

PROJECT NO. 34561

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND PUC SUBSTANTIVE RULES	§	
RELATING TO DEFINITION OF	§	OF TEXAS
SEASONAL AGRICULTURAL	§	
CUSTOMERS	§	

**ORDER ADOPTING AN AMENDMENT TO §25.214
AS APPROVED AT THE DECEMBER 19, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities with changes to the proposed text as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7364). The proposed amendment will establish a definition for a retail seasonal agricultural customer in Chapter One of the Pro-Forma Retail Delivery Tariff for Transmission and Distribution Service Providers (TDSPs) (Pro-Forma Retail Delivery Tariff) to ensure that the seasonal agricultural customer exemption, currently within each TDSP's tariff, is consistently applied to customers by each TDSP. This amendment is adopted under Project Number 34561.

The commission received comments on the proposed amendment from AEP Texas Central Company (TCC) and AEP Texas North Company (TNC), CenterPoint Houston Electric, LLC, Oncor Electric Delivery Company, LLC, and Texas-New Mexico Power Company (Joint Transmission Distribution Utilities (TDUs)); the Texas Cotton Ginners' Association (TCGA); the Texas Grain and Feed Association (TGFA); and TXU Retail Energy Company, LLC (TXU Energy). Reply comments were received from Joint TDUs, TCGA, and TGFA.

In addition to the proposed language, the commission requested that parties submit comments on the following questions:

- (1) *The proposed definition of “retail seasonal agricultural customer” includes the requirement that the customer’s energy consumption be “subject to significant seasonal variation.” Should the definition specify what constitutes significant seasonal variation?*
- (2) *Should the definition include a specific time limit on the number of months that an agricultural customer can reach peak usage in order to be considered seasonal? Should the definition specify whether peak usage may be reached in more than one season, such as one summer peak and one winter peak? Should the definition specify a threshold amount that the peak(s) must be above the customer’s average usage?*
- (3) *The proposed definition currently includes irrigation that meets the requirements of the definition as an example of a possible retail seasonal agricultural customer. Is this an appropriate inclusion?*
- (4) *Are there any customers that the proposed definition would include that should not be included? Are there any customers that the proposed definition would exclude that should be included?*

Question 1

Joint TDUs agreed that significant seasonal variation in electric consumption of agricultural customers is the major determination for qualifying for the exemption, but stated that the definition needs to include a more specific term to provide more clarity and precision to the definition’s application. Broad language may result in multiple interpretations, leading to non-uniform application. Additionally, Joint TDUs noted customers with peripheral non-seasonal

loads behind the same point of delivery as the seasonal loads may not experience as significant an energy shift as they will a seasonal kilowatt (kW) demand shift because many seasonal loads are very large, but operate only for short periods of time. Joint TDUs suggested a definition, which they stated takes into consideration variations in a typical growing season and the impact weather may have on those seasons. The Joint TDUs submitted that the adopted definition should set the qualifications for the seasonal variation in kW or kilovolt amperes (kVA) demand, not energy, and that the seasonal variations should be contained within a narrow timeframe. Joint TDUs suggested a timeframe that does not exceed four months in a calendar year, and requested that each seasonal agricultural group identify its season so that it can be determined if the appropriate time frame can be more precisely defined.

TCGA and TGFA stated that it is unnecessary to define significant seasonal variation. TCGA commented that it is important to consider that the definition refers to groups of customers as opposed to individual customers, and gave two examples. Cotton gins typically operate for 60 to 120 days during a given year, during which their load is generally from 800 kW to over 1,500 kW. When the season is over, the gin remains idle, with only lighting and maintenance equipment comprising load of 10 kW to 50 kW. Similarly, irrigation customers will run their pumps during the growing season when various crops are being watered then will remain idle the rest of the year. Each of these customers performs a specific task that takes place during a specific time of the year, and the pattern is recurring and distinct. TCGA stated that grain dryers and rice dryers exhibit similar patterns. TCGA compared this to non-seasonal agricultural customers such as a feed mill producing cattle rations, which would run and have similar load throughout the year. TCGA stated that under the proposed definition, if a group of customers

can show variations in their annual operating characteristics that are similar to the four named groups, the rule would allow their inclusion.

TGFA commented that it would be difficult to craft a definition for significant seasonal variation that would fit every circumstance, and that a review of the bills of the affected customers demonstrates that the variations are obvious. TGFA suggested that customers should be allowed to self-certify their load as qualifying for the significant seasonal variation. TGFA asserted that this method would avoid the pitfalls inherent in writing specification into the definition that could prevent the application of the exemption because of unanticipated events such as weather, growing patterns, or other characteristics that are unique to agricultural customers. In reply comments, TGFA elaborated and stated that the commission should establish a procedure that allows these customers to file an affidavit with their Retail Electric Provider (REP) stating that they are retail seasonal agricultural customers, which the REP would forward to the TDU within five days of receipt. TGFA recommended that the exemption be granted with the next full billing cycle after receipt of the affidavit. Under this process, the TDU could deny the exemption if it found reason to believe the exemption should not be granted, and would notify the REP of the denial, who would in turn, notify the customer. The customer could appeal the TDU's determination to the commission. The exempted customer would be responsible for notifying the REP when changes in operations dictate that one or more its premises no longer qualifies for the exemption.

Joint TDUs replied that if sound rationale for adopting a definition of retail seasonal agricultural customer is to promote uniformity of application among utilities, it does not make sense to have a self-certifying approach.

