

PROJECT NO. 26359

RULEMAKING TO ADDRESS § PUBLIC UTILITY COMMISSION
COMPETITIVE METERING § OF TEXAS

ORDER ADOPTING NEW §25.311
AS APPROVED AT THE MAY 22, 2003 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.311, relating to Competitive Metering Services with changes to the proposed text as published in the January 31, 2003 issue of the *Texas Register* (28 TexReg 814). The new rule establishes the parameters under which competitive metering services will be available to commercial and industrial customers beginning on January 1, 2004, as required by Public Utility Regulatory Act (PURA) §39.107(a), in areas where customer choice has been introduced. New §25.311 is the first section to be adopted in new Subchapter M, Competitive Metering. The new rule does not, however, excuse a utility from complying with the commission's existing metering rules in Subchapter F, Metering. This new section is adopted under Project Number 26359.

The commission's goal of implementing the terms of PURA §39.107(a) to permit the competitive market to deliver all metering services must be construed in a manner consistent with the implementation of the broader transition to a competitive retail electric market. Based upon the experience of the transition to competition among retail electric providers, it is clear that the operational systems required to support full implementation of competitive metering services cannot be designed, implemented, and adequately tested in the months remaining before January 1, 2004. Therefore, the proposed definition of metering services must be accompanied by an orderly timeline that anticipates the development of the competitive market for the

delivery of all metering services based upon reasonable assumptions of the time required to develop the necessary underlying market structure and associated operational support systems.

New §25.311(e) specifically addresses this transition period, requiring the transmission and distribution utility to: (1) serve as the default meter owner, and (2) continue providing metering services other than ownership until the commission determines that the operational support systems in the market are adequate to allow full customer choice in metering services. To facilitate the commission's determination, new §25.311(e) also requires status reports on operational readiness, allows for public comment on those reports, and allows the commission to establish a pilot project for competitive metering services.

A public hearing on the proposed section was held at commission offices on March 20, 2003 at 9:30 a.m. Representatives from American Electric Power (AEP); Automated Energy (AEI); Brownsville Public Utilities Board (BPUB); CenterPoint Energy Houston Electric (CenterPoint); Clark, Thomas, and Winters; Competitive Assets; Good Company Associates (Good Company); the Electric Reliability Council of Texas (ERCOT); Entergy Gulf States, Inc. (EGSI); Oncor Electric Delivery Company (Oncor); Reliant Resources, Inc. (RRI); Texas New Mexico Power Company (TNMP); and TXU Energy Retail Company (TXU) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new section from AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, AEP); Appliance-Lab, LLC (App-Lab); AEI; CenterPoint; Automated Utilities, EC Power, Fowler Energy, Retail Energy Aggregators of Texas, Texas Energy Associations Cooperative, Utility Choice Electric, and Viterra Energy Services (collectively Certain Retail Market Companies or CRMC); the City of Austin d/b/a Austin Energy; City Public Service Board of San Antonio (CPS); EGSI; ERCOT; Good Company on behalf of the Texas Advanced Metering Coalition (TAMC); Green Mountain Energy Company (GMEC); National Energy Marketers Association (NEMA); the Office of Public Utility Counsel (OPC); Oncor; RRI; the State of Texas (State); Texas Apartment Association (TAA); Texas Association of Electrical Workers (TAEW); Texas Meter & Device Company (TMD); and TXU.

In the proposed rule, the commission requested comments on the following issues.

1. *Should the commission include a definition of "industrial" and "commercial" customers eligible for competitive metering services? If so, should the definition look to the type of premise receiving service, the distribution tariff under which the customer takes service, or to something else?*

ERCOT, OPC, and EGSI stated that such a clarification would be helpful. Oncor, TXU, AEP, and CenterPoint stated that the rule should clearly identify that eligible customers are those that do not receive electric service under a residential tariff. Oncor suggested, and AEP supported,

language to reflect this recommendation. RRI recommended that the definitions of large and small non-residential customers found in §25.43 of this title (relating to Provider of Last Resort (POLR)) be incorporated by reference into proposed subsection (a) and suggested this section apply to small non-residential customers as defined in §25.43(c)(10) when deemed appropriate by the commission. CenterPoint suggested adding a definition for a "commercial/industrial customer" as a customer that is not classified as a residential customer in §25.41(c)(10) of this title (relating to Price to Beat). CRMC recommended that the rule "define commercial and industrial as those uses other than those that are exclusively residential, and also include those that have historically been served under a commercial or industrial tariff." GMEC stated that it did not believe definitions of commercial and industrial were necessary. NEMA stated that the definitions should be clarified in a manner that would permit the largest number of customers to participate in competitive metering. TMD stated that the commission should not set a threshold restricting eligibility for competitive metering. RRI suggested that the rule language be revised to refer to non-residential customers as defined in §25.43(c)(4).

The commission agrees with the commenters that proposed commercial and industrial customers be defined as all customers other than those receiving transmission and distribution service under a residential tariff. This distinction is consistent with customer groupings (i.e., classes) that have already been determined by the commission to be appropriate for transmission and distribution service. Further, because the delineation is based on existing rate design, it will facilitate the calculation of the competitive metering service credit and any REP-designed rates based on use of a competitive meter. Finally, the commission notes that the tariff-based definition is the most

inclusive interpretation of PURA §39.107, allowing the greatest number of customers to participate in competitive metering. The commission amends the rule accordingly. With respect to the size differentiation suggested by RRI, the commission finds that no authority exists in PURA to allow the commission to delay the implementation of competitive metering for any non-residential customers.

EGSI disagreed with TAMC's statement that interval-data recorder (IDR) meters should be required for all customers with over 50 kW in peak demand, stating that not only would it be expensive, but extensive system changes would be required by ERCOT and the transmission and distribution utilities (TDUs).

The commission finds that the issue of mandating IDR meters for particular customers is outside the scope of this rulemaking.

