergy's suggestion of deleting the commission review requirement.

The commission agrees with the commenters that argued that objectives for customer notification can be reasonably met by requiring annual notification through each REP's Your Rights as a Customer disclosure. Because mention of the Electric No-Call List in the Your Rights as a Customer disclosure is currently required by §25.475(f)(4)(K) (relating to Information Disclosures to Residential and Small Commercial Customers), the notice requirements in proposed §25.484 would not constitute a material change to that disclosure. Given that the Your Rights as a Customer disclosure is already subject to review by the commission, a separate requirement is not necessary. The commission notes that placement of the notice required by subsection (g)(2) in a REP's Terms of Service document is also acceptable, if the REP's Your Rights as a Customer disclosure complies with §25.475(f)(4)(K).

Subsection (g)(4)(B) requires REPs to retain customer notification records and provide such records to the commission. OPC requested that the commission require REPs to provide copies of customer notification records to OPC in addition to the commission. OPC contended that such a requirement would serve to inform OPC of the status of REP compliance and highlight the level of priority afforded this issue. At the public hearing, OPC clarified its written comments and stated that OPC did not intend to suggest that it is a regulatory body, but that it is charged by the Legislature with representing the public interest of small commercial and residential customers. OPC stated that this gives it the jurisdiction to look at the notices supplied by companies to their customers. OPC further stated that allowing it to look at the notices would not place a burden on companies and that no companies have asserted that the notice information is confidential. OPC also stated that that agency would pay any copying costs associated with supporting its request. OPC stated that, if it was not allowed to view all

notices, the agency would have to file open records requests for the materials and this would be administratively burdensome.

RRI objected indicating that there is no justification for the added expense and time of providing copies to OPC and that any records required by OPC are better dealt with on a case-by-case basis rather than through a general requirement.

The commission agrees with RRI and declines to implement OPC's suggested language. There is no statutory authority for requiring OPC receipt of REP customer notification records.

TXU Energy and RRI recommended adding the introductory language "Upon commission request" to subsection (g)(4)(B) in order to clarify when a REP is required to provide copies of records maintained under the requirements of this rule.

The commission finds that the language requested by TXU Energy and RRI is contained in §25.491 (relating to Record Retention and Reporting Requirements) and declines to make the recommended change.

Subsection (h) relates to violations and delineates that it is an affirmative defense to this section that a telemarketing call made to a telephone number on the Texas electric no-call list is not a violation if the telemarketing call is an isolated occurrence made by a REP who has in place adequate procedures to

comply with this section. Entergy REPS generally supported the provisions in this subsection, but suggested clarifying language regarding the term "isolated occurrence." Entergy REPs explained that a situation might arise in which several telephone numbers might be called in error; therefore, the number of telephone calls made in error should not be the determining factor as to what constitutes an isolated occurrence. Entergy recommended specifying in the rule that an isolated occurrence may involve more than one incident "or separate occurrence."

The commission modifies the proposed language in subsection (h)(2)(A) to provide clarity to the meaning of isolated occurrence. The commission inserts the "separate occurrence" language suggested by Entergy REPs, but the commission deletes the word "incident" because it is not necessary to the definition. This clarifying change is also made for consistency with §26.37(h)(2)(A), relating to the Texas no-call list.

Subsection (i) relating to Enforcement and Penalties specifies commission authority for investigating alleged violations of this section. Entergy REPs proposed revising the wording to clarify that violations are "alleged."

The commission disagrees with Entergy REPs and declines to make the suggested change. The provisions of §25.485 (relating to Customer Access and Complaint Handling) apply to customer complaints regarding REP actions. The purpose of this subsection is to specify the entity responsible for enforcement actions beyond the initial complaint resolution process. The commission does, however,

delete the word "exclusive" from this subsection because the word is not necessary to the meaning of the sentence.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purposes of clarifying its intent and consistency with proposed §26.37. For example, the commission changes the term electric no-call "subscriber" to electric no-call "registrant" to distinguish an electric no-call "registrant" as a telephone customer that has registered to be on the Texas electric no-call list, from a "subscribing REP" which denotes a REP that has "subscribed," through application and payment of fees, to receive the quarterly published electric no-call list.

This repeal and new section are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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, §39.1025 which provides the commission with the authority to operate the no-call database and prohibits the telephone solicitation of an electricity customer who has previously advised the commission that he/she does not want to receive such solicitations. In addition, this repeal and new section are adopted under the Texas Business & Commerce Code Annotated §43.103 (Vernon 1998 & Supplement 2002) (Bus. & Com. Code) which grants the commission the authority to adopt rules to administer the no-call list.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.1025; Texas Business & Commerce Code Annotated §§43.002, 43.003, and 43.101 — 43.103.

§25.484. Texas Electric No-Call List.

- (a) **Purpose.** This section implements the Public Utility Regulatory Act (PURA) §39.1025, relating to Limitations on Telephone Solicitation, and the Texas Business & Commerce Code Annotated (Bus. & Com. Code) §43.103 relating to rules, customer information, and isolated violations of the Texas no-call list.
- (b) **Application.** This section applies to retail electric providers (REPs) as defined in §25.5 of this title (relating to Definitions). A REP acting as a telemarketer, as defined by §26.37 of this title (relating to Texas No-Call List), is also subject to the provisions of §26.37 of this title.
- (c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Consumer good or service** — For purposes of this section, consumer good or service has the same meaning as Bus. & Com. Code §43.002(3) relating to Definitions.
 - (2) **Electric no-call database** — Database administered by the commission or its designee that contains the names, addresses, telephone numbers and dates of registration for all Texas electric no-call registrants. Lists or other information generated from the electric no-call database shall be deemed to be a part of the database for purposes of enforcing this section.

