

The Public Utility Commission of Texas (commission) proposes an amendment to §25.105 relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities, new §25.109 relating to Registration of Power Generation Companies and Self-Generators, and new §25.111 relating to Registration of Aggregators. The proposed amendment and new rules will implement provisions of the Public Utility Regulatory Act (PURA) §§39.351, 39.353, 39.354, 39.3545, 39.356 and 39.357. The §25.105 amendment retains existing requirements for power marketers but eliminates requirements for exempt wholesale generators and qualifying facilities in order to eliminate duplication with the proposed new requirements for power generation companies. Section 25.109 establishes registration requirements and procedures for power generation companies, including exempt wholesale generators and qualifying facilities, that generate more than one megawatt of electricity and intend to sell electricity at wholesale. It also establishes registration requirements and procedures for self-generators that generate more than one megawatt of electricity but do not intend to sell electricity at wholesale. Section 25.111 establishes registration requirements and procedures for persons and public entities seeking to aggregate the loads of electricity customers. Project Number 21082 has been assigned to this proceeding.

Project Number 21082, *Certification of Retail Electric Providers and Registration of Power Generation Companies and Aggregators; Forms*, was established in July 1999 as

part of the plan for implementing Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2591 (Vernon) (codified as an amendment to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§39.351, 39.353, 39.354, 39.3545, 39.356, and 39.357). Senate Bill 7, the Electric Restructuring Act, amends several sections of the Public Utility Regulatory Act (Vernon 1999) (PURA) and became effective September 1, 1999. The commission staff posted questions for comment on its Internet site on October 20, 1999 and published an invitation to comment in the *Texas Register* on October 22, 1999 (24 TexReg 9434). The staff prepared drafts of §25.109 and §25.111 in December 1999, which were discussed at a workshop held on December 15, 1999. A second draft of §25.111 was prepared in January 2000 with an invitation for comments from interested persons. Written comments were received and used to prepare a third draft of §25.111, which was discussed at a workshop held on January 20, 2000. Written comments were received on the first draft of §25.109 in early January. The comments were used to develop a second draft of §25.109, which also was discussed at the workshop held on January 20, 2000.

Revision of §25.105 relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities was added to Project Number 21082 to eliminate duplication of requirements with proposed §25.109 and with rules being drafted in Project Number 21081, *Market Power Mitigation Plans and Generating Capacity Reports*. Specifically, all existing registration and reporting requirements in §25.105 pertaining

to exempt wholesale generators (EWGs) and qualifying facilities (QFs) are proposed for deletion from §25.105. Proposed §25.109 addresses the registration of EWGs and QFs. Rules being drafted in Project Number 21081 will address reporting requirements for EWGs and QFs. Proposed §25.109 provides for the registration of self generators because implementation of PURA §39.154, relating to Limitation and Ownership of Installed Capacity, will require the commission to make an assessment of the capacity of generating facilities used to generate electricity for the consumption of the person owning or controlling the facility.

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules.

When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition, the commission requests that interested parties specifically address the issues set out below pertaining to §25.111, Registration of Aggregators:

1. The proposed rule is drafted from the perspective that aggregators negotiate with retail electric providers (REPs) on behalf of a group of electricity customers. However, similar services could be provided to customers by a consultant without direct negotiation with a REP on behalf of the customers. The commission invites comments on whether the rule draws an appropriate distinction between consultation and aggregation services.

2. The workshop transcripts reveal that views vary widely on whether, and under what conditions, aggregators should accept monies from electricity customers. The proposed rule attempts to establish customer protection strategies without substantially constraining possibilities for compensation to aggregators for aggregation services. First, the rule prohibits private aggregators from accepting payments or prepayments for electric service, but the rule is silent on this topic with respect to public aggregators. Second, the rule imposes financial requirements only on the aggregators who are persons, and who accept payments for aggregation services. The rule does not impose financial requirements on public entities. The rule does not dictate whether or not the aggregator is, functionally speaking, a buyer's agent, a seller's agent, or both. Instead, for customer information, the rule requires disclosure to the customers of the basis on which the aggregator will be compensated for services, such as fees from the REP, pre-paid fees from the customer, payments from the customer upon delivery of service, a

combination of the above, or other methods. This requirement is applicable only to aggregators who are persons. The commission requests comment on whether the rule strikes the proper balance in allowing market forces to operate while protecting customers.

