

their outflows to electric utilities and retail electric providers who in turn will be able to benefit from the purchase of this generation in connection with the settlement of energy and capacity purchased and sold in the wholesale market. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the new and amended sections. Therefore, no regulatory flexibility analysis is required. There are some anticipated economic costs to owners of distributed renewable generation, electric utilities, and REP, but the costs are difficult to quantify and are required by PURA §39.914 and §39.916.

Mr. Smithson 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 (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, August 5, 2008, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

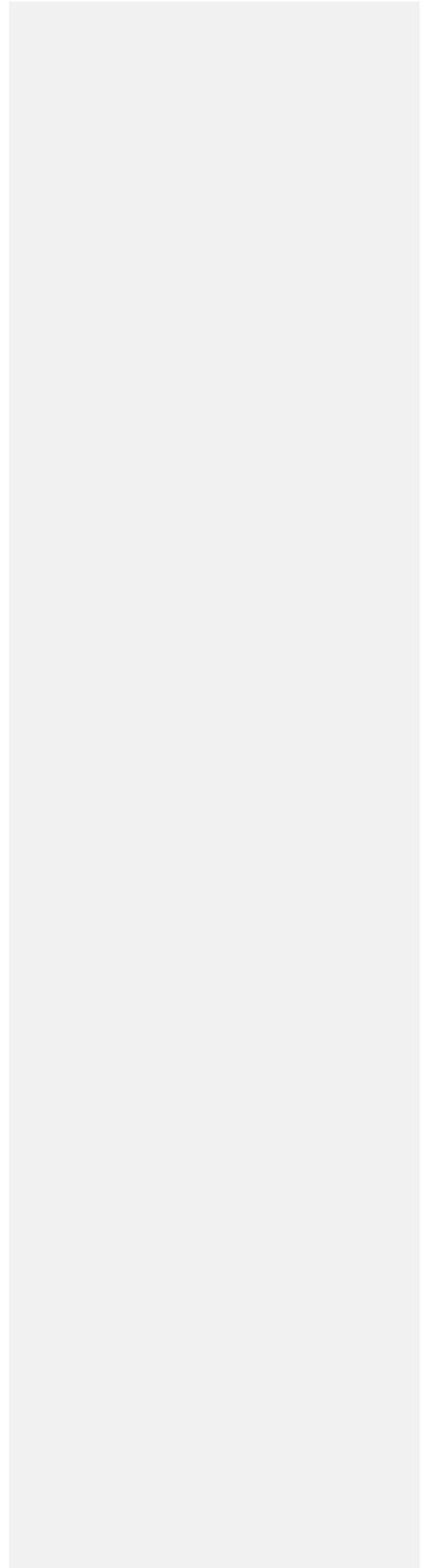
In addition to comments on the proposed sections, the commission requests interested persons to file comments in response to the following question:

Should existing qualifying facilities operating under P.U.C. Subst. R. §25.242(h)(4) in areas of the state in which customer choice has not been introduced be allowed to continue to do so?

Comments on the proposed sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Sixteen copies of comments on the proposed sections are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed sections. 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 proposed sections. All comments should refer to Project Number 34890.

The new and amended sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 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, and, in particular, PURA §38.002, which authorizes the commission to adopt standards relating to measurement, quality of service, and metering standards, PURA §39.101(b)(3), which provides the commission the authority to adopt and enforce rules relating to customers' right of access to on-site distributed generation, PURA §39.914, which provides for the sale of out-flows produced by a public school building's solar electric generation panels, and PURA §39.916, which directs the commission to establish standards for distributed renewable generation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 38.002, 39.101, 39.914, and 39.916.



§25.217. Distributed Renewable Generation.

(a) **Application.** This section applies to owners of distributed renewable generation, retail electric providers (REPs), the program administrator for the renewable energy credits trading program pursuant to §25.173 of this title (relating to Goal for Renewable Energy), and electric utilities, including transmission and distribution utilities (TDUs), but excludes river authorities that are electric utilities.

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

(1) **Distributed renewable generation (DRG)** – An electric generation facility with a capacity of not more than 2,000 kilowatts provided by a renewable energy technology, as defined by Public Utility Regulatory Act §39.904(d), installed on a retail electric customer’s side of the meter.