Commission response

The commission agrees with TCFA and TGCA that it would be difficult to specifically describe significant seasonal variation to account for the different types and groups of customers that should fall under the definition. The commission further acknowledges that a specifically described variation unlikely would adapt to the unpredictability that those customers can experience because weather affects their operations, and may unintentionally exclude customers that should be included. The commission agrees that it should be apparent in the bills or historical usage for a customer, whether the electric load has significant variations and is therefore a seasonal operation as contemplated by the definition. A new customer, through its REP, will need to provide the TDU with information that is sufficient to demonstrate that it meets the definition.

The commission agrees with the Joint TDUs that the rule should contemplate demand, and amends the definition accordingly.

Question 2

Joint TDUs supported a specific peak period time limit, and stated that by setting a peak period time limit on a calendar year basis that should not exceed four months, one can avoid the need to address the various growing seasons. They added that it is important for maximum

understanding, uniform application, and ease of administration that the definition have a peak time period limit based on a calendar year.

TCGA stated that, as outlined in their response to Question 1, the answers to the questions posed as Question 2 should be negative. TCGA stated that the definition relates to a distinct group of customers that operate seasonally, and if an arbitrary time limit is established, the result would be a great increase in the complexity of administering the rate. TCGA provided an example that the optimum harvest condition for the cotton industry is consistently dry weather, allowing farmers to harvest their cotton quickly, in which a gin might run for 90 days without stopping, and then close for the season. Under this scenario, the gin would set a full demand for three or four billing cycles. However, in the following year, the conditions might be worse because of rain or snow, and the gin may have to start and stop depending upon weather conditions, which could stretch out over five or even six billing cycles. Once the gin in this bad-weather example exceeds an arbitrary threshold, the utility would have to remove them from the seasonal designation. The next year, the weather conditions could be optimal, and the customer would presumably re-qualify. TCGA stated that going back and forth from qualifying to non-qualifying on a customer by customer basis would be complex and frustrating for all parties. TCGA stated that the four customer groups listed under the proposed definition will have an off-season load that is either zero or a very small percentage of their on-season load, simply because of the way the units operate, and that there is no need to establish a threshold amount for these customers.

TGFA commented that the definition should not include specific time limits, limitations on peak usage during one or more seasons, or a threshold peak usage. There are many different patterns for various seasonal agricultural products and these patterns can vary from year to year, and within a single year. TGFA provided the example that during a drought period, irrigation patterns will vary from a rainy period, but will still be seasonal in nature, and will correspond to the planting and growing season of a specific agricultural product. In an alternate example, TGFA stated that the primary operations of rice dryers and storage usually begin towards the end of July or beginning of August and conclude around the beginning of September. The second, usually smaller crop is harvested beginning in October, through sometime in December. These customers have two seasons, and their usage may vary year to year depending upon the size of crops in a given year. TGFA stated that the 2005 crop was 1,000,000 hundredweight, the 2006 crop was down 40% to 600,000 hundredweight, and the 2007 crop was down 16% to 500,000 hundredweight. TGFA stated that as these examples show, the significant variations in growing, harvesting, and processing crops would make the limitations or refinements to the definition suggested by the question unnecessarily cumbersome at best, and unworkable at worst.

Commission response

Based on the comments of TCFA and TGCA, the commission finds that it would be difficult to set a specific time limit on the number of months that an agricultural customer could reach peak usage, the number of seasons in which a peak usage may be reached, or a threshold amount that the peak must be above the customer's average usage in a way that would account for the different types and groups of customers that should fall under this definition, as well as the unpredictability that those customers can experience as weather

affects their operations, without unintentionally excluding customers that should be included. The commission agrees that it should be apparent in the historical usage for a customer, whether the electric load has significant variations in load and is therefore a seasonal operation as contemplated by the definition. A new customer, through its REP, will need to provide the TDU with information that is sufficient to demonstrate that it meets the definition.

Question 3

Joint TDUs supported the inclusion of irrigation in the definition provided that it is specifically for agricultural crop production. They stated that there are currently many irrigation applications that do not relate to agricultural crop production, including golf courses, parks and road medians, and sports fields. Additionally, Joint TDUs stated that the proposed definition uses the phrase “producing and processing crops subsequent to their harvest” in a context that may eliminate irrigation because all irrigation is prior to harvest. They recommended additional clarification to include irrigation applications for agricultural crop production.

TCGA stated that irrigation customers were a critical component of the original seasonal agricultural definition. TCGA commented that most agricultural customers are located in established areas where the distribution lines are already in place, where minimal growth is taking place. If the seasonal agricultural customer treatment is removed from either of the groups currently being served under this definition, their rates will increase significantly. If distribution rates are ratcheted for these customers, overall rates will increase to the point that alternative sources of energy would likely be utilized. TCGA stated that in the case of irrigation

customers, it is fairly simple to convert a well, so that it is powered by a reciprocating engine. If a significant number of irrigation customers move off of the grid, the utility is left maintaining the same distribution system with much less revenue, and in a rural area, it may be years before additional load moves in to replace the lost load.

TGFA supported the inclusion of irrigation in the definition, and stated that it qualifies as seasonal agricultural load if it is for agricultural purposes.