3. In certain instances, statutory conditions that appear applicable to all aggregators are stated in PURA §39.353, relating to Registration of Aggregators, but are not restated in PURA §39.354 and §39.3545, which concern the registration of public aggregators. Because a person can seek registration as both a private and a public aggregator, a person could be subject to different operating constraints for public customers than private customers. The commission requests comment on the extent to which the following matters apply to all aggregators:

- (a) First, PURA §39.353 states, "A retail electric provider is not an aggregator." The commission interprets this sentence to mean that certificated REPs cannot also be registered as aggregators that register pursuant to that PURA provision. How should the absence of the sentence in §39.354 and §39.3545 be construed? If REPs were allowed to register as public aggregators, what would be the practical result?

(b) Second, PURA §39.353 states, "Aggregators may not take title to electricity."

The commission interprets this sentence to mean that aggregators registering pursuant to this provision may not accept payment for electricity services from customers. How should the absence of this sentence in PURA §39.354 and §39.3545 be construed? If the prohibition does not apply to all aggregators, then persons who are registered as both a private and a public aggregator could be in the position of taking title to electricity for some customers, and accepting their payments, while not doing so for others. What are the implications of such a result?

4. From a customer perspective, what are the differences between aggregators and REPs? How will a customer be able to distinguish a REP from an aggregator? The commission invites comment on ways, if any, this rule should further differentiate the role of the aggregator in the market place from that of the REP.

Ms. Jan Barga, Senior Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Barga has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be protection of the

public interest and a uniform process of registering power generation companies and aggregators in Texas. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Barga has also determined that for each year of the first five years the proposed sections 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 §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, April 18, 2000, at 9:30 a.m.

Comments on the proposed amendment and new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 28 days after publication. Parties are also requested to e-mail an electronic copy of comments to jan.barga@puc.state.tx.us, if possible.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the

costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 21082.

The amendment and new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supp. 1999) (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 §39.154, which requires the commission to make a calculation of installed generation capacity that depends in part on the capacity of generating facilities used to generate electricity for consumption by the person controlling the facility; §39.157, which grants the commission authority to address market power and requires it to review reports of installed generation capacity; §39.351, which grants the commission authority to require registration of power generation companies; §39.353, which grants the commission authority to establish terms and conditions necessary for the regulation of the reliability and integrity of aggregators; §39.354 and §39.3545, which require the commission to develop registration procedures for municipal and political subdivision aggregators; §39.356, which grants the commission authority to establish terms under which the commission may suspend or revoke a power generation company's or an aggregator's registration; and §39.357, which grants the commission authority to impose an administrative penalty for violations of §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 15.024, 39.351, 39.353, 39.354, 39.3545, 39.356, and 39.357.

§25.105. Registration and Reporting by Power Marketers, ~~Exempt Wholesale Generators, and Qualifying Facilities.~~

(a) **Purpose.** This section contains the registration and reporting requirements for a person intending to do business in Texas as a power marketer ~~(PM), exempt wholesale generator (EWG), or qualifying facility (QF).~~

(b) **Applicability.**

(1) A power marketer ~~PM, EWG, or QF~~ becomes subject to this section on the date that it first buys or sells electric energy at wholesale in Texas.

(2) No later than 30 days after the date it becomes subject to this section, a power marketer ~~PM, EWG, or QF~~ shall register with the commission or provide proof that it has registered with the Federal Energy Regulatory Commission (FERC) or been authorized by the FERC to sell electric energy at market-based rates.

(c) **Initial information.** Regardless of whether it has registered with the FERC, a power marketer ~~PM, EWG, or QF~~ shall:

(1) Provide its address and State: ~~whether it is a PM, EWG, or QF; its address;~~ the name, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications should be addressed; and the names and types of businesses of the owners (with percentages of ownership).