2. *How should the rule treat mixed-use premises, such as separately-metered apartments and other premises that are usually occupied by residential customers, even though the electric service is occasionally taken by a commercial customer (e.g., the landlord)?*

TAA stated that it is impractical for individual residents of multifamily housing to contract separately for metering services, because a resident may only live at a particular location for a short period of time. However, TAA asserted, allowing competitive metering services such as

automated meter reading (AMR), regardless of whether a property is individually-metered or master-metered, would benefit both property owners and tenants.

OPC stated that classifying a premise that is occupied by a residential customer as eligible for competitive metering would violate PURA §39.107(b). Oncor, TXU, and AEP stated, and RRI agreed, that if eligibility for competitive metering is determined by a customer's tariff, then this question becomes moot, because a customer can take service under only one tariff. RRI stated that the customer's contract with a REP, e.g., the presence of a continuous service agreement (CSA), should govern the treatment of mixed-use premises. EGSI stated that the treatment of mixed-use premises should be determined by "the reasonably intended and ongoing purpose of the premise and the associated meter." CenterPoint stated that premise type (e.g., apartment), rather than the name of the registered customer (landlord vs. tenant), is the determining factor. CRMC, GMEC, NEMA, and TMD stated that any premise that has a component of commercial or industrial use should be permitted to participate in competitive metering under the proposed rule. ERCOT recommended treating mixed-use premises as a separate classification in order to minimize the complexity of registration system requirements. In reply, Oncor stated that established practices of classifying premises as residential, commercial, or industrial should also be applied in the case of mixed-use premises for competitive metering.

Having established that eligibility for competitive metering is determined by a customer's distribution tariff, the commission finds that this question is now moot, because a customer can take service under only one tariff.

3. *What types of customers may be included in a pilot program?*

CRMC, GMEC, NEMA, and TMD stated that all customers should be eligible to participate in a pilot program, while Oncor and TXU suggested that participation should be open to any *non-residential* customer. RRI proposed that the pilot project initially be restricted to large non-residential customers, followed at some later date by smaller non-residential customers. App-Lab asserted that customers with IDR meters should be included in a pilot project. In response to TAA's statement that multifamily residential customers should be eligible for the pilot project, CenterPoint and RRI stated that inclusion of residential customers is inappropriate and impermissible under PURA §39.107(b).

AEP and CenterPoint asserted that the types of customers to be eligible for the pilot project depend on the purpose of the pilot. EGSI commented that the pilot project does not apply to EGSI. ERCOT stated that mixed-use premises should be either specifically included, or specifically excluded from pilot project participation.

The commission finds that it is premature to restrict the type of customers that may participate in a pilot project in this rule. The commission would entertain a pilot project proposal involving service to any type of customer. However, a proposal that seeks to include residential customers should address the concerns raised by commenters regarding PURA §39.107(b), and should

specify the authority under which the commission may establish a pilot project for competitive metering that includes residential customers.

§25.311(a), Purpose

CPS disputed whether PURA §39.107 is applicable to municipally owned utilities and electric cooperatives, because PURA §40.053(b) clearly states that "notwithstanding §39.107," metering may not be deemed a competitive function and may continue to be offered by the municipally owned utility as the sole provider. CPS offered clarifying language to be included in the preamble to the rule and suggested the eligibility be restricted to customers of investor-owned transmission and distribution utilities in subsection (a) of the proposed rule.

The commission agrees with CPS and amends the rule accordingly.

EGSI suggested that for areas where customer choice is introduced after January 1, 2002, metering should not become a competitive service until two years after the introduction of customer choice. This would give these areas the proper amount of time to implement customer switches before adding another activity. EGSI also asserted that both the Legislature and the commission have recognized that a transition period is advantageous for many activities, competitive metering being one such activity, in developing a well-functioning market. TXU responded that while it may be appropriate to delay the introduction of competitive metering for

some time after the introduction of customer choice, this should not be based on a mandated period or a strict deadline.

The commission agrees with TXU, and adds language to address EGSI's concern, while maintaining flexibility for the commission to implement the rule in a way that is responsive to changing market conditions.

§25.311(b), Definitions

Oncor stated that the definition of "data management" under paragraph (1) could be interpreted to require immediate changes to the ERCOT settlement system to support the transfer of data to the TDUs and the REPs. Oncor recommended that the rule contain a more general reference to entities specified in the ERCOT protocols. According to Oncor, this would allow the transmittal of data to be consistent with the way the market evolves to support competitive metering. Similarly, ERCOT suggested that the definition be modified to include the transactions required to support the current market structure, as prescribed in the ERCOT Protocols. ERCOT offered revised language to that effect.

The commission agrees with the clarifications suggested by Oncor and ERCOT, and revises the rule accordingly.

App-Lab suggested that programming of the meter should be an activity under "data management," and that the customer should be included as a recipient of meter reading data. In addition, App-Lab suggested that the definition should also include any programs or services selected by the customer. EGSI objected to App-Lab's proposal, stating that adding programming to the definition would blur the distinction between data management as a back-end service from programming, which is a front-end service. Instead, EGSI agreed with Oncor that this function should remain with the TDU.

The proposed rule seeks to implement customer choice for ownership of meters, and to clarify that the customer owns its metering data. The data management services that App-Lab proposes are not presently governed by the commission's rules. The commission therefore finds that the programming of unregulated data management services is beyond the scope of this rulemaking. The commission does, however, recognize that programming may have an impact on the customer's ability to access and retrieve data in a usable format. This issue should, however, be addressed in the appropriate Competitive Metering Working Group at ERCOT.

AEP suggested that data collection be included in the definition of data management because of the strong functional relationship between data collection and management. With respect to proposed §25.311(b)(4), definition of "metering services," AEP stated that data collection should be deleted from the definition because it is more appropriately included in the definition of "data management."

The commission disagrees with AEP and notes that the intent of the rule is to separate data collection—a regulated TDU service—from data management at this stage of competitive metering implementation.