Commission response

The commission agrees with all parties that irrigation should be included in the definition and therefore retains the inclusion. The commission agrees with Joint TDUs that irrigation must be specifically for the use of raising agricultural crops, and amends the definition to include further clarification. The commission notes that in the phrase “producing and processing crops subsequent to their harvest,” “subsequent to their harvest” directly refers to processing, not producing, and therefore does not eliminate irrigation. However, the commission modifies this phrasing to eliminate confusion.

Question 4

Joint TDUs commented that the proposed definition does not readily lend itself to a narrow interpretation and that there is some probability that customers that should be included will be excluded, and those that should be excluded will be included. Joint TDUs stated that the proposed definition sets the framework for excessive complaints from customers that believe they should qualify, or still qualify.

TCGA commented that all four customer groups that it proposed for inclusion should be included and that it was not aware of any other groups that should be included. It stated that Mr. Donald Moncreif of AEP originally identified the issue, and in his testimony in PUC Docket 22352, he noted the need for seasonal agricultural customers to be billed based on their monthly maximum kW, because of their highly seasonal usage pattern. TCGA stated that to the best of their knowledge, Mr. Moncreif's testimony was the basis for this treatment, and that he also determined that cotton gin and irrigation customers would be the two groups that would originally meet this definition. TCGA stated that it represents the cotton gin group of customers, and that it provided testimony on the effect of the ratchet on the cotton gin class that resulted in the original definition of seasonal agricultural customer. In their original testimony, TCGA stated that it used test year data received from the utilities. Based on the projected costs at that time, TCGA stated that without a ratchet provision, total wires charges would cost an average of \$0.0371/kWh for WTU customers and \$0.0274/kWh for CP&L customers, and the distribution only rate would cost \$0.0289/kWh for WTU and \$0.0133/kWh for CP&L. Using the same data and assumptions, the distribution only rates with the ratchet in place would cost the gin customers \$0.0988/kWh for WTU and \$0.0573/kWh for CP&L. Total wires costs with the ratchet were projected at \$0.1081/kWh for WTU and \$0.0716/kWh for CP&L. At that time, it was assumed that the transmission charges would not be ratcheted. TCGA stated that if it were to substitute the actual distribution charges today, the ratcheted distribution-only charges would cost the cotton gin customers \$0.1141/kWh for WTU and \$0.0684/kWh for CP&L. TCGA stated that the need for seasonal agricultural treatment was well established for cotton gins

during the original case, and that it is apparent that costs have increased significantly since that time.

TGFA stated that “seasonal” and “agricultural” are two key words in the definition adopted by the commission in 2001. If the retail customer is engaged in agricultural activities that are performed during various times during the year, rather than year-round, the customer should be eligible for the exemption, and the rule needs to be flexible enough to allow for the different types of customers that fall within these parameters. TGFA stated that the proposed definition does not include customers that should be excluded and does not exclude customers that should be included. However, in comments on the definition itself, TGFA recommended that rice and grain storing be amended to include drying as well.

TXU Energy stated that the definition excludes certain segments of customers with similar seasonal load characteristics, such as ball-field lighting premises, from the same benefits offered to agricultural premises. TXU Energy stated that these premises do not qualify as seasonal agricultural customers under the current or proposed definition and there is no seasonal definition for other seasonal usage customers in Chapter One of the Pro-Forma Retail Delivery Tariff. Therefore, a premise with similar usage characteristics is being treated differently solely on the basis of customer type rather than usage characteristics. TXU Energy stated that for both customer types, any initial costs to the customer for service are derived from the particular TDSP’s line extension policies, and that even though any applicable contribution in aid of construction is applied similarly to each customer type upon initiation of service, a seasonal agricultural customer receives preferential treatment in how the TDSP bills the customer’s REP

for demand. TXU Energy requested that ball-field lighting premises and other seasonal use customers that exhibit similar characteristics to that of seasonal agricultural customers be included in the definition, or that the designation be changed to seasonal use customer.

Joint TDUs responded that expanding the qualifying customer base to include non-agricultural “seasonal” use retail customers is beyond the scope and purpose of this project, and therefore must be rejected. They also took exception to TXU Energy’s statement that seasonal agricultural customers receive preferential treatment. Joint TDUs stated that each TDU’s billing is based on their respective commission-approved tariffs, and that the commission has broad discretion to ascertain when a rate is unduly preferential. Joint TDUs added that it is ironic that TXU Energy’s recommendation would expand the granted preference which it implicitly criticized.

TGFA agreed that ball-field lighting premises share some of the seasonal characteristics of seasonal agricultural customers; however, the rule amendment is limited to alleviating the inconsistencies in the application of the commission order which exempted seasonal agricultural customers. TGFA stated it would not oppose the addition of ball-field lighting customers if they could be added without another round of publication, notice, and comment, as well as without unreasonable delay. Otherwise, TGFA recommended that the commission initiate a new rulemaking for seasonal recreational customers at a later time.

Commission response

The decision to exempt seasonal agricultural customers from the demand ratchet provision was made during a contested proceeding in Docket Number 22344. The purpose of this

proceeding is to clarify the customers to which that exemption applies. It is outside of the scope of this proceeding to expand the exemption to customers not contemplated in the contested proceeding. Therefore, the commission declines to amend the definition to include ball-field lighting as requested by TXU Energy in this proceeding. As previously indicated by the commission at the Open Meeting on June 22, 2007, the commission may address the broader issue of the application of demand ratchets to other customers in a separate proceeding.