- (2) Identify each affiliate that buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric or municipally owned utility in Texas.
- (3) Describe the location of any facility in Texas ~~each existing facility~~ used to provide service. ~~A power marketer should describe the location of each office from which it carries on its business in Texas. An EWG or QF should describe each of its existing generating units in Texas, by providing the following information:~~
- ~~(A) Name;~~
 - ~~(B) Net dependable capacity in megawatts (MW);~~
 - ~~(C) Primary and secondary fuels;~~
 - ~~(D) Technology (e.g., combined cycle, wind turbines, air pump storage);~~
 - ~~(E) If the unit is a cogenerator, maximum amount of capacity in MW reserved to serve its steam host by year;~~
 - ~~(F) Location, by county, utility service area, and control area;~~
 - ~~(G) Reliability council; and~~
 - ~~(H) Commercial operation date.~~
- (4) Provide a description of the type of service provided. ~~the following information for each generating unit planned or under construction:~~
- ~~(A) A copy of pages 1 and 2 of Texas Natural Resource Conservation Commission Form PI-1, General Application, Air Quality Permit;~~

~~(B) — Gross and net capacity design ratings in MW; and~~

~~(C) — Copies of press releases announcing the major construction milestones.~~

(5) Submit copies of all of its FERC registration information, filed with FERC subsequent to the effective date of this section.

~~(6) — Submit the information required in subsection (d) of this section for the previous year. If a person files under this subsection between January 1 and February 28, the information required in subsection (d) of this section can be provided in a separate filing by February 28.~~

~~(6)(7)~~ Submit an affidavit by an authorized person that the registrant is a power marketer-PM, EWG, or QF.

~~(d) — **Annual information for existing generating units.** An EWG or QF shall provide the following information by February 28 of each year:~~

~~(1) — Total company megawatt hour (MWH) generation at the busbar in Texas, by reliability council, for the immediately preceding year;~~

~~(2) — Total company MWH wholesale sales in Texas, by reliability council, for the immediately preceding year; and.~~

~~(3) — Total company firm capacity commitments in MW for generating units in Texas, by reliability council, for the current calendar year and the following four calendar years.~~

~~(d)~~(e) **Material change in information.** Each power marketerPM, ~~EWG, or QF~~ shall report any material change in the information provided pursuant to this section within 30 days of the change.

~~(e)~~(f) **Commission list of power marketers, ~~exempt wholesale generators, and qualifying facilities.~~** The commission will maintain a list of power marketersPMs, ~~EWGs, and QFs~~ registered in Texas.

§25.109. Registration of Power Generation Companies and Self-Generators.

(a) **Application.**

- (1) A person that owns an electric generating facility in Texas and is either a power generation company (PGC), as defined in §25.5 of this title (relating to Definitions), or a qualifying facility (QF) as defined in §25.5 of this title, and generates electricity intended to be sold at wholesale, must register as a PGC.
- (2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.
- (3) A person that owned such generating facility prior to September 1, 2000 may register any time between September 1, 2000 and January 1, 2001. A person that becomes subject to this section after September 1, 2000 must register on or before the first date of generating electricity.

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.

- (1) **Nameplate rating** – The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

- (2) **Net dependable capability** – The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

- (c) **Capacity ratings.** For purposes of this section, the capacity of generating units shall be reported as follows:
 - (1) Renewable resource generating units shall be rated at the nameplate rating;
 - (2) All other generating units having a nameplate capacity rating of ten MW or less shall be rated at the nameplate capacity; and
 - (3) All other generating units having a nameplate capacity rating greater than ten MW shall be rated at the summer net dependable capability.

- (d) **Registration requirements for self-generators.** To register as a self-generator, a person shall provide the following information:
 - (1) The legal name of the registering party.
 - (2) The Texas business address and principal place of business of the registering party.
 - (3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications relating to the self-generator should be addressed.

- (4) For each generating facility that is located in the state, the following information:
 - (A) Name;
 - (B) Location by county, utility service area, control area, power region, and reliability council; and
 - (C) Capacity rating in megawatts.

