

PROJECT NO. 29637

RULEMAKING TO AMEND P.U.C. § PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE §25.214 AND PRO- §
FORMA RETAIL DELIVERY TARIFF § OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.214
AS APPROVED AT THE OCTOBER 28, 2005 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities. The proposed amendment will clarify the terms and conditions of retail delivery service and establish standard services to be provided by all investor owned utilities. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 29637 is assigned to this proceeding.

Shawnee Claiborn-Pinto, Sr. Retail Market Analyst, has determined that for each year of the first five-year period the proposed section is in effect there will be an impact to the Public Utility Commission of Texas to monitor the implementation and to process additional rate cases or discretionary service cases. There will be an impact to the Electric Reliability Council of Texas (ERCOT) to develop systems and transactions to support these changes.

Ms. Claiborn-Pinto 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 to enhance customer service for electricity users, which will be achieved through better standardization of delivery service by transmission and distribution providers to Competitive Retail Electric Providers and customers. There may be costs to small businesses that operate the competitive

retail market in ERCOT. However, it is believed that standardization and the other benefits accruing from implementation of the proposed section will outweigh these costs.

Ms. Claiborn-Pinto 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 (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, January 10, 2006, beginning at 10:00 am. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than 3:00 pm on Monday, December 19, 2005. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted no later than 3:00 pm on Monday, January 9, 2006. Comments should be organized in a manner consistent with the organization of the proposed rule(s). 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 refer to Project Number 29637.

The commission will also accept comments on the following question:

1. PURA §43.055 states that an “an electric utility...shall employ all reasonable measures to ensure that the operation of the BPL (Broadband over Power Line) system does not interfere with or diminish the reliability of the utility’s electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery service.” Should the commission alter the retail electric delivery service tariff to implement this provision or otherwise recognize that some Transmission and Distribution Utilities (TDUs) will be using their distribution facilities to provide BPL?

When commenting on specific subsections of the proposed rule(s), 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 interested in receiving only “leading edge” examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility

Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §39.203 which grants the commission the authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice and PURA §32.101 which requires an electric utility to file a tariff with the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §32.101, and §39.203.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

- (a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU), and to standardize the terms of service among TDUs. A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.
- (b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.
- (c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are minimum, mandatory, requirements that shall be complied with and offered to all Competitive Retailers and Retail Customers unless otherwise

specified. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff; however the only modifications the TDU may make to 6.1.2 are to insert the commission-approved rates. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.

Figure: 16 TAC §25.214(d)(1)

(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by June 15, 2006 .

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

**ISSUED IN AUSTIN, TEXAS ON THE 30th DAY OF OCTOBER 2005 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**