The commission agrees with TCGA and TGFA that the applicable parties have been included in this definition, with the exception of rice and grain drying. The commission responds to the comments of the Joint TDUs in response to their more specific recommendation of a new definition in the section immediately below.

PUC SUBST. R. 25.214(d)(1) Chapter 1 - Definitions

Joint TDUs proposed an alternate definition, which they stated would provide a clearer understanding of the qualification requirements to ensure a consistent and uniform application of the 80% demand ratchet waiver for seasonal agricultural customers. Additionally, Joint TDUs stated that it would create a more clear understanding for customers and would require less administrative oversight once a customer meets the qualifications and is granted the waiver. The Joint TDUs' alternate definition was as follows:

RETAIL SEASONAL AGRICULTURAL CUSTOMER. Grain handling/storage customers, cotton gins, grain dryers, and irrigation customers whose electric load is primarily engaged in the production and processing of agricultural crops, including preparing or storing them for market, and whose electric load is subject to variations. In addition to the end-use criteria stated above, an account must

have significant seasonal variation to qualify as a “Retail Seasonal Agricultural Customer”. For purposes of this definition, significant seasonal variation means that the customer’s maximum monthly demand (kW or kVA) in eight months of a calendar year must be at least 75% less than the annual high monthly demand for the same calendar year. To be qualified as an irrigation customer, the pumping load must be for water that is used to raise agricultural crops, and does not include turf farms, golf courses, or watering systems for ornamental plants.

In reply comments, TCGA stated that the Joint TDUs’ proposed definition was generally acceptable to TCGA, with one exception. TCGA stated that in their original comments, it discussed the potential problems that would result from the inclusion of a specific time limit on the number of months a seasonal customer could reach peak usage to be considered seasonal. TCGA stated that the definition proposed by the Joint TDUs would produce the problematic results discussed in TCGA’s original comments.

In reply comments, TGFA stated that the Joint TDUs’ proposal, with the limitations of a 75% demand variance and a four month period for higher demand, completely ignores the facts that crop production and, therefore, crop processing, does vary by type of crop and geographical location. TGFA stated that to suggest that weather in Texas can be predicted is preposterous. Weather, type of crop, and growing seasons are all factors that customers deal with on an annual basis, and the limitations proposed by Joint TDUs would prevent many customers from obtaining the exemption which Order Number 40 in Docket 22344 (Order 40) authorized, without making such distinctions. TGFA commented that the Joint TDUs’ proposed definition would increase administrative difficulties and customer confusion, and would not eliminate the discriminatory situation that exists today. For example, if unexpected rain occurs, requiring the harvest to extend beyond the four month period, there would be questions as to whether the

customer would lose the exemption, and when or if a customer that lost an exemption might regain the exemption. TGFA stated that it is not reasonable to leave such decisions to each TDU's selective tariff interpretation.

TGFA requested that the definition proposed by the commission include rice and grain drying in addition to storing rice and grain.

Commission response

The commission agrees with the Joint TDUs' recommendation in regards to referring to demand rather than consumption, and adding specificity regarding irrigation. However, for the reasons pointed out by TCGA and TGFA, the commission disagrees that it is appropriate to specify the number of months of the year that the customer must be at a certain level of demand, or the percentage below the peak demand that the customer must be at for those months.

The commission agrees with TGFA that it is appropriate to include rice and grain drying in addition to storing rice and grain, and amends the definition accordingly.

General Comments

Joint TDUs stated that there appears to be a misconception that there is no cost impact resulting from a definition that is likely to grant additional exceptions from the charges related to the 80% ratchet requirements of the standard tariff schedules. The Joint TDUs commented that each TDU's cost of service tariff and resulting tariff schedule pricing is based on the revenue impacts

associated with the respective TDU's current application of the retail seasonal agricultural customer exemption, and that the adoption of a consistent application of the exemption will have fiscal impacts on both the TDUs and the newly affected customers. Some customers currently enjoying the discount afforded by the respective TDU's application of the exemption will lose that benefit while other customers that do not currently receive the discount will begin to receive it. Joint TDUs stated that the implementation of the proposed tariff provision that will allow some customers to bypass certain charges that have already been considered in a cost of service study will create a revenue shortfall in the TDU's next general rate case. Other customers will also be affected, and once consideration has been given in a TDU general rate case to the calculation of the pricing of the billing determinants for the affected rate classes, the revenue requirements avoided by the waiver to seasonal agricultural customers will be reallocated to other customers. Joint TDUs stated that careful consideration should be taken to ensure that the benefits granted by the new definition to a small subset of customers is considered fair and appropriate by those customers that will be paying the additional revenue requirements. Therefore, the Joint TDUs recommended that any new definition of a "Retail Seasonal Agricultural Customer" be implemented at the time of each TDU's next general rate case so that the TDU can account for the change in billing determinants.

TGFA disagreed with the Joint TDUs' claims regarding cost and stated that the Staff is well aware of the potential cost of the rule amendment to the Joint TDUs, and that in Order 40 at 1 and 5, the commission concluded that a uniform customer classification scheme is appropriate for the purpose of standardizing transmission and distribution rates in Texas and in furtherance of the principles of cost causation, simplicity, and equity to customers within the given rate

classes. TGFA stated that the inconsistent and random application of the exemption from the billing ratchet for retail seasonal agricultural customers has resulted in a failure by the TDUs to comply with the commission's order and forced customers to pay amounts in excess of what the commission intended. Additionally, in Order 40, the commission ordered the Joint TDUs to design their rates to reflect the exemption in the order.