- (e) **Registration requirements for power generation companies.** To register as a PGC, a person shall provide the following information:
 - (1) The legal name of the registering party as well as any trade or commercial name(s) under which the registering party intends to operate.
 - (2) The registering party's Texas business address and principal place of business.
 - (3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications should be addressed.
 - (4) The names and types of business of the registering party's corporate parent companies, along with percentages of ownership.
 - (5) A description of the types of services provided by the registering party that pertain to the generation of electricity.
 - (6) The name and corporate relationship of each affiliate that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric or municipally owned utility in Texas.
 - (7) For each generating facility that is located in the state, the following information:

- (A) Name;
 - (B) Location by county, utility service area, control area, power region, and reliability council; and
 - (C) Capacity rating in megawatts.
- (8) For any such application that was filed after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed with the Federal Energy Regulatory Commission (FERC) in connection with registration with the FERC, and any order issued by the FERC pursuant thereto. Such registrations shall include, for example, determination of exempt wholesale generator (EWG) or QF status.
- (9) An affidavit by an authorized person attesting that the registering party:
- (A) Generates electricity that is intended to be sold at wholesale;
 - (B) Does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title; and
 - (C) Does not have a certificated service area.
- (f) **Registration procedures.** The following procedures apply to the registration of PGCs and self-generators.

- (1) Registration shall be made by completing the form approved by the commission, which shall be verified by oath or affirmation and signed by an owner, partner, or officer of the registering party. Registration forms may be obtained from the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each registering party shall file its registration form with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22 of this title, Subchapter E (relating to Pleadings and Other Documents).
- (2) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete request, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.
- (3) The registering party may designate answers or documents that it believes to contain proprietary or confidential information. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to registration information for PGCs and self-generators.

- (g) **Post-registration requirements for self-generators.** Self-generators shall report any material change in the information provided on the registration form by February 28 of each year.
- (h) **Post-registration requirements for power generation companies.** PGCs shall report any material change in the information provided on the registration form within 45 days of the change. A material change would include, for example, a merger or consolidation with another owner of electric generation facilities that offers electricity for sale in this state. PGCs shall comply with the reporting requirements of the commission's rules implementing the Public Utility Regulatory Act (PURA) §39.155(a).
- (i) **Suspension and revocation of power generation company registration and administrative penalty.** Pursuant to PURA §39.356, registrations granted pursuant to this section are subject to suspension and revocation for significant violations of PURA or rules adopted by the commission. The commission may also impose an administrative penalty for a significant violation at its discretion. Significant violations may include the following:
- (1) Failure to comply with the reliability standards and operational criteria duly established by the independent organization that is certified by the commission;
 - (2) For a PGC operating in the Electric Reliability Council of Texas (ERCOT), failure to observe all scheduling, operating, planning, reliability, and settlement

- policies, rules, guidelines, and procedures established by the independent system operator in ERCOT;
- (3) Providing false or misleading information to the commission;
 - (4) Engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;
 - (5) A pattern of failure to meet the conditions of this section, other commission rules, regulations or orders;
 - (6) Suspension or revocation of a registration, certification, or license by any state or federal authority;
 - (7) Failure to operate within the applicable legal parameters established by PURA §39.351; and
 - (8) Failure to respond to commission inquiries or customer complaints in a timely fashion.

§25.111. Registration of Aggregators.

(a) **Application.** Any person, municipality, political subdivision, or political subdivision corporation that aggregates the loads of two or more electric service customers for purposes of purchasing electricity services shall register with the Public Utility Commission of Texas (commission) pursuant to this section. An electric cooperative aggregating electric service customers outside of its certificated service area shall register with the commission. A single electricity customer, including a municipality or political subdivision, negotiating loads for its own use in multiple locations, does not need to register with the commission.

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:

(1) **Aggregation** – to join two or more electricity customers into a purchasing unit to negotiate the purchase of electricity by the electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

(2) **Aggregator** – one of the following:

(A) **Private aggregator** – a person joining two or more customers, other than municipalities and political subdivision corporations, into a single

purchasing unit to negotiate the purchase of electricity from retail electric providers (REPs). Private aggregators may not sell or take title to electricity. REPs are not private aggregators.

