

PROJECT NO. 25963

**RULEMAKING TO ESTABLISH § PUBLIC UTILITY COMMISSION
GUIDELINES AND STANDARDS FOR §
MUNICIPAL REGISTRATION OF § OF TEXAS
RETAIL ELECTRIC PROVIDERS §**

**PROPOSAL FOR PUBLICATION AS OF NEW §25.113
AS APPROVED AT THE AUGUST 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.113 relating to Municipal Registration of Retail Electric Providers (REPs). The proposed actions will simplify and provide certainty to the registration process thereby facilitating the development of a competitive retail electric market in Texas. Project Number 25963 is assigned to this proceeding.

The project team solicited draft rule language on June 24, 2002 and received comments from interested stakeholders on July 9, 2002. Considering the comments that were received, the project team has prepared the proposed new §25.113 and standard registration form relating to municipal registration of REPs.

The proposed rule establishes an optional "safe harbor" process for municipal registration of REPs. The rule incorporates the threshold legal/policy decisions in the preliminary orders issued in Docket Numbers 25275, *Appeal of TXU Energy Services Company from an Ordinance (No. 2001-47) of the City of Copperas Cove*, and 25310, *Appeal of Reliant Resources, Inc. from Ordinance No. 2007-12-01, City of Allen* on February 27, 2002 and in Docket

Number 24906, *Appeal of TXU Energy Services Company of City of Coppell Ordinance No. 2001-967*, on February 28, 2002. These orders addressed threshold issues related to the type of information a municipality can require to register a REP under the Public Utility Regulatory Act (PURA) §39.358, and the commission's authority to hear appeals of municipal ordinances adopted under that section. The rule also incorporates the threshold legal/policy decisions in the supplemental preliminary orders issued on June 21, 2002 in Docket Numbers 24906, 25275, 25310, 25462, 25484, 25485, 25513, 25615, 25649, 25650, 25685, 25686, 25687, 25688, 25689, 25690, 25691, 25766, 25767, 25768, 25769, and 25770. These orders addressed threshold issues related to the scope of registration, re-registration of a REP, the reasonableness of registration fees, reasonableness of sanctions against a REP, definition of "residents of the municipality," discrimination against REPs or types of REPs, REP reporting requirements, notice requirements, and suspension and revocation procedures.

The proposed "safe harbor" registration is a one-time registration process, not an annual registration, and standardizes filing procedures, deadlines, registration information, and fees. REPs are obligated to update their registration information, but a municipality may not require a REP to re-register. However, if a REP's registration is revoked, and the REP subsequently cures its defects and resumes operations, the REP may register in the same manner as a new REP.

The proposed rule prohibits a municipality that adopts the "safe harbor" process from excluding any REP or type of REP from its registration requirement. However if a REP provides service only to the municipality's own electric accounts and not to its residents, it may be excluded from the municipality's registration requirement because the municipality would already have the necessary contact information. Accordingly, the definition of "resident" includes all entities within the municipality except the municipality itself. This ensures that a municipality knows of all REPs operating within its boundaries and is consistent with the provision prohibiting discrimination in PURA §39.001(c), by making all REPs serving within one municipality subject to the same registration requirements.

The proposed rule requires municipalities that adopt the "safe harbor" registration process to file a copy of its ordinance with the commission. Having a centralized place for the ordinances will advance a municipality's interests and facilitate compliance with the ordinance requirements by the REPs.

The proposed rule does not allow municipalities that have adopted the "safe harbor" process to require REPs to file reports regarding complaints. Instead, municipalities may access REP complaint information from the commission's Customer Protection Division (CPD currently provides quarterly complaint databases on the commission's website).

The proposed rule establishes standard suspension and revocation procedures for municipalities that adopt the "safe harbor" process. A municipality may suspend or revoke a REP's registration and authority to operate within the municipality only upon a commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. In addition, a municipality may not assess fines or take action against any REP other than suspension or revocation. The affiliated REP (while it is required to offer the price-to-beat) and the POLR are given vital roles in the new competitive market. Accordingly, to preserve these essential functions, a municipality may not suspend or revoke the registration of the affiliated REP or POLR serving residents in the municipality.

Carrie Collier, Retail Market Analyst, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section. There may be a reduction in costs to local governments as a result of enforcing or administering this section. Municipalities that adopt the optional registration process under the proposed rule would avoid litigation expenditures in an appeals process before the commission. The anticipated reduction in costs to local governments is difficult to ascertain or quantify at this time.