In reply comments Joint TDUs added that all things being equal, implementing additional exemptions before a general rate case has the effect of diminishing the utility's ability to earn its allowed rate of return.

TGFA disagreed that the changes should not be made until each TDU's next rate case. TGFA stated that this is not a new issue, as it was discussed and decided seven years ago in Docket 22344. TGFA emphasized the following language, from page 8 of the order: "the design for each customer class that includes seasonal agricultural customers shall contain a provision for the recovery of distribution charges without the use of a demand ratchet for those customers." TGFA stated that this portion of the order required the rates to be designed to recover the cost shift from other customers within the classes where the agricultural customers were exempted, and that the commission does not need to wait until each TDU's next rate case. TGFA claimed that retail seasonal agricultural customers have over-paid long enough, and the cost of denying this exemption has been unjustly borne by customers engaged in the agriculture industry for the past five years.

Commission response

The decision for a retail seasonal agricultural customer to receive an exemption to the demand ratchet was made in Docket Number 22344. The addition of a definition pursuant to this rulemaking does not change that decision. Instead, this rulemaking clarifies the decision by providing a definition of retail seasonal agricultural customer. Any effect on a TDU's overall rate of return that results from applying this definition should be small. In addition, a TDU has the right to seek a rate change if it is not earning a reasonable rate of return. Waiting until a TDU's next general rate case to implement the definition could mean that implementation of the definition is delayed for years, which would unacceptably frustrate the goal of this rulemaking to have TDUs apply a uniform definition. Consequently, each TDU shall file a compliance tariff incorporating the new language within 30 days of the effective date of this rulemaking amendment. Upon notification from a customer's REP that a customer's premise qualifies for the exemption, the TDU shall apply the exemption to the billings for the applicable premises and shall apply the exemption on a prospective basis as contemplated in Tariff Section 4.3.6. To the extent that a TDU is notified or discovers that a customer's premise is no longer eligible under the new definition, the TDU shall make any changes to that premises billing as contemplated in Tariff Section 4.3.6.

Joint TDUs also commented that "as evidenced by the four questions presented by Staff, the proposed definition might not meet the desired objectives of consistent and uniform application." TGFA responded that the Staff was asking questions to make sure that the definition meets the test of being fair and applicable between reasonable parties in most situations.

TCGA stated that the proposed published definition is reasonable as written. TCGA stated that the purpose of the original seasonal agricultural customer definition was to allow the seasonal agricultural customers to participate in the open market, and that the original concern was if wires rates were set at an excessive level, there would be no headroom for the customer to purchase energy. The existing definition has worked well for the cotton gin and irrigation customers, and removing either of these from the definition would have severe adverse effects to these customers. TCGA stated that rice and grain dryers do exhibit the same characteristics as the cotton gin and irrigation customer groups, and as such should be added to the uniform definition.

Joint TDUs responded to TCGA and stated that they generally agreed with their general comments, but that some of their comments in response to questions were too narrowly focused on the effect to cotton farmers. Joint TDUs agreed with TCGA that the original concern for the ratchet exemption was that if wires rates were set at an excessive level, there would simply be no “headroom” for the REPs to purchase energy. Joint TDUs stated that any other interpretation and customer exemption without the showing of negative headroom and seasonal usage by an agricultural customer would have been outside of the scope of the original exemption from the distribution demand ratchet.

TGFA stated that it fully supported the commission’s rule proposal, and commented that it is necessitated by the inconsistencies that have arisen from the lack of a definition of a retail seasonal agricultural customer in the tariffs of the electric utilities in the Electric Reliability Council of Texas. TGFA stated that the definition is necessary to ensure the uniform application

of the seasonal agricultural exemption from the 80% billing demand ratchet, which was ordered in the commission's final orders in the unbundling dockets that established the transmission and distribution rates and tariffs prior to market restructuring. TGFA provided language which it stated was from Order 40, which provided an explanation as to why the commission created the exemption for seasonal agricultural customers. TGFA stated that while each of the TDU's tariffs contains provisions for the exception, without a definition in the generic tariffs and substantive rules, there is no consistency. The benefits to be gained by implementation would be the elimination of inconsistencies to ensure that all of the retail customers who have been eligible for this exemption since the commission's decision in 2001 will be able to take advantage of the exemption. TGFA claimed that the omission of a definition in the Pro-Forma Retail Delivery Tariff has led to discriminatory treatment of retail seasonal agricultural customers based simply on the location of their facilities and has resulted in some customers being charged amounts in excess of the authorized tariff for service, and has failed to ensure uniform rates between TDUs in accordance with Order 40. TGFA stated that the cost of denying this exemption has been unjustly borne by customers engaged in the agriculture industry for the past seven years and that the cost to correct the omission is negligible to any party. TGFA also stated that the lack of uniformity has resulted in seasonal agricultural customers overpaying the distribution charges authorized in the TDU's tariffs and paying higher rates in the competitive market than they would have paid under the pre-restructuring bundled rates or the Price-to-Beat.