- (B) **Public aggregator** – a public aggregator is one of the following:
- (i) **Municipal aggregator** – a person authorized by two or more municipal governing bodies to join the bodies into a single purchasing unit to negotiate the purchase of electricity from REPs or a municipality aggregating under Local Government Code, Chapter 303.
 - (ii) **Political subdivision aggregator** – a person or political subdivision corporation authorized by two or more political subdivision governing bodies to join the bodies into a single purchasing unit or multiple purchasing units to negotiate the purchase of electricity from REPs for the facilities of the aggregated political subdivisions or a person or political subdivision aggregating under Local Government Code, Chapter 303.
- (3) **Person** – an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation, but not including a municipal corporation. For purposes of this section, an electric cooperative is considered a person only when it aggregates electricity customers

located outside its certificated service area. For purposes of this section, a political subdivision or political subdivision corporation is not a person.

- (4) **Political subdivision** – a county, municipality, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice.
- (5) **Political subdivision corporation** – an entity consisting of two or more political subdivisions created to act as an agent, or otherwise, to negotiate the purchase of electricity for the use of the respective public facilities in accordance with Local Government Code §303.001.
- (6) **Proprietary customer information** – any information compiled by an aggregator on a customer in the normal course of aggregating 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.

- (7) **Revocation** – the cessation of all aggregation business operations in the state of Texas, pursuant to commission order.
 - (8) **Suspension** – the cessation of all aggregation business operations in the state of Texas associated with obtaining new customers, pursuant to commission order.
- (c) **Types of aggregator registrations required.**
- (1) Entities seeking to aggregate electricity customers may not provide aggregation services in the state unless they have registered with the commission. Such registration may be sought after September 1, 2000.
 - (2) There are two types of registration available to aggregators. An entity seeking to aggregate under the terms and conditions set forth in the Public Utility Regulatory Act (PURA) §39.353 shall register as a "private aggregator." An entity seeking to aggregate under the terms and conditions set forth in PURA §39.354 or §39.3545, or both, shall register as a "public aggregator." The terms of eligibility and operational requirements for each type of aggregator are specified in paragraphs (3) and (4) of this subsection. If a person is eligible and wishes to perform aggregation for both private and public electricity customers, it shall obtain both registrations.
 - (3) **Private aggregator registration.** A private aggregator may join at least two voluntary customers into a single purchasing unit to negotiate the purchase of electricity from REPs. A private aggregator shall:

- (A) be a person and not a REP;
 - (B) not include municipalities, political subdivisions, or political subdivision corporations among the customers of an aggregation;
 - (C) not take title to electricity, and shall not collect any money associated with payment or prepayment for electric service, as distinguished from aggregation services;
 - (D) comply with the customer protection provisions, disclosure requirements, and marketing guidelines of PURA and this title;
 - (E) comply with terms and conditions established by the commission to regulate reliability and integrity of aggregators.
- (4) **Public aggregator registration.** Public aggregators shall meet at least one of the following sets of eligibility and operational requirements:
- (A) **Person that aggregates municipalities.** A person registered as a public aggregator pursuant to this paragraph may join two or more authorizing municipal governing bodies into a single purchasing unit to negotiate the purchase of electricity from REPs.
 - (B) **Person or political subdivision corporation aggregating political subdivisions.** A person or a political subdivision corporation registered as a public aggregator pursuant to this paragraph may join two or more authorizing political subdivision governing bodies, including municipal governing bodies, into single or multiple purchasing units to

negotiate the purchase of electricity from REPs for the facilities of the aggregated political subdivisions.

(C) **Governing body that aggregates its citizens.** A municipality or other political subdivision registered as a public aggregator pursuant to this paragraph may negotiate for the purchase of electricity and energy services on behalf of the affirmatively requesting citizens of the municipality in accordance with Local Government Code §303.002, with the option to contract with a third party for the administration of the aggregation of the purchased services.

(D) **Administrator of citizen aggregation.** A person registered as a public aggregator pursuant to this paragraph may administer the aggregation of electricity and energy services purchased for requesting citizens of a municipality or other political subdivision pursuant to a contract with the municipality or political subdivision.

(d) **Requirements for public bodies seeking to register as a public aggregator.** A municipality, other political subdivision, or political subdivision corporation seeking to register and operate in accordance with this section shall provide the following information on a registration form approved by the commission.