Ms. Collier has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be an efficient, streamlined process that will accommodate both the needs of the municipalities to know of and

be able to contact the entities providing electric services in their areas, and the REPs' need for consistent and easy-to-comply-with requirements throughout the Texas market. There will be no adverse economic 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 section as proposed. The proposed rule will reduce REPs cost of compliance with multiple and varying municipal registration ordinances.

Ms. Collier has also determined that for each year of the first five years the proposed section is 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, November 12, 2002 at 1:30 p.m. in the Commissioners' Hearing Room located on the seventh floor.

The commission seeks comments on the proposed new section from interested persons. Comments on the proposal (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. The deadline for submission of comments is October 28, 2002. Reply comments may be submitted by November 4, 2002. 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 section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should be filed in Project Number 25963.

In addition to the proposed new substantive rule, the commission is proposing a form for the optional "safe harbor" municipal registration of REPs under proposed new §25.113. The commission is also requesting comments concerning the proposed registration form. Copies of the proposed registration form may be obtained from the commission's Central Records, the commission's Interchange, and the commission's website under Project Number 25963.

In addition to the proposed new rule and registration form, the commission requests comments on the following question:

Should the commission develop an online registration procedure? Such a procedure would allow REPs to register once on the commission website and allow registration information to be electronically forwarded to those municipalities adopting ordinances that comply with this rule. Please submit implementing rule language.

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which authorizes the Public Utility Commission to make and enforce rules reasonably required in the exercise of its powers

and jurisdiction; and specifically, PURA §17.051(a) which instructs the commission to implement rules relating to the registration for a retail electric provider; PURA §39.001(d) which instructs the commission to implement rules that impose the least impact on competition; PURA §39.002, which states that if there is a conflict between provisions of Chapter 39 and other provisions of PURA, except for Chapters 40 and 41, the provisions of Chapter 39 control; PURA §39.352 relating to Certification of Retail Electric Providers; and PURA §39.356 relating to Revocation of Certification.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.051, 39.001, 39.002, 39.352, and 39.356.

§25.113. Municipal Registration of Retail Electric Providers.

- (a) **Applicability.** This section applies to municipalities that require retail electric providers (REPs) to register in accordance with the Public Utility Regulatory Act (PURA) §39.358 and to all REPs with a certificate granted by the commission pursuant to PURA §39.352(a) and §25.107 of this title (relating to Certification of Retail Electric Providers).
- (b) **Purpose.** A municipality may require a REP to register as a condition of serving residents of the municipality, in accordance with PURA §39.358. This section establishes an optional "safe harbor" process for municipal registration of REPs to standardize notice and filing procedures, deadlines, and registration information and fees. The optional "safe harbor" registration process simplifies and provides certainty to both municipalities and REPs, thereby facilitating the development of a competitive retail electric market in Texas. If a municipality enacts a registration ordinance that is consistent with this section, the ordinance shall be deemed to comply with PURA §39.358. A municipality may exercise its authority under PURA §39.358 and adopt an ordinance that is not consistent with this section; however, such ordinance could be subject to an appeal to the commission under PURA §32.001(b).

- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) **Resident**—Any electric customer located within the municipality, except the municipality itself, regardless of customer class.
 - (2) **Revocation**—The cessation of all REP business operations within a municipality, pursuant to commission order.
 - (3) **Suspension**—The cessation of all REP business operations within a municipality associated with obtaining new customers, pursuant to commission order.
- (d) **Non-discrimination in REP registration requirements.** A municipality shall not establish registration requirements that are different for any REP or type of REP or that impose any disadvantage or confer any preference on any REP or type of REP. However, a municipality may exclude from its registration requirement a REP that provides service only to the municipality's own electric accounts and not to any residents of the municipality.
- (e) **Notice.** A municipality that enacts an ordinance adopting the standard registration process under this section shall file only the ordinance or section of ordinance, including the effective date, with the commission at least 30 days before the effective date of the ordinance. The filing shall not exceed ten pages.