Joint TDUs replied that it is incorrect to assume that any eligible customers have been denied the demand ratchet waiver and have been overbilled by TDUs since unbundling. Joint TDUs stated that all customers that have met the qualifications of each TDU's applicable, long-standing and

consistent application of the waiver for seasonal agricultural customers have enjoyed that benefit. The possible adoption of a new state-wide definition to expand the set of customers eligible to receive this benefit in the future in no way implies that historical over-billing has occurred. Joint TDUs commented that new rules and new rates can only be applicable on a prospective basis. Joint TDUs also stated that contrary to certain assertions, PURA never guaranteed that a seasonal agricultural customer, or any other retail customer, would receive a lower bill in the competitive market than in the bundled market other than the protection provided to Price-to-Beat customers.

Joint TDUs disagreed with TGFA's assertion that the commission intended that application of the exemption to be consistent across all TDUs, and stated that this does not appear to be the intent since the commission did not establish a definition at the time. Instead, the determination was left to the TDUs and provided the opportunity for any interested party to demonstrate that it would be harmed without the exemption. Joint TDUs stated that TGFA has misinterpreted the criteria on which the commission based its original exemption from the ratchet as ensuring a guarantee that competitive total bills would be less than previous bundled bills, and that with the exception of the Price-to-Beat, no such guarantee was provided through Order 40. Joint TDUs stated that only TGFA has disputed the consistent application, based on its desire for all TDUs to apply the waiver identically.

Joint TDUs disagreed with TGFA's allegation that the TDUs have been engaged in discrimination on this matter. The future adoption of a definition that includes a larger sub-set of customers does not constitute discrimination in the past for those customers that are just now

included in the new definition. Joint TDUs stated that in the generic Unbundled Cost of Service (UCOS) case, the commission considered whether seasonal agricultural customers were entitled to an exemption from the ratchet, and the information for the exemption for other customer classes was to be provided in the individual UCOS compliance cases. In the generic UCOS case, TCGA provided examples of the negative headroom that would be experienced by cotton gin customers if the ratchet was applied. Negative headroom was considered a situation in which the transmission and distribution bill would be greater than the Price-to-Beat, which was considered to be a barrier to competition. Joint TDUs stated that in the cases of TCC and TNC, the exemption was also based on the existence of a specific seasonal agricultural bundled rate and whether that customer class experienced negative headroom as calculated in the UCOS cases. For TCC and TNC, only cotton gin and irrigation retail customers met the exemption criteria.

Joint TDUs questioned TGFA's assertion that the cost to correct the omission is negligible to any party. Joint TDUs stated that if the costs are negligible, then its membership is presumably not being burdened unreasonably. Joint TDUs claimed that it is cavalier for TGFA to argue for expansion of the exemption and concurrently assume that no one else will be adversely affected by having demand costs reallocated to the other customers in the same rate class.

Commission response

The general comments above have been considered in the commission's responses to each of the specific comments, and the corresponding revisions to the rule.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (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 adopts this rule pursuant to PURA §36.001, which grants the commission the authority to adopt rules for determining the classification of customers and the applicability of rates; 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, 36.001, 39.203, and 32.101.

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

(a) – (c) (No change.)

(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 February 15, 2008.

Figure: 16 TAC §25.214(d)(1)

**TARIFF
FOR
RETAIL DELIVERY SERVICE**

(Company Name)

TABLE OF CONTENTS (No change.)**CHAPTER 1: DEFINITIONS**

The following definitions apply to Company's Tariff for Delivery Service, including the service rules and regulations, policies, Rate Schedules and Riders, and to any Service Agreements made pursuant to the Tariff, unless specifically defined otherwise therein.

ACTUAL METER READING. A Meter Reading whereby Company has collected information from the Meter either manually or through a direct reading, through telemetry, or other electronic communications.

AFFILIATED RETAIL ELECTRIC PROVIDER. A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

APPLICABLE LEGAL AUTHORITIES. A Texas or federal law, rule, regulation, or applicable ruling of the Commission or any other regulatory authority having jurisdiction, an order of a court of competent jurisdiction, or a rule, regulation, applicable ruling, procedure, protocol, guide or guideline the Independent Organization, or any entity authorized by the Independent Organization to perform registration or settlement functions.

BANKING HOLIDAY. Any day on which the bank designated by Company as the repository for payment of funds due to Company under this Tariff is not open for business.

BILLING DEMAND. Demand used for billing purposes as stated in the applicable Rate Schedule or Rider.

BILLING DETERMINANTS. Measured, calculated, or specified values used to determine Company's Delivery Charges that can be transmitted to the CR on an approved TX SET electronic transaction. These values may include, but are not limited to, measurements of kilowatt-hours (kWh), actual monthly Non-Coincident Peak (NCP) Demand, annual NCP Demand, annual 4-CP Demand (coincident peak for four summer months), Billing Demand, Power Factor, fixed charges, number of lamps, Rate Schedules, and rate subclass.

BUSINESS DAY. Any day on which Company's corporate offices are open for business.

CENTRAL PREVAILING TIME, CPT. As established by national time standards, either Central Standard Time or Central Day-Light time.

CODES. Federal, state, or local laws, or other rules or regulations governing electrical installations.

COMMISSION, PUC, or PUCT. The Public Utility Commission of Texas.

COMPANY. The transmission and distribution utility providing Delivery Service pursuant to this Tariff, and its respective officers, agents, employees, successors, and assigns.

COMPANY'S DELIVERY SYSTEM. The portion of the Delivery System that is owned by Company.