(2) **Distributed renewable generation owner (DRGO)** – A person who owns DRG.

(3) **Independent school district solar generation (ISD-SG)** – Solar electric generation equipment installed on the customer’s side of the meter at a building or other facility owned or operated by an independent school district, irrespective of the level of generation capacity.

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(4) **Independent school district solar generation owner (ISD-SG Owner)** – A person who owns ISD-SG.

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(5) **Interconnection** – The physical connection of DRG or ISD-SG to an electric utility distribution system in accordance with this section and §25.211 of this title

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(relating to Interconnection of On-Site Distributed Generation (DG)), §25.212 of

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this title (relating to Technical Requirements for Interconnection and Parallel

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Operation of On-Site Distributed Generation) and §25.213 of this title (relating to Metering for Distributed Renewable Generation).

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(6) Out-flow – Energy produced by DRG or ISD-SG and delivered to an electric utility distribution system.

(c) Interconnection.

(1) An electric utility shall permit interconnection of DRG or ISD-SG if:

(A) the DRG to be interconnected has at least five years remaining on a warranty against breakdown or undue degradation;

(B) the rated capacity of the DRG or ISD-SG does not exceed the electric utility's service capacity; and

(C) the DRG or ISD-SG is in compliance with applicable requirements of §25.211 and §25.212 of this title.

(2) An electric utility may disconnect a DRG or ISD-SG pursuant to §25.211(e) of this title.

(3) An electric utility shall not require a DRGO or ISD-SG Owner whose generation capacity is below 2,000 kilowatts and whose DRG or ISD-SG meets the standards established by this section to purchase an amount, type, or classification of liability insurance the DRGO or ISD-SG Owner would not have in the absence of the DRG or ISD-SG.

(4) An existing or prospective DRGO or ISD-SG Owner may request interconnection by submitting an application for interconnection with the electric utility. The application shall be on a form approved by the commission and processed by the electric utility in accordance with §25.211 and §25.212 of this title.

(5) Metering is addressed by §25.213 of this title and, for certain qualifying facilities, by §25.242(h)(4)(C) of this title (relating to Arrangements Between Qualifying Facilities and Electric Utilities).

(d) **Renewable Energy Credits (RECs).** Any RECs or compliance premiums resulting from the operation of DRG or ISD-SG are the property of the DRGO or ISD-SG Owner unless sold or otherwise transferred by the DRGO or ISD-SG Owner. The REC program administrator shall award the RECs or compliance premiums to the DRGO or ISD-SG Owner pursuant to §25.173 of this title. The purchase of out-flows does not automatically confer any rights of REC ownership on the purchaser.

(e) **Registration.** DRGOs and ISD-SG Owners acting pursuant to this section are exempt from registration pursuant to §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators), but are subject to the certification requirements in §25.173 of this title to be eligible to receive RECs.

(f) **Sale of out-flows by an ISD-SG Owner.**

(1) In areas of the state in which customer choice has not been introduced, the electric utility serving the load of an ISD-SG Owner shall buy all ISD-SG out-flows at a value consistent with §25.242 of this title.

(2) In areas in which customer choice has been introduced, ISD-SG Owners shall sell out-flows to the REP that serves the facility at which the ISD-SG is located, at a price to which both parties agree.

(3) If a REP's service to an ISD-SG Owner is terminated, any outstanding amounts due to the ISD-SG Owner shall be remitted by the REP no later than 30 days after

the REP receives the usage data and any related invoices for non-bypassable charges.

(g) Sale of out-flows by a DRGO.

(1) In areas in which customer choice has not been introduced, the electric utility serving the DRGO's load shall buy all DRG out-flows at a value consistent with the requirements of §25.242 of this title.

(2) In areas in which customer choice has been introduced, DRGOs who choose to sell out-flows shall sell the out-flows to the REP that serves the load of the DRGO at a price to which both parties agree.

(3) If a REP's service to a DRGO is terminated, any outstanding amounts due to the DRGO shall be remitted by the REP no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges.

(h) Transition provision. Electric utilities and REPs shall make reasonable efforts to inform existing and potential DRGOs and ISD-SG Owners of their rights and obligations pursuant to this chapter.