(1) The legal name of the registering party as well as any trade or commercial name(s) under which the registering party intends to operate;

- (2) The registering party's Texas business address and principal place of business;
 - (3) The names and business addresses of the registering party's principal officers;
 - (4) The names of the registering party's affiliates and subsidiaries, if applicable;
 - (5) Telephone number of the customer service department or the name, title and telephone number of the customer service contact person;
 - (6) Name, physical business address, telephone number, fax number, and e-mail address for a regulatory contact person and for an agent for service of process, if a different person;
 - (7) The types of electricity customers that the registering party intends to aggregate; and
 - (8) Any other information required of public bodies on a registration form approved by the commission.
- (e) **Requirements for persons seeking to register as a private aggregator, a public aggregator, or both.** A person seeking to register under this section shall provide evidence of competency and experience in providing the scope and nature of its proposed services by providing the information listed in either paragraph (1) or (2) of this subsection on a registration form approved by the commission.
- (1) **Standard registration.**

- (A) The legal name(s) of the registering party. A registering party may operate under a maximum of five trade or commercial names, and shall provide all names to the commission;
- (B) The Texas business address and principal place of business of the registering party;
- (C) The name, title, business address, and phone number of each of the registering party's directors, officers, or partners;
- (D) Address and telephone number for the customer or member service department or the name, title and telephone number of the customer service contact person;
- (E) Name, physical business address, telephone number, fax number, and e-mail address for a Texas regulatory contact person and for an agent for service of process, if a different person;
- (F) The types of electricity customers that the registering party intends to aggregate;
- (G) Applicable information on file with the Texas Secretary of State, including, but not limited to, the registering party's endorsed certificate of incorporation certified by the Texas Secretary of State, a copy of the registering party's certificate of good standing, or other business registration on file with the Texas Secretary of State;
- (H) Disclosure of delinquency with taxing authorities in the state of Texas;

- (I) A description of prior experience of the registering party or one or more of the registering party's principals or employees in the retail electric industry or a related industry;
- (J) The names of the affiliates and subsidiaries of the registering party that provide utility-related services, such as telecommunications, electric, gas, water or cable service;
- (K) Disclosure of any affiliate relationships and the nature of any affiliate agreements with REPs or transmission and distribution utilities;
- (L) A list of other states in which the registering party and registering party's affiliates and subsidiaries that provide utility-related services, such as telecommunications, electric, gas, water, or cable service, currently conduct or previously conducted business;
- (M) Discussion of the registering party's sources of compensation for aggregation services, and an explanation of plans for disclosure to its customers of the sources of compensation for aggregation services;
- (N) Disclosure of the history of bankruptcy or liquidation proceedings of the registering party or any predecessors in interest in the three calendar years immediately preceding the registration request;
- (O) Disclosure of whether the registering party, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft

or larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;

(P) A statement indicating whether the registering party is currently under investigation, either in this state or in another state or jurisdiction for violation of any customer protection law or regulation;

(Q) The following information regarding the registering party's complaint history during the three years preceding the application:

(i) Any complaint history regarding the registering party, registering party's affiliates or subsidiaries that provide utility-related services, such as telecommunications, electric, gas, water, or cable service, the registering party's predecessors in interest, and principals with public utility commissions or public service commissions in other states where the registering party is doing business or has done business in the past. Relevant information shall include, but not be limited to, the number of complaints, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occurred. The Office of Customer Protection shall provide similar complaint information on file at the commission for review.

- (ii) Any complaint history regarding the registering party, registering party's affiliates or subsidiaries that provide utility-related services, such as telecommunications, electric, gas, water or cable service, the registering party's predecessors in interest, and principals on file with the Texas Secretary of State, Texas Comptroller's Office, Office of the Texas Attorney General, and the Attorney General in other states where the registering party is doing business.
 - (R) Any other information required of persons on a registration form approved by the commission.
- (2) **Alternative limited registration.** A person registering pursuant to this paragraph may aggregate only customers who seek to contract for 250 kilowatts or more, per customer, of peak demand electricity. Requirements for registration under this paragraph are as follows:
 - (A) The person shall provide the commission a signed, notarized affidavit stating that it possesses a written consent from each customer it wishes to serve, authorizing the person to provide aggregation services for that customer;
 - (B) The person shall complete applicable portions of the registration form other than the information prescribed in paragraph (1)(J), (K), (L), (M) and (Q) of this subsection;