Oncor stated that §25.311 applies only to meters used for settlement and billing purposes, and is not applicable to any meters installed on the customer's side of the settlement and billing meter. Oncor suggested that the language in proposed §25.311(b)(3) and (4), and §25.311(e) be clarified by specifying that such meters are "settlement and TDU billing" meters.

The commission agrees with Oncor's clarification, and adopts the proposed revisions.

NEMA suggested that reading and transmission of pulse outputs via the Internet be added to the list of activities included in metering services.

The commission disagrees with NEMA's suggestion because reading and transmission of pulse outputs by the customer or the customer's agent are already addressed by §25.129 of this title (relating to Pulse Metering). If a customer chooses to have the agent provide services via the Internet, nothing in §25.129 or §25.311 as proposed precludes the customer from employing an agent to do anything the customer itself is authorized to do.

Several commenters offered additional terms to be added to subsection (b), Definitions. EGSI suggested adding a definition for "energy theft" to address the unauthorized use of electricity by

the customer, including the TDU's authority to disconnect service without prior notice, pursuant §25.29(c)(4) of this title (relating to Disconnection of Service).

The commission disagrees that the term energy theft should be added to this section because, as cited by EGSI, §25.29 addresses energy theft.

CenterPoint suggested adding a definition for "meter transformers," such as current transformers and potential transformers, in order to clarify that the ownership and responsibility of such equipment remains with the TDU. EGSI agreed with CenterPoint, but suggested that the definition be clarified that for locations where instrument-metering is required, only the meter itself is subject to competition, and transformers remain with the TDU.

The commission disagrees that a definition of "meter transformers" would improve the rule, because no such term is used within the rule. Project Number 27244, *Rulemaking to Amend P.U.C. SUBST. R. 25.214 and Pro-Forma Retail Delivery Tariff*, may be an appropriate forum for the commission to more fully explore the issue raised by CenterPoint and EGSI.

GMEC and NEMA suggested adding a definition for "meter reading." Although GMEC recognized the importance of data integrity for the purpose of settlement, GMEC argued that the rule should not preclude the possibility of competitively outsourcing this function. GMEC suggested that the market participants be tasked with evaluating whether meter data integrity can be ensured when and if meter reading for settlement and billing is provided competitively.

Oncor responded that adding a definition for "meter reading" is unnecessary, for it is part of "data collection," and would, therefore, only result in confusion. EGSI stated that GMEC's proposal was overbroad and premature given the state of competitive metering in Texas.

The commission agrees with Oncor. The commission also finds that GMEC's suggestions are appropriate topics for discussion in the implementation of competitive metering, but are beyond the scope of this rulemaking, which establishes competitive ownership of meters, but is not intended to specifically address "when and if" meter reading is to be provided competitively.

§25.311(c), Meter ownership

The State supported the proposed rule's emphasis on voluntary choice of ownership, stating that the use of advanced metering in many cases is not needed or justified, particularly for non-metered, flat rate accounts. EGSI voiced agreement with the State's position.

App-Lab suggested deleting the REP as a potential meter owner. According to App-Lab, REPs should be precluded from owning the meters to prevent them from having an unfair advantage over other REPs trying to enter the market and thus limiting competition. In reply comments, RRI and TXU opposed App-Lab's suggestion. TXU responded that App-Lab's comments regarding REP participation in the competitive metering market are without basis and should be disregarded, in that REPs already provide a number of services that are also provided by independent, third-party providers. It is up to the customer whether to procure these services

from the REP or another provider. TXU also disagreed with App-Lab's assertion that REP meter ownership would create a barrier to the ability of customers to switch providers. Similarly, RRI stated that it is counter-intuitive to argue that in order to promote competition, the number of market participants must be restricted, or that REP participation would somehow increase the cost for customers. In addition, RRI argues that App-Lab's suggestion would violate PURA §39.001(c) because it would allow discrimination against a particular market participant. Austin Energy, on the other hand, stated that the rule should not preclude municipally owned utilities from owning meters outside their certificated retail service area, and municipally owned utilities should, therefore, be added to the list of potential meter owners. TMD requested that meter service providers also be specifically added to the list as potential meter owners, particularly as meter service providers would probably be the predominant party to own the meters.

For the reasons stated by TXU and RRI, the commission agrees that a REP should not be precluded from becoming a meter owner. The commission also declines to make any additions to the list of potential meter owners, because the language "another person authorized by the customer" is adequate to address the scenarios described by Austin Energy and TMD.

AEP stated that the meter owner should comply with the TDU's tariffed Terms and Conditions for Retail Access and the ERCOT Protocols, and offered revised language to that effect.

While the commission agrees that a meter owner is required to comply with the terms of those documents, it is not necessary to reiterate that obligation in this rule. Rather, the pro-forma tariff

and ERCOT protocols should be revised to address the new market structure that includes a meter owner as a market participant.

§25.311(d), Data ownership

The State, TAMC, and TMD each stated that they strongly support the right for retail customers to own and control access to their usage data. TAMC suggested that the rule should specifically emphasize the customer's right to access the meter directly to ensure timely access to data. Oncor, TAMC, and TMD stated that such access should be on a read-only basis. EGSI, in reply comments, stated that meter programming passwords that provide access to settlement and billing parameters should remain the responsibility of the TDU.

While the commission agrees that the customer has a right to timely access its data, the issue of what constitutes "timely" has not been fully developed in this rulemaking, primarily because it is a topic more properly addressed in revisions to the pro forma transmission and distribution tariff, to be undertaken in Project Number 27244. In the instant rulemaking, the commission has sought to establish a market structure under which the ownership of a meter, followed at a later time by other metering services, will become competitive. Specific implementation of this new market—such as timeliness, read-only capabilities, and passwords—warrants further development in Project Number 27244.

EGSI suggested that the rule should specify that a customer owns its meter data regardless of whether the meter owner is the customer or a third party.