COMPETITIVE RETAILER (CR). A Retail Electric Provider, or a Municipally Owned Utility, or an Electric Cooperative that offers customer choice in the restructured competitive electric power market or any other entity authorized to provide Electric Power and Energy in Texas. For purposes of this Tariff, a Municipally Owned Utility or an Electric Cooperative is only considered a Competitive Retailer where it sells retail Electric Power and Energy outside its certified service territory.

CONSTRUCTION SERVICE. Services related to the construction, extension, installation, modification, repair, upgrade, conversion, relocation, or removal of Delivery System facilities, including temporary facilities.

CONSTRUCTION SERVICE CHARGE. Commission authorized charges to recover costs associated with Construction Services.

DELIVERY. The movement of Electric Power and Energy through Company's electric lines and other equipment, including transformers, from the Point of Supply to the Point of Delivery.

DELIVERY CHARGES. Commission authorized rates and charges for the use of Company's Delivery System. Delivery Charges comprise Delivery System Charges and Discretionary Charges.

DELIVERY SERVICE. The service performed by Company pursuant to this Tariff for the Delivery of Electric Power and Energy. Delivery Service comprises Delivery System Services and Discretionary Services.

DELIVERY SERVICE AGREEMENT. The standard, pro-forma document set forth in this Tariff in which Company and Competitive Retailer agree to be bound by the terms and conditions of Company's Tariff.

DELIVERY SYSTEM. The electric lines, and other equipment, including transformers, owned by Company and the Meters, including Non-Company Owned Meters, used in the Delivery of Electric Power and Energy.

DELIVERY SYSTEM CHARGES. Commission authorized charges to recover costs associated with Delivery System Services.

DELIVERY SYSTEM SERVICES. Delivery Services whose costs are attributed to all Retail Customers that receive Delivery Service from Company and charged to Competitive Retailers serving Retail Customers under the Rate Schedules specified in Section 6.1.1, DELIVERY SYSTEM CHARGES. Delivery System Services are all Tariffed Delivery Services provided by Company that are not specifically defined as Discretionary Services.

DEMAND. The rate at which electric energy is used at any instant or averaged over any designated period of time and which is measured in kW or kVA.

DISCRETIONARY CHARGES. Commission authorized charges to recover costs associated with Discretionary Services.

DISCRETIONARY SERVICES. Customer-specific services for which costs are recovered through separately priced Rate Schedules specified in Chapter 6.

ELECTRIC COOPERATIVE. An electric cooperative as defined in PURA §11.003(9).

ELECTRIC POWER AND ENERGY. The kWh, the rate of Delivery of kWh, and ancillary services related to kWh that a Competitive Retailer provides to Retail Customers.

ELECTRIC SERVICE IDENTIFIER or ESI ID. The basic identifier assigned to each Point of Delivery used in the registration system and settlement system managed by ERCOT or another Independent Organization.

ERCOT. The Electric Reliability Council of Texas, Inc.

ESTIMATED METER READING. The process by which Billing Determinants are estimated when an Actual Meter Reading is not obtained.

FACILITY EXTENSION POLICY. The Company policy that covers such activities as extensions of standard facilities, extensions of non-standard facilities, extensions of facilities in excess of facilities normally provided for the requested type of Delivery Service, upgrades of facilities, electric connections for temporary services, and relocation of facilities.

FACILITY EXTENSION AGREEMENT. The Service Agreement pursuant to this Tariff that must be executed by Company and the entity (either a Retail Customer or Retail Electric Provider) requesting certain Construction Services before Company can provide such Construction Services to the requesting entity.

GOOD UTILITY PRACTICE. This term will have the meaning ascribed thereto in P.U.C. SUBST. R. 25.5, Definitions, or its successor.

INDEPENDENT ORGANIZATION or IO. The organization authorized to perform the functions prescribed by PURA §39.151.

KILOVOLT AMPERES or kVA. 1000 Volt-Amperes.

KILOWATT or kW. 1000 Watts.

KILOWATT-HOUR or kWh. 1000 Watt-hours.

LOAD FACTOR. The ratio, usually stated as a percentage, of actual kWh used during a designated time period to the maximum kW of Demand times the number of hours occurring in the designated time period.

METER or BILLING METER. A device, or devices for measuring the amount of Electric Power and Energy delivered to a particular location for Company billing, CR billing and as required by ERCOT. Meters for residential Retail Customers shall be Company owned unless otherwise determined by the Commission. Commercial and industrial Retail Customers required by the Independent Organization to have an IDR Meter may choose a Meter Owner in accordance with P.U.C. SUBST. R. 25.311, Competitive Metering Services and other Applicable Legal Authorities.

METER DATA. All data contained within the Meter.

METER OWNER. Entity authorized by the Retail Customer to own the Meter. Entity could be Retail Customer, Competitive Retailer, or other entity designated by the Retail Customer as permitted by Applicable Legal Authorities. If the Retail Customer is not eligible for competitive metering or does not choose to participate in competitive metering the Meter Owner shall be Company.

METER READING. The process whereby Company collects the information recorded by Meter. Such reading may be obtained manually, through telemetry or other electronic communications, or by estimation, calculation or conversion in accordance with the procedures and practices authorized under this Tariff.

METER READING SCHEDULE. No later than December 15 of each calendar year, Company shall post its schedule for reading each meter on its website so that Competitive Retailers and Retail Customers may access it. Company shall notify Competitive Retailer of any changes to this schedule 60 days prior to the proposed change. Company is responsible for reading the Meter within two Business Days of the date posted in this schedule.