- (f) **Standards for registration of REPs.** A municipality that adopts a "safe harbor" ordinance in accordance with this section shall process a REP's registration request on an administrative basis only. A municipality shall not deny a REP's request for registration based upon investigations into the fitness or capability of a REP that has a current certificate from the commission. A municipality shall not require a REP to undergo a hearing before the municipality for the purposes of registration, nor require the REP to send a representative to the municipality for purposes of processing the registration form.
- (1) A REP shall register with a municipality that adopts an ordinance in accordance with this section within 30 days after the ordinance requiring registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.
- (2) A REP shall register with a municipality that adopts an ordinance in accordance with this section by completing a form approved by the commission, verified by oath or affirmation, and signed by an owner, partner, officer, or other authorized representative of the registering party. Forms may be submitted to a municipality by mail, facsimile, or online where online registration is available. Registration forms may be obtained from the commission's Central Records division during normal business hours, or from the commission's website.

- (3) The municipality shall review the submitted form for completeness, including the remittance of the registration fee. Within 15 business days of receipt of an incomplete registration, the municipality shall notify the registering party in writing of the deficiencies in the registration. 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 municipality shall notify the registering party that the registration is rejected without prejudice.
- (g) **Information.** A municipality may require a REP to provide only the information set forth below. A REP shall provide all of the following information on the commission's prescribed form to a municipality that has adopted a "safe harbor" ordinance under this section:
- (1) The legal name(s) of the retail electric provider and all trade or commercial names;
 - (2) The registering party's certificate number, as approved under §25.107 of this title and the docket number under which the certification was granted by the commission;
 - (3) The Texas business address, mailing address, and principal place of business of the registering party. The business address provided shall be a physical address that is not a post office box;

- (4) The 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;
 - (5) Toll-free telephone number for the customer service department or the name, title and telephone number of the customer service contact person;
 - (6) The types of electric customer classes that the REP intends to serve within the municipality; and
 - (7) The location of each office maintained by the registering person within the municipal boundaries, including postal address, physical address, telephone number, hours of operation, and listing of the services available through each office.
- (h) **Registration fees.** A municipality adopting the "safe harbor" registration process may require REPs to pay a reasonable administrative fee for the purpose of registration.
- (1) Registration fees shall be based on the municipality's cost to administer the statute. A one-time registration fee of not more than \$25 shall be deemed reasonable. The municipality shall file with the commission a statement of costs incurred if they exceed the \$25 threshold.
 - (2) A municipality may require a REP to pay a late fee, which shall not exceed \$15, only if the REP fails to register within 30 days after the ordinance requiring

registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.

(i) **Post-registration requirements and re-registration.**

- (1) A REP shall notify municipalities adopting the "safe harbor" registration within 30 days of any change in information provided in its registration. In addition, a REP shall notify a municipality within ten days if it discontinues offering service to residents of the municipality.
- (2) A municipality shall not require REPs to file periodic reports regarding complaints, or any other matter, as part of the registration process.
- (3) A municipality shall not require a periodic re-registration process or fee.
- (4) A municipality shall not require a REP to re-register unless a REP's registration is revoked and the REP subsequently cures its defects and resumes operations. In that circumstance, the REP may register in the same manner as a new REP.

- (j) **Suspension and revocation.** A municipality may suspend or revoke a REP's registration and authority to operate within the municipality only upon a commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. A municipality shall not suspend or revoke the registration of the affiliated REP or provider of last resort (POLR) serving residents in the municipality. A municipality shall not take any action against a REP other than

suspension or revocation of a REP's registration and authority to operate in the municipality, or imposition of a late fee in accordance with subsection (h)(2) of this section.

- (1) A municipality may provide a REP with a warning prior to seeking to suspend or revoke a REP's registration.
- (2) A municipality seeking to suspend or revoke a REP's registration shall provide the REP with at least 20 calendar days written notice, informing the REP that its registration and authority to operate shall be suspended or revoked. The notice shall specify the reason(s) for such suspension or revocation.
- (3) A municipality may order that the REP's registration be suspended or revoked only after the notice period has expired.
- (4) In its suspension order, a municipality shall specify the reasons for the suspension and provide a date certain or provide conditions that a REP must satisfy to cure the suspension. Once the suspension period has expired or the reasons for the suspension have been rectified, the suspension shall be lifted.
- (5) In its revocation order, a municipality shall specify the reasons for the revocation.
- (6) A REP may appeal a municipality's suspension or revocation order to the commission.
- (7) A municipality shall be entitled to recover from the REP costs reasonably expended in revoking or suspending the REP's registration.

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 13th DAY OF SEPTEMBER 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**