- (C) The person shall meet financial requirements of this section, if applicable;
 - (D) A person registering on the basis of this paragraph is subject to the applicable post-registration requirements of subsection (h) of this section.
- (f) **Financial requirements for certain persons.** A person seeking to register under this section who intends to take any payments from electricity customers for aggregation services, as distinguished from electric services, shall demonstrate financial resources necessary to protect customers from the loss of payments through fraud, business failure or other causes. Aggregation services are distinct from retail electric services. A person registered initially on the basis of not accepting customer payments for aggregation services shall amend its registration with a showing to the commission that it is able to comply with the requirements of this subsection in advance of accepting payments for aggregation services.
- (1) **Standard financial qualifications.** The amount of required financial resources shall equal the registering person's cumulative obligations to customers arising from payments for aggregation services made by customers prior to the delivery of aggregation services. A person registering under this paragraph shall disclose its methodology for calculating required financial resources on the registration form. Evidence of financial resources shall be met by:

- (A) a cash deposit or its equivalent in a separate account in a financial institution with a registered agent or a principal place of business in Texas or a financial institution acceptable to the commission;
 - (B) a line of credit or a commitment letter from such an institution; or
 - (C) any other financial instrument satisfactory to the commission, including, but not limited to, insurance, bonds, or guarantees from a company or an institution rated investment grade by two credit rating agencies, one of which shall be either Standard & Poors or Moody's Investor's Service (or the best rating service for insurance companies).
 - (D) A person registering under this paragraph shall provide evidence that a copy of this rule has been provided to any party providing, either directly or indirectly, financial resources necessary to protect customers pursuant to this paragraph.
 - (E) A person registering under this paragraph is subject to the ongoing financial requirements and other applicable post-registration requirements of subsection (h) of this section.
- (2) **Alternative financial qualifications for limited registration.** A person aggregating pursuant to this paragraph is limited to aggregating only customers who seek to contract for 250 kilowatts or more, per customer, of peak demand electricity. Requirements for registration on this limited basis are as follows:

- (A) The person shall provide the commission a signed, notarized affidavit indicating that it has a written consent from each customer it wishes to serve, stating that the customer is satisfied that the aggregator can provide aggregation services without establishing the cash and credit resources prescribed in paragraph (1) of this subsection.
 - (B) The person shall complete portions of the registration request form other than the information prescribed in paragraph (1) of this subsection;
 - (C) A person registering on the basis of this paragraph is subject to the applicable post-registration requirements of subsection (h) of this section.
- (g) **Registration procedures.** The following procedures apply to all entities seeking to register pursuant to this section:
- (1) A registration request shall be made on the form approved by the commission, verified by oath or affirmation, and signed by a registering party owner or partner, or an officer of the registering party. The form may be obtained from the Central Records division of the Public Utility Commission of Texas or from the commission's Internet site. Each registering party shall file its form to request registration with the commission's Filing Clerk in accordance with the

commission's procedural rules, Chapter 22 of this title, Subchapter E (relating to Pleadings and Other Documents).

- (2) The registering party may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Registering parties may not designate the entire registration request as confidential. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to requests to register as an aggregator.
- (3) An application shall be processed as follows:
 - (A) The registering party shall immediately inform the commission of any material change in the information provided in the registration request while the request is pending.
 - (B) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete request, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.

(C) Based upon the information provided pursuant to subsections (d), (e), and (f) of this section, the commission shall determine whether a registering party is capable of fulfilling customer protection provisions, disclosure requirements, and marketing guidelines of PURA.

(D) The commission shall determine whether to accept or reject the registration request within 60 days of the receipt of a complete application.

(h) **Post-registration requirements.**

(1) A registrant may not refuse to provide aggregation services or otherwise discriminate in the provision of aggregation services to any customer because of race, creed, color, national origin, ancestry, sex, marital status, source or level of income, disability, or familial status; or refuse to provide aggregation services to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services; or otherwise unreasonably discriminate on the basis of the geographic location of a customer.

(2) Registrants shall comply with the commission's education, disclosure, and marketing guidelines and rules, including those pertaining to customer protection and the filing of regular reports on customer complaints. Registered aggregators

may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission.

- (3) A registrant shall update any changes to business name, address, or phone number within ten business days from the date of the change.
- (4) A registered aggregator shall notify the commission within 30 days of any material change to its registration request, or if the registrant ceases to meet any commission requirements.
- (5) A registrant may amend its registration by providing only the information relevant to the amendment on the registration form. The amendment shall be submitted pursuant to subsection (g)(1) of this section.
- (6) The registrant shall file an annual report with the commission on September 1 of each year on a form approved by the commission.
- (7) Persons registered pursuant to the standard financial qualifications specified in subsection (f)(1) of this section are subject to the following ongoing conditions:
 - (A) The registrant shall maintain records on an on-going basis for any advance payments received from customers. Financial resources required under subsection (f)(1)(A) - (C) of this section, shall be maintained at levels sufficient to demonstrate that the registrant can cover all advanced payments that are outstanding at any given time.
 - (B) The registrant shall file a sworn affidavit demonstrating compliance with subsection (f)(1)(A) - (D) of this section within 90 days of receiving the

first payment for aggregation services before those services are rendered.

- (C) Financial obligations to customers shall be payable to them within 30 business days from the date the registrant notifies the commission that it intends to withdraw its registration or is deemed by the commission not able to meet its current customer obligations. Customer payment obligations shall be settled before registration is withdrawn.
 - (D) Financial resources required pursuant to subsection (f)(1) of this section shall not be reduced by the registrant without the advance approval of the commission.
 - (E) The annual update required by paragraph (6) of this subsection shall include a sworn affidavit attesting to compliance with subsection (f)(1) of this section, and an explanation of the methodology for that compliance.
- (8) A person that initially received its registration on the basis of not accepting payments for aggregation services, and was therefore not subject to subsection (f) of this section, shall amend its registration with a showing to the commission that it is able to comply with the requirements of subsection (f) of this section in advance of accepting payments.
- (9) Persons registered pursuant to the alternative requirements for limited registration specified in subsections (e)(2) and (f)(2) of this section shall make

available to the commission the written consent of individual customers, if requested.

(10) A registered aggregator that ceases to provide aggregation services may withdraw its registration by notifying the commission 30 days prior to ceasing operations and providing proof of refund of any monies owed to customers. An aggregator that withdraws its registration is not required to comply with paragraphs (1) - (9) of this subsection, following such a withdrawal.

(11) A registration shall not be transferred without prior commission approval. The transferee shall submit an application for registration in accordance with this section. The commission shall determine whether to approve the transfer within 60 days of the receipt of a complete application submitted in accordance with subsection (g) of this section.

(i) **Suspension and revocation of registration and administrative penalty.** Pursuant to PURA §39.356, registrations granted pursuant to this section are subject to suspension and revocation for significant violations of PURA or other rules adopted by the commission. At its discretion, the commission may also impose an administrative penalty for a significant violation. Significant violations are the following:

- (1) providing false or misleading information to the commission;
- (2) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

- (3) failing to maintain the minimum level of financial resources required under subsection (f)(1) of this section, if applicable;
- (4) a pattern of failure to meet the conditions of this section, other commission rules, or orders;
- (5) bankruptcy, insolvency, or failure to meet its financial obligations on a timely basis;
- (6) suspension or revocation of a registration, certification, or license by any state or federal authority;
- (7) conviction of a felony by the registrant or a principal or officer employed by the registrant, of any crime involving fraud, theft or deceit related to the registrant's aggregation service;
- (8) failure to operate within the applicable legal parameters established by PURA §§39.353, 39.354, 39.3545, and Local Government Code Chapter 303;
- (9) failure to respond to commission inquiries or customer complaints in a timely fashion;
- (10) switching or causing to be switched the REP of a customer without first obtaining the customer's authorization; or
- (11) billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill.

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

**ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF MARCH 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**