The commission agrees with EGSI's clarification and adopts the proposed revision.

AEI suggested that the customer should not only be able to assign access to meter data, but should be able to access and assign access to both the meter and the meter data. AEI offered revised language.

The commission finds that AEI's proposed changes are unnecessary, because the concept of access to the meter and meter data by the customer itself is implicit in the rule language as proposed. Further, the rule does not preclude the customer from employing an agent to do anything the customer itself is authorized to do.

With regard to giving the customer exclusive rights to the data, AEP stated that the current wording may be interpreted to mean that the TDU does not have the right to access the customer's meter unless the TDU has express permission from the customer, even if it is data for the purpose of billing and settlement. AEP suggested moving subsection (i), Use of meter data for billing, to clarify that the TDU does have the right to access the meter to collect the data necessary to render a bill and perform load research. CenterPoint also stated that the language should be clarified to emphasize the TDU's right to access the data and transmit it to appropriate market participants. In addition, AEP stated that this provision may preclude the utility from

rendering such services as testing and calibrating. AEP offered additional language that would ensure TDU access to the data and permit it to secure the data against alteration by the customer.

The commission disagrees with the commenters that their suggestions improve the clarity of the rule, and declines to adopt the proposed changes. It is clear from the proposed rule that the TDU has the right to access the meter data for billing purposes and has the right to take measures to ensure the integrity of the meter data.

§25.311(e), Transition period

TAEW indicated its support of the proposed rule, provided that proposed subsection (e)(4) remained in the rule, due to safety concerns. Under current industry practice and the rule as proposed, TAEW stated, a "worker who installs or tests a meter knows that all others who have preceded him or her in working on the equipment received the requisite training and have the requisite experience to do the job safely." CenterPoint agreed.

GMEC recommended that the rule establish a deadline of January 1, 2004 for completion of the activities in subsection (e) and that the commission re-visit the provisions of subsection (e) on or before June 1, 2004. AEP disagreed that specific deadlines are appropriate, stating that parties may focus on achieving the deadlines, rather than fully developing an effective market. EGSI also disagreed with GMEC, citing a general consensus in the market that the necessary development and testing for competitive metering cannot be accomplished by January 1, 2004.

The commission agrees that specific deadlines are not appropriate for inclusion in this rule. However, as evidenced by the reporting requirements of subsection (e), the commission intends to evaluate the on-going activities in the development of competitive metering in both frequent (quarterly) and in-depth (annual) reviews.

GMEC also suggested that the issues addressed by market participants include "competitive sourcing of meter reading services."

The commission agrees that this is an appropriate topic for discussion in the implementation of competitive metering, but given the scope of this rule declines to include specific directives in this rule.

A general concern was expressed among the commenters that costs incurred to implement a pilot project should be carefully weighed to ensure that such costs did not exceed the benefits of a pilot.

The commission shares this concern, and will require a cost-benefit discussion, at minimum, if no quantitative data is available, in any pilot project proposal approved under this rule. The commission has added language to the rule to clarify its expectations for the content of a pilot project proposal.

RRI recommended language limiting the pilot to 5.0% of large non-residential electric service identifiers (ESIs).

The commission disagrees that a specific participation limit should be included in this rule. Instead, the commission prefers to retain flexibility in the design of a pilot project to ensure that the costs do not exceed the benefits.

App-Lab proposed language that would allow a TDU, a REP, or ERCOT to establish a commission-approved pilot project. EGSI stated that App-Lab's recommendation is outside the scope of this rulemaking.

The commission agrees with EGSI that establishment of a detailed pilot project procedure is beyond the scope of this rule. The commission also notes that it is not clear what App-Lab means by allowing a TDU, REP, or ERCOT to "establish a commission-approved pilot project." However, if App-Lab intends to limit the types of market participants that may propose a pilot project for approval, the commission disagrees that such a limitation is appropriate. The commission would entertain a proposal from a REP, TDU, or any entity that is designated as a potential meter owner under the rule, including a trade association or other group of customers. The commission does not agree that the role of ERCOT, as the registration agent, includes advocacy of a particular pilot project proposal. ERCOT should instead serve as a resource to facilitate the commission's evaluation of a proposal.

GMEC recommended that the rule specifically authorize a REP operating a residential direct load control (DLC) or balancing up load (BUL) program to participate in a pilot project. Oncor replied that GMEC's recommendation was unnecessary because DLC is only "tangentially related to competitive metering."

The commission agrees that GMEC's recommendation is outside the scope of this rulemaking. While competitive metering is important to the implementation of DLC and BUL programs, the commission does not seek to prescribe specific pilot project participants or parameters in this rule.

TAMC stated that the language in proposed subsection (e)(2) could be construed to authorize only a single pilot project for competitive metering.

While the commission disagrees with TAMC that the language as proposed is limiting, the commission has amended the rule to explicitly allow for one or more pilot projects. Ideally, the commission would like to establish multiple pilot projects.

§25.311(f), Metering equipment

Oncor proposed a clarification to subsection (f)(1) to require ERCOT market participants rather than ERCOT, to develop a process to establish and revise a list of qualifying competitive meters.

The commission expects that all interested parties will participate in the development of the qualified-meter list. However, it is ERCOT (and its market participant-led board) that is responsible for providing the resulting process and list to the commission. No change to the rule is necessary.

EGSI stated that the meters that the utility installs should not be restricted by the list developed by ERCOT.

The commission disagrees with EGSI. While some transition period may be appropriate to deplete stocks of meters that are not on the list, the commission can see no logical reason that a utility would deploy a meter that has not been placed on the qualified-meter list.

Oncor and CenterPoint recommended specifying in subsection (f)(1)(B) that each qualifying competitive meter must meet TDU specifications for quantities measured for billing purposes.

The commission agrees with the proposed clarifications, and amends the rule accordingly.

EGSI proposed that the TDU data collection system should be compatible with each meter on the list within 90 days of notification that a customer has selected the meter. In order to eliminate investments by TDUs and meter manufacturers to support meters that will not be requested in a TDU area, AEP and CenterPoint suggested that TDUs should acquire the necessary software, hardware and training only after a customer has actually ordered the first meter of that type in

that service territory. Since this issue is currently being addressed in the Competitive Metering Working Group at ERCOT, AEP proposed language to allow greater flexibility for market participants to resolve the issue of TDU compatibility. ECSI proposed a new subparagraph (D) to require the meter owner to be responsible for any costs the TDU incurs if the TDU does not have the capability to read that meter. CenterPoint and Oncor agreed that the meter owner should be responsible for providing the necessary hardware or software to access the meter data. Oncor added that neither the TDU nor its other customers should be forced to subsidize a meter-owner's choice of a meter that is not compliant with the TDU's system. AEP agreed that it should not be the TDU who is responsible for these costs but they suggested it should be the responsibility of the meter manufacturers to provide the necessary software, training and support to the TDU to read its meter.

The commission notes that these issues have not been fully developed in this rulemaking, and anticipates that they will be more completely explored in revisions to the pro forma transmission and distribution tariff, to be undertaken in Project Number 27244. As such, the commission declines to make the suggested revisions in this rule.

ECSI stated that the level of documentation under this proposed rule was unnecessary, and proposed deleting the requirement that the meter's unique identifier be derived from the ERCOT process for assigning unique identifiers.

The commission finds that insufficient evidence exists to require a unique meter identifier in this rule. However, this preliminary determination should not preclude a future such requirement from being instituted in the ERCOT protocols or a TDU tariff, should it become necessary to do so.

TXU proposed a new subsection (f)(3) to provide responsibilities for the installation and removal of non-TDU-owned billing and settlement meters. This proposed process would require the customer or the customer's REP to contact the TDU for installation or removal, would require the cost to be paid directly to the TDU by the requesting entity, would require the meter owner or meter owner's agent to provide the qualifying meter to the TDU and would require the TDU to safeguard the meter for 30 days or until the meter-owner takes possession of the meter. AEP agreed with TXU's proposal.

The commission agrees that issues addressed in TXU's proposed addition of subsection (f)(3)(A)-(D) would clarify the process to request installation or removal of a meter, and has added language that refers to the TDU's tariff for specific processes to request installation or removal of a meter. However, the issue raised by TXU's proposed subsection (f)(3)(E) is more appropriately explored in Project Number 27244; therefore, no change is being made to the proposed rule in response to that comment.

§25.311(g), *Conformance with metering standards*

Oncor proposed that this subsection cite specific commission-approved standards for accuracy. App-Lab suggested that subsection (g)(2) be modified to require meters to operate within an acceptable margin of error and operate as closely as practicable to the condition of zero error if the meter deviates from the acceptable margin of error.

The commission finds that the standards suggested by Oncor and App-Lab should be addressed in Project Number 27244.

EGSI stated that if a meter was removed due to inaccuracies, it should be replaced by a permanent not a temporary meter. Accordingly, EGSI proposed to delete "temporary meter" from the proposed rules. CenterPoint also proposed to delete "temporary meter" and allow for either a permanent replacement meter or calibration of the existing meter to commission-approved standards.

The commission agrees and amends the rule accordingly.

EGSI stated that the TDU must be afforded a mechanism to recover the costs it incurs for removing and testing the meter. EGSI proposed that the end user or REP be responsible for these charges. EGSI also suggested that the rule more clearly state that if the non-TDU-owned meter is found not to meet the standards for accuracy, then the TDU should remove the meter and install a replacement meter capable of recording the billing determinants for billing the customers load. The TDU should also inform the end-use customer and the REP.

The commission finds that the rule as proposed sufficiently addresses the issues raised by EGSI, and that further clarification is not necessary.

CenterPoint proposed to clarify that a replacement meter should not be required to be the same type of meter but only that it must be capable of providing the same units of measurement necessary for billing the TDU rates and for settlement purposes.

The commission agrees and amends the rule accordingly.

EGSI proposed a new subsection (g)(5) to establish a procedure for dealing with a non-TDU-owned meter that has been tampered with. Under the proposed procedure, if a meter has been found to be tampered with, the meter will be removed by the TDU and retained for investigation, and the TDU will replace the meter with a TDU-owned meter capable of recording the billing determinants. Finally, the TDU will notify the end-user or the REP of the replacement and the REP will be responsible for associated charges in accordance with the TDU tariff.

The commission notes that the situation described by EGSI is already addressed by subsection (g)(4). However, because §25.126 of this title (relating to Meter Tampering), refers to tampering with an electric utility's meter, the commission finds that it is appropriate to add similar language to subsection (b), to define meter tampering with respect to a non-utility-owned meter.

App-Lab also proposed a new subsection (g)(5) to require that if meter-ownership is transferred or sold, the selling party must certify that the meter meets commission-approved standards for accuracy and shall safeguard the meter until the new meter-owner takes possession of it.

The commission finds that App-Lab's suggestion is more appropriately addressed by the sales agreement between the two parties, and is beyond the scope of this rulemaking.

§25.311(h), Testing of meters

Oncor recommended the deletion of the phrase "at REP request" in the heading of subsection (h), because the subsection governs meter tests at the request of retail customers as well as TDU-initiated tests. Oncor asserted that in accordance with the provision of other similar discretionary services provided by TDUs, costs for meter tests should be paid by the customer's REP. Oncor also suggested that language be added to indicate that subsection (h) of the rule supercedes existing §25.124(c) in areas of competitive metering.

CenterPoint suggested that the commission amend §25.311(h)(3) to include language that provides a process for meter owners that are not a TDU, retail customer, or REP to have their meter tested. In reply comments, EGSI supported CenterPoint's position that a meter owner may also request a meter test.

The commission agrees with these suggestions and amends the rule accordingly.

EGSI suggested language to ensure that the TDU should retain flexibility regarding how to treat meter malfunctions. Under the proposed rule, a meter test would be required in every instance of a meter malfunction. EGSI asserted that a meter test should be performed only at the TDU's discretion.

As proposed, the rule requires that the TDU test the meter *in accordance with its tariff*. EGSI did not offer examples of circumstances where malfunction was suspected, but a test was not required. If such circumstances do exist, however, a TDU is free to propose a tariff that delineates the instances in which resolving the suspected malfunction without a meter test is appropriate. The commission finds that such standards should be set forth in the revisions to the pro forma tariff to be addressed in Project Number 27244.

CRMC recommended that the proposed rule restrict entities other than the meter owner from requesting frequent meter tests of a meter that is "suspected" of malfunctioning, but that has recently and/or repeatedly been tested and found to be accurate, unless adequate evidence is produced to demonstrate that it is likely that the meter is indeed malfunctioning. In reply comments, AEP stated that such language could place the TDU or commission in a position of determining whether there is "adequate evidence" to conduct a meter test. AEP also suggested that because the test requesters bear significant costs associated with conducting each meter test, it is difficult to imagine why a party would continually submit such a request and bear that cost.

The commission agrees with AEP and finds that no change to the proposed rule is required.

§25.311(i), Use of meter data for billing

Oncor recommended language changes to proposed §25.311(i) to ensure that TDUs remain responsible for the security of settlement data and the maintenance of passwords capable of altering billing parameters. Oncor's language changes also provide for the TDU to retain exclusive rights to the capability to alter meter data collected or the meter programming password for the purpose of billing. EGSI and AEP both agreed with Oncor's proposed language that the TDU is responsible for the security of data used for settlement and TDU billing.

The commission agrees and amends the rule accordingly.

EGSI proposed language to restrict customers from having the right or capability to alter billing determinants or the data collected by the meter for the purposes of billing or load research.

The commission disagrees with the language proposed by EGSI, but finds that further clarification would be helpful. Therefore, the commission adds language to subsection (i) that clarifies that any load research performed by the utility may not have the effect of limiting the type or frequency of data available to the customer.

§25.311(j), Competitive metering service credit

CenterPoint suggested rule language to allow the TDU to create metering discretionary service charges in its tariff.

The commission finds that the issue of discretionary service charges warrants further exploration, which will be undertaken in Project Number 27244.

EGSI proposed rule language to make clear that the credit is applicable only to the ownership of the meter.

The commission finds that the rule language as proposed is appropriate, in that it allows flexibility for future or pilot implementation of a credit for other metering services and declines to make the change suggested by EGSI.

Oncor recommended a language change to §25.311(j) to indicate that the metering service credit would be provided to the customer's REP, rather than to the customer directly. In reply comments, AEP agreed with Oncor's proposed language.

The commission agrees and amends the rule accordingly.

Parties generally supported the concept of requiring a TDU to provide a competitive metering service credit to customers who choose a meter owner other than the TDU. The State suggested

that it might be worthwhile to include in the rule some language clarifying that the amount of the credit should be commensurate with the amount attributable to meter costs, as such costs are embedded in current distribution tariffs. The State stated that a credit equal to the full, avoided cost should be refunded. NEMA recommended that the commission provide shopping credits to consumers equal to the fully allocated embedded costs of all metering services and related information technologies including ownership, installation, servicing of equipment, maintenance, testing, reading, data management, validation, editing, estimations, pulse output transmission via Internet, and billing. NEMA argued that allowing these broad shopping credits will encourage significant new private investments in advanced metering and information technologies and will drive prices down through bona-fide price competition for these services. In reply comments, AEP, EGSI, and Oncor generally disagreed with NEMA on this point. Oncor noted that NEMA'S recommendation regarding the metering credit would potentially result in other customers of a TDU subsidizing a customer who selects a competitive meter provider. Specifically, a TDU's cost to provide metering service to a particular customer is the incremental cost for serving an additional customer. If a TDU is required to provide a competitive metering credit based on the fully allocated embedded cost of providing metering services, that amount will be greater than the TDU's incremental cost for serving the customer. As a result, the TDU's existing customers would subsidize the competitive customer for the difference between the incremental cost to serve the competitive customer and the amount of the metering credit. Along similar lines, OPC believed the proposed rule should set parameters that ensure the credit is equal to the amount paid by the commercial or industrial customer in their TDU rates to avoid

forcing ratepayers who retain the TDU as the meter owner from subsidizing the customer leaving the TDU.

The commission agrees with OPC and commenters that suggest that incremental cost is an appropriate starting point for calculations of a metering services credit, because it represents a balance between the interests of the customers that select a competitive meter with the interests of the customers that do not. Further, the commission has clarified its expectation that the tariff filing must be accompanied by explanatory workpapers.

TAMC suggested that subsection (j) should have the primary goal of producing fair credits for competitive meter ownership, while at the same time allowing the commission to take a deeper look into existing TDU metering costs of service. TAMC noted that an analysis of TDU metering charges may identify areas where competition can achieve its desired result of reducing inefficiencies, but may also identify other areas where the value of the TDUs' current and future role in metering services may be underestimated. Further, TAMC suggested that Shedding light on metering tariffs will permit stakeholders to better understand the costs behind the TDUs' responsibilities in providing reliable and accurate metering services, thus improving the likelihood that the decisions made in developing future competitive metering rules will be grounded in economic reality. In reply comments, EGSI and CenterPoint disagreed with TAMC that this proceeding is the place to gain the underlying data of the TDU's metering tariffs, and pointed out that the tariff process is the correct forum for review of the appropriate costs to be credited to customers using competitive metering. As in all tariff proceedings, the commission

and interested persons will have the opportunity to review the associated costs and supporting data to determine whether the credit is appropriate.

The commission agrees with TAMC that the primary goal of the tariff proceeding is to produce fair credits for meter ownership; however it disagrees that the tariff proceeding will allow a "deeper look" at metering costs in order to reduce "inefficiencies." While the commission agrees that analysis of metering costs with a goal of reducing inefficiency is a worthwhile endeavor, the commission finds that the tariff proceeding required by subsection (j) is not the appropriate forum for such detailed research and analysis.

App-Lab submitted a red-lined version of the proposed rule, absent any narrative justification for its proposed changes. Certain of App-Lab's comments that pertain specifically to the proposed rule have been discussed above. The remaining proposed changes submitted by App-Lab represent a fundamental change from the market structure set forth by the commission in its proposed rule. App-Lab suggested adding a definition for "metering" and a definition for "metering data services." In addition, App-Lab argued that REPs should be precluded from offering metering and meter data services because they would have an unfair advantage over other third-party service providers trying to enter the market. EGSI objected to App-Lab's proposal to add a definition for "metering," because the wording "including physical connection to the power transmission lines" would make transformers subject to the competitive market. AEP objected to App-Lab's proposal, stating that including "meter data services" in the rule would require 1) changes in TDU's data communication networks to allow third-party access, 2)

the development of an approved list of communication devices, 3) certification of meter data service providers, and 4) the development of additional ERCOT protocols. According to AEP this could not be accomplished prior to the January 1, 2004 deadline. EGSI agreed with AEP, stating that App-Lab's definition is overly broad and would result in an unwarranted expansion of the scope of this rule.

App-Lab also suggested adding communication protocols and meter programs as the means by which a customer may access the data, and that the customer be able to access the data using common Internet interfaces. In addition, App-Lab offered language that would preclude ERCOT, the TDU, the REP, or the meter data service provider from selling or sharing customer data without the customer's consent. Security of the customer's data and data management would be the responsibility of the meter data service provider. Consistent with EGSI's response to App-Lab's comments regarding the definition of "data management" under §25.311(b)(1), EGSI disagreed with App-Lab in this respect as well.

App-Lab further suggested language authorizing a meter service provider to provide metering data services including meter programming, data collection, data transmission, and data management. EGSI disagreed with the inclusion of these activities in the definitions.

App-Lab suggested adding two new subparagraphs, (D) and (E), to subsection (f)(1). App-Lab proposed that the TDU be required to share meter programs with any meter data service provider

(MDSP) that is selected to provide data communications to the meter, and to allow the MDSP free access to meter networks such as existing wireless or powerline carrier systems.

App-Lab also proposed a new subsection (f)(2) to require ERCOT to develop a process to qualify meter communication devices. AEP commented that this should not be considered as it would require changes that can not be fully resolved by January 1, 2004.

App-Lab proposed language to allow a commission-approved meter service provider to have the right to alter meter programs and adjust data collected by the meter for billing or services purposes. App-Lab also added language to state that the TDU has the right to review and approve all adjustments to the metering program of a customer to ensure non-interference with grid operations and settlement billing.

App-Lab proposed language in subsection (h)(4) to require the TDU to notify the retail customer and the meter service provider in addition to the REP about the date of removal of the meter, the date of the test, the result of the test, and who made the test. In reply comments, EGSi opposed App-Lab's proposed language and stated that the customer and the REP should be the only entities who contact the TDU.

App-Lab proposed adding language to require the TDU to review meter programs to ensure compatibility and operation with the transmission line and ERCOT rewired functionality.

EGSI opposed App-Lab's proposed language because it is overreaching. Under App-Lab's proposal, the meter service provider would be able to adjust the data and thereby affect the integrity of this data. EGSI suggested that such a proposal would not foster confidence in the meter data for billing, settlement, or any other purpose.

Finally, App-Lab proposed language to allow a customer to select a commission approved meter service provider other than the TDU.

The commission observes that App-Lab's recommended changes are not truly comments on the commission's proposed rule, but are instead intended to create a market structure not contemplated by the proposed rule. While the commission would have welcomed such input earlier in the rulemaking process, it is not procedurally appropriate to make such fundamental changes at this time. The commission also concludes that it is unlikely that the changes proposed by App-Lab could be implemented in a schedule consistent with the introduction of competitive metering by January 1, 2004.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA) which provides the commission with the

authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.107, which requires that metering services to commercial and industrial customers be provided on a competitive basis beginning January 1, 2004.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.107.

§25.311. Competitive Metering Services.

- (a) **Purpose.** This section establishes the terms and conditions for competitive metering services to be offered to commercial and industrial customers served by an investor-owned transmission and distribution utility (TDU) beginning on January 1, 2004, as required by Public Utility Regulatory Act (PURA) §39.107(a), in areas where customer choice has been introduced. In areas where customer choice has been delayed, this section shall establish terms and conditions for competitive metering services to begin on a date determined by the commission, following the introduction of customer choice.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.
- (1) **Commercial and industrial customers** — Those customers that do not receive electric service under a residential distribution tariff.
 - (2) **Data management** — Includes validation, estimation, editing, extraction of billing components, support of retail transactions described in the Electric Reliability Council of Texas (ERCOT) protocols, and transfer of meter reading data to the settlement agent and other approved entities specified by the ERCOT protocols.
 - (3) **Maintenance** — Activities necessary to maintain a meter in proper working order, including failure investigation, equipment repair, and replacement.

- (4) **Meter owner** — Entity that owns the settlement and TDU billing meter that is used for the measurement of electric energy delivered to a particular location.
 - (5) **Metering services** — Activities relating to the measurement, for the purpose of settlement and TDU billing, of electricity provided to a retail customer, including, but not limited to ownership, installation and removal, maintenance, testing and calibration, data collection, and data management.
 - (6) **Meter tampering** — In areas where competitive metering has been introduced, meter tampering, bypass, or diversion is defined as tampering with a settlement and TDU billing meter or equipment, bypassing the same, or other instances of diversion, such as physically disorienting the meter; attaching objects to the meter to divert or bypass service; inserting objects into the meter; and other electrical and mechanical means of tampering with, bypassing, or diverting electrical service.
 - (7) **Testing** — Activities as defined in §25.124 of this title (relating to Meter Testing).
- (c) **Meter ownership.** Beginning January 1, 2004, a commercial or industrial retail customer may choose a meter owner. The meter owner may be, at the option of the retail customer:
- (1) the retail customer;
 - (2) a retail electric provider (REP);
 - (3) the TDU; or

- (4) other person authorized by the customer.
- (d) **Data ownership.** The current retail customer shall own all meter data related to the premise occupied by that customer, regardless of whether the meter owner is the customer, the owner of the premise, or a third party. To the extent that data integrity is not compromised, the current retail customer shall have the right to physical access to the meter to obtain such meter data when technically feasible. The current retail customer shall have the right and capability, including necessary security passwords, to assign access to meter data related to the premise occupied by that customer.
- (e) **Transition period.**
- (1) **Market readiness.**
- (A) ERCOT shall file with the commission quarterly updates on the operational readiness of support systems necessary for the commission to authorize an entity other than the TDU to provide metering services as described in paragraph (4) of this subsection.
- (B) ERCOT shall file an annual status report on the implementation of competitive metering services on September 1 of each year. No later than 30 days after ERCOT's annual filing, interested parties may file comments on the status report.

- (2) **Pilot project.** The commission may establish one or more pilot projects under which an entity other than the TDU may provide metering services as described in paragraph (4) of this subsection.
 - (A) Any request to establish a pilot project shall be filed with the commission, and shall include a full description of the proposed project, including date of commencement, geographic scope, an explanation of how the proposed project will operate under the then-current ERCOT protocols and procedures, and a cost-benefit analysis of the proposed project.
 - (B) No competitive metering pilot project shall begin before January 1, 2004.
 - (3) **Utility ownership of meters.** A TDU shall continue to provide metering services and own all settlement and TDU billing meters that are used for the measurement of electric energy to any customer that does not choose an alternative meter owner.
 - (4) **Other metering services.** Until otherwise authorized by the commission, a TDU shall continue to provide metering services relating to installation and removal, maintenance, testing and calibration, data collection, and data management, including the transfer of meter data to the settlement agent.
- (f) **Metering equipment.**
 - (1) No later than 60 days after the effective date of this section, ERCOT shall develop a process to establish, and periodically revise, a list of meters that shall be considered qualifying competitive meters for the purposes of this section.

- (A) The first list of qualifying meters shall be adopted by ERCOT no later than 90 days after the effective date of this section.
 - (B) Each qualifying competitive meter shall meet commission-approved standards and shall be capable of providing the data necessary for billing in accordance with the TDU's delivery tariff and for settlement in accordance with the settlement agent's protocols.
 - (C) Each TDU data collection system shall be compatible with each meter on the list within 90 days of the release of the list.
- (2) Requests for installation or removal shall be made to the TDU pursuant to the TDU's tariff.
- (g) **Conformance with metering standards.**
- (1) A meter that fails to meet commission-approved standards for accuracy shall not be placed in service or left in service. A meter found to violate these standards shall be adjusted or replaced in accordance with this subsection at the time the violation is discovered.
 - (2) Meters shall be adjusted as closely as practicable to the condition of zero error.
 - (3) If a meter owned by the TDU is found not to meet commission-approved standards for accuracy, the TDU shall install a replacement meter in accordance with its tariffs.
 - (4) If a meter that is not owned by the TDU is found not to meet commission-approved standards for accuracy, the TDU shall install a temporary replacement

meter. The temporary replacement meter shall be capable of providing the data necessary for billing in accordance with the TDU's tariff, and shall also provide settlement data in accordance with the settlement agent's protocols. The TDU shall notify the customer and the meter owner that the meter does not meet commission-approved standards for accuracy and shall take reasonable measures to safeguard the meter until the meter owner takes possession of it. The meter owner shall be responsible for the associated charges, in accordance with the TDU's tariff.

- (h) **Testing of meters.** Costs for meter tests shall be the responsibility of the customer's REP in accordance with the TDU's tariff, except that when a request is made to test a meter that is subsequently found to meet commission-approved standards for accuracy, the cost of the meter test shall be the responsibility of the requestor.
- (1) Upon request for a meter test by a retail customer, a REP shall request that a meter be tested in accordance with the TDU's applicable tariff.
 - (2) A REP may request that a meter be tested in accordance with the TDU's applicable tariff.
 - (3) A meter owner other than the retail customer may request that a meter be tested in accordance with the TDU's applicable tariff.
 - (4) If the TDU suspects a meter malfunction, it shall promptly test the meter in accordance with its tariff.

- (5) Following the completion of any meter test, the TDU shall promptly advise the requestor, and the retail customer's REP of the date of removal of the meter, the date of the test, the result of the test, and who made the test.
- (i) **Use of meter data for settlement and TDU billing.**
- (1) The TDU shall have the right and capability, including necessary security passwords, to access meter data for the purpose of rendering a bill, as well as for load research purposes. The TDU is responsible for the security of the data used for settlement and TDU billing and shall maintain the meter programming password capable of altering such billing parameters.
 - (2) No entity other than the TDU shall have the right, capability, or meter programming password to alter the data collected by the meter for the purpose of TDU billing.
 - (3) A TDU's requirements for load research shall not have the effect of limiting the type or frequency of meter data available to an end-use customer.
- (j) **Competitive metering service credit.** Within 90 days of the effective date of this rule, a TDU shall file with the commission a tariff that provides a competitive metering service credit to the REP of a customer that selects a meter owner other than the TDU. Such tariff shall be accompanied by workpapers demonstrating the derivation of the credit.

This agency hereby certifies that the rule, as adopted, 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 §25.311, relating to Competitive Metering, Services is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF MAY 2003.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Brett A. Perlman, Commissioner

Julie Parsley, Commissioner