(i) For purposes of this section, the DRGO or ISD-SG Owner is assumed to be the retail customer; provided however, if any other person is the DRGO or ISD-SG Owner and purports to act on behalf of the retail customer pursuant to this section or §§25.211, 25.212 or 25.213 of this title, such person must demonstrate contractual authority to do so by letter of agency or otherwise.

§25.242. Arrangements Between Qualifying Facilities and Electric Utilities.

- (a) (No change.)
- (b) **Application.** This section ~~applies~~shall apply to all PTB REPs, and to all electric utilities, including transmission and distribution utilities (TDUs), and electric utilities in Texas. The provisions of this section concerning purchase or sale of electricity between an electric utility and a qualifying facility do not apply to a transmission and distribution utility. This section ~~does~~shall not apply to municipal utilities, river authorities, or electric cooperatives.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) – (2) (No change.)
- (3) **Cost of decremental energy** — The cost savings to a utility associated with the utility's ability to back-down some of its units or to avoid firing units, or to avoid purchases of power from another source~~utility~~ because of purchases of power from qualifying facilities.
- (4) – (18) (No change.)
- (d) – (e) (No change.)
- (f) **PTB REP and electric utility obligations.**
- (1) – (2) (No change.)
- (3) ~~**Interconnection**~~Obligation to interconnect. Interconnection by a qualifying facility is addressed by ~~The obligation of electric utilities and TDUs to interconnect with qualifying facilities is set forth in~~ Subchapter I, Division 1, of

this chapter (relating to Transmission and Distribution) ~~if the interconnection is to a transmission system and bywith respect to qualifying facilities seeking to interconnect with TDUs in the ERCOT, and in the respective electric utility's Open Access Transmission Tariff for electric utilities in non-ERCOT power regions §25.211 of this title (relating to Interconnection of On-site Distributed Generation) if the interconnection is to a distribution system, except if the interconnection is regulated by the Federal Energy Regulatory Commission.~~

(4) **Transmission to other electric utilities.** Transmission service provided by an electric utility in the ERCOT power region to a qualifying facility shall be governed by Subchapter I of this chapter.

(5) (No change.)

(g) (No change.)

(h) **Standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.**

(1) – (3) (No change.)

(4) In addition, each electric utility shall offer qualifying facilities using renewable resources with an aggregate design capacity of 50 kilowatts or less the option of interconnecting through a single meter that runs forward and backward.

(A) - (B) (No change.)

(C) This option is not available for applications for interconnection received by the electric utility after December 31, 2008.

(5) – (6) (No change.)

- (7) Except for qualifying facilities subject to §25.217 of this title (relating to Distributed Renewable Generation) requirements for the provision of insurance under this subsection shall be of a type commonly available from insurance carriers in the region of the state where the customer is located and for the classification to which the customer would belong in the absence of the qualifying facility. An enhancement to a standard homeowner's or farm and ranch owner's policy containing adequate liability coverage and having the effect of adding the electric utility as an additional insured or named insured is one means of satisfying the requirements of this paragraph. Such policies shall in each instance be on a form approved or promulgated by the Texas Department of Insurance and issued by a property or casualty insurer licensed to do business in the State of Texas.

(i) – (k) (No change.)

~~(1) **Interconnection costs.** The establishment and reimbursement of interconnection costs are set forth in Subchapter I of this chapter with respect to qualifying facilities seeking to interconnect with TDUs in ERCOT, and in the respective electric utility's Open Access Transmission Tariff for electric utilities in non-ERCOT power regions.~~

~~(1)(m)~~ **System emergencies.**

- (1) **Qualifying facility obligation to provide power during system emergencies.**

A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

- (A) provided by agreement between such qualifying facility and electric utility; or

(B) ordered under the Federal Power Act, §202(c).

(2) **Discontinuance of purchases and sales during system emergencies.** During any system emergency, an electric utility may discontinue:

(A) purchases from a qualifying facility if such purchases would contribute to such emergency; and

(B) sales to a qualifying facility, provided that such discontinuance is on a nondiscriminatory basis.

(m)(#) Enforcement. A proceeding to resolve a dispute between an electric utility, PTB REP and a qualifying facility arising under this section may be instituted by filing of a petition with the commission. Electric utilities, PTB REPs, and qualifying facilities are encouraged to engage in alternative dispute resolution prior to the filing of a complaint.

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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 6th DAY OF JUNE 2008 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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