METERING EQUIPMENT. Required auxiliary equipment that is owned by Company and used with the billing meter to accurately measure the amount of Electric Power and Energy delivered. Metering equipment under this definition does not include communication, storage, and equipment necessary for customer access to data.

MUNICIPALLY OWNED UTILITY. A utility owned, operated, and controlled by a municipality or by a nonprofit corporation, the directors of which are appointed by one or more municipalities, as defined in PURA §11.003(11).

NON-COMPANY OWNED METER. A Meter on the ERCOT-approved competitive Meter list that is owned by an entity other than the Company. Unless otherwise expressly provided herein, a Non-Company Owned Meter shall be treated under this Tariff as if it were a Meter owned by the Company.

POINT OF DELIVERY. The point at which Electric Power and Energy leaves the Delivery System.

POINT OF SUPPLY. The point at which Electric Power and Energy enters the Delivery System.

POWER FACTOR. The ratio of real power, measured in kW, to apparent power, measured in kVA, for any given load and time, generally expressed as a percentage.

PREMISES. A tract of land or real estate or related commonly used tracts, including buildings and other appurtenances thereon.

PROVIDER OF LAST RESORT (POLR). A REP certified in Texas that has been designated by the Commission to provide a basic, standard retail service package to requesting or default customers.

PURA. Public Utility Regulatory Act, TEXAS UTILITIES CODE ANNOTATED.

RATE SCHEDULE. A statement of the method of determining charges for Delivery Service, including the conditions under which such charges and method apply. As used in this Tariff, the term Rate Schedule includes all applicable Riders.

REGISTRATION AGENT. Entity designated by the Commission to administer settlement and Premises data and other processes concerning a Retail Customer's choice of Competitive Retailer in the competitive retail electric market in Texas.

RETAIL CUSTOMER. An end-use customer who purchases Electric Power and Energy and ultimately consumes it. Whenever used in the context of Construction Services, the term Retail Customer also includes property owners, builders, developers, contractors, governmental entities, or any other organization, entity, or individual that is not a Competitive Retailer making a request for such services to the Company.

RETAIL CUSTOMER'S ELECTRICAL INSTALLATION. All conductors, equipment, or apparatus of any kind on Retail Customer's side of the Point of Delivery, except the Meter and Metering Equipment, used by or on behalf of Retail Customer in taking and consuming Electric Power and Energy delivered by Company.

RETAIL CUSTOMER'S ELECTRICAL LOAD. The power and energy required by all motors and other electricity-consuming devices located on Retail Customer's Premises that are operated simultaneously using Electric Power and Energy delivered by Company.

RETAIL ELECTRIC PROVIDER or REP. As defined in PURA §31.002(17), a person, certificated pursuant to PURA §39.352, that sells Electric Power and Energy to Retail Customers.

RETAIL SEASONAL AGRICULTURAL CUSTOMER. A customer whose Demand is subject to significant seasonal variation and that is primarily engaged in producing crops or processing crops subsequent to their harvest to prepare or store them for market or other processing, including, but not limited, to cotton ginning, irrigation, and the drying or storing of rice and grain. To be qualified as an irrigation customer under this definition, the pumping load must be for water that is used to raise agricultural crops.

RIDER. An attachment to a Rate Schedule that defines additional service options, pricing, conditions, and limitations for that class of service.

SCHEDULED METER READ DATE. Date Company is scheduled to read the Meter according to the Meter Reading Schedule.

SERVICE AGREEMENT. Any Commission-approved agreement between Company and a Retail Customer or between Company and a Competitive Retailer, which sets forth certain information, terms, obligations and/or conditions of Delivery Service pursuant to the provisions of this Tariff.

SERVICE CALL. The dispatch of a Company representative to a Delivery Service address or other designated location for investigation of a complete or partial service outage, irregularity, interruption or other service related issue.

SWITCHING FEE. Any fee or charge assessed to any Retail Customer or Competitive Retailer upon switching the Competitive Retailer that does not relate to recovering any utility cost or expenses already included in Commission-approved Delivery Charges included in Chapter 6 of this Tariff.

TAMPER or TAMPERING. Any unauthorized alteration, manipulation, change, modification, or diversion of the Delivery System, including Meter and Metering Equipment, that could adversely affect the integrity of billing data or the Company's ability to collect the data needed for billing or settlement. Tampering includes, but is not limited to, harming or defacing Company facilities, physically or electronically disorienting the Meter, attaching objects to the Meter, inserting objects into the Meter, altering billing and settlement data or other electrical or mechanical means of altering Delivery Service.

TARIFF. The document filed with, and approved by, the PUC pursuant to which Company provides Delivery Service. It is comprised of Rate Schedules, Riders, and service rules and regulations. The service rules and regulations include definitions, terms and conditions, policies, and Service Agreements.

TEXAS SET, TX SET or SET. A Standard Electronic Transaction as defined by the protocols adopted by the Commission or the Independent Organization.

TRANSITION CHARGES or TC. Charges established pursuant to a financing order issued by the Commission.

VALID INVOICE. An invoice transaction that contains all the information required by TX SET and is in compliance with TX SET standards as set forth in the TX SET Implementation Guides and Commission rules, and have not been rejected in accordance with the TX SET Implementation Guides and Commission Rules.

CHAPTER 2 – CHAPTER 6 (No change.)

This agency hereby certifies that the adoption has 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 §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 20__.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE CARUTHERS PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER