

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter O. UNBUNDLING AND MARKET POWER.

DIVISION 1. UNBUNDLING.

§25.342. Electric Business Separation.

- (a) **Purpose.** The purpose of this section is to identify the competitive electric industry business activities that must be separated from the regulated transmission and distribution utility and performed by a power generation company (PGC), a retail electric provider (REP), or some other business unit pursuant to the Public Utility Regulatory Act (PURA) §39.051. This section establishes procedures for the separation of such business activities.
- (b) **Application.** This section shall apply to electric utilities, as defined in §25.5 of this title (relating to Definitions).
- (c) **Compliance and timing.**
- (1) The commission shall prescribe a schedule for the filing of a business separation plan prior to the introduction of customer choice for an electric utility that is subject to PURA §39.102(c) or §39.402. Pursuant to such schedule, an affected electric utility shall separate from its regulated utility activities its customer energy services business activities and shall separate its business activities in accordance with subsection (d) of this section.
 - (2) Upon review of the filing, the commission shall adopt the electric utility's plan for business separation, adopt the plan with changes, or reject the plan and require the electric utility to file