- (3) **Electric no-call list** — List that is published and distributed as required by subsection (f)(2) of this section.
 - (4) **Electric no-call registrant** — A telephone customer who has registered, by application and payment of accompanying fee, for the Texas electric no-call list.
 - (5) **Established business relationship** — A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.
 - (6) **Telemarketing call** — An unsolicited telephone call made to:
 - (A) solicit a sale of a consumer good or service;
 - (B) solicit an extension of credit for a consumer good or service; or,
 - (C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.
 - (7) **Telephone call** — A call or other transmission that is made to or received at a telephone number, including but not limited to:
 - (A) a call made by an automatic dial announcing device (ADAD); or,
 - (B) a transmission to a facsimile recording device.
- (d) **Requirement of REPs.** A REP shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the Texas electric no-call list.

- (e) **Exemptions.** This section shall not apply to a telephone call made:
- (1) By an electric no-call registrant that is the result of a solicitation by a REP or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;
 - (2) In connection with:
 - (A) An established business relationship; or,
 - (B) A business relationship that has been terminated, if the call is made before the later of:
 - (i) the date of publication of the first Texas electric no-call list on which the electric no-call registrant's telephone number appears; or
 - (ii) one year after the date of termination; or,
 - (3) To collect a debt.
- (f) **Electric no-call database.**
- (1) **Administrator.** The commission or its designee shall establish and provide for the operation of the electric no-call database.
 - (2) **Distribution of database.**
 - (A) **Timing.** Beginning on April 1, 2002, the administrator of the electric no-call database will update and publish the entire Texas electric no-call list on January 1, April 1, July 1, and October 1 of each year;

- (B) Fees. The no-call electric list shall be made available to subscribing REPs for a set fee not to exceed \$75 per list per quarter;
 - (C) Format. The commission or its designee will make the no-call list available to subscribing REPs by:
 - (i) electronic internet access in a downloadable format;
 - (ii) Compact Disk Read Only Memory (CD-ROM) format;
 - (iii) paper copy, if requested by the REP; and,
 - (iv) any other format agreed upon by the current administrator of the no-call database and the subscribing REP.
- (3) **Intended use of the electric no-call database and electric no-call list.**
- (A) The electric no-call database shall be used only for the intended purposes of creating an electric no-call list and promoting and furthering statutory mandates in accordance with PURA §39.1025 and the Bus. & Com. Code, Chapter 43 relating to Telemarketing. Neither the electric no-call database nor a published electric no-call list shall be transferred, exchanged or resold to a non-subscribing entity, group, or individual, regardless of whether compensation is exchanged.
 - (B) The no-call database is not open to public inspection or disclosure.
 - (C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.

- (4) **Penalties for misuse of information.** Improper use of the electric no-call database or a published electric no-call list by the administrator, REPs, or any other person, regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).
- (g) **Notice.** A REP shall provide notice of the electric no-call list to its customers as specified by this subsection. In addition to the required notice, the REP may engage in other forms of customer notification.
- (1) **Content of notice.** A REP shall provide notice in compliance with §25.473 of this title (relating to Non-English Language Requirements) that, at a minimum, clearly explains the following:
- (A) Beginning January 1, 2002, customers may add their name, address and telephone number to a state-sponsored electric no-call list that is intended to limit the number of telemarketing calls received relating to the customer's choice of REPs;
 - (B) When a customer who registers for inclusion on the electric no-call list can expect to stop receiving telemarketing calls on behalf of a REP;
 - (C) A customer must pay a fee to register for the electric no-call list;
 - (D) Registration of a telephone number on the electric no-call list expires on the fifth anniversary of the date the number is first published on the list;

- (E) Registration of a telephone number on the electric no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;
 - (F) The customer registration fee, which cannot exceed five dollars per term, must be paid by credit card when registering online or by telephone. When registering by mail, the fee must be paid by credit card, check or money order;
 - (G) The toll-free telephone number, website address, and mailing address for registration; and,
 - (H) A customer that registers for inclusion on the electric no-call list may continue to receive calls from telemarketers other than REPs, and a statement that the customer may instead or may also register for a no-call list that is intended to limit telemarketing calls regarding consumer goods and services in general, including electric service.
- (2) **Publication of notice.** A REP shall include notice in its Terms of Service document or Your Rights as a Customer disclosure. The notice shall be easily legible, prominently displayed and comply with the requirements listed in paragraph (1) of this subsection.
- (3) **Records of customer notification.** A REP shall provide a copy of records maintained under the requirements of this subsection as specified by §25.491 of this title (relating to Record Retention and Reporting Requirements).
- (h) **Violations.**

- (1) **Separate occurrence.** Each telemarketing call to a telephone number on the electric no-call list shall be deemed a separate occurrence.
- (2) **Isolated occurrence.** A telemarketing call made to a number on the electric no-call list is not a violation of this section if the telemarketing call is determined by the commission to be an isolated occurrence.
 - (A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one separate occurrence, but it does not involve a pattern or practice.
 - (B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the REP who made the call. In order for a REP to assert as an affirmative defense that a potential violation of this section was an isolated occurrence, the REP must provide evidence of the following:
 - (i) The REP has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;
 - (ii) The REP has trained its personnel in the established procedures; and,
 - (iii) The telemarketing call that violated this section was made contrary to the policies and procedures established by the REP.

- (i) **Enforcement and penalties.** The commission has jurisdiction to investigate REP violations of this section, as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).

§25.484. Do Not Call List. (Repeal)

This agency hereby certifies that the rules, as adopted, have 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 the repeal of §25.484 relating to Do Not Call List and new §25.484 relating to Texas Electric No-Call List are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF MAY 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Brett A. Perlman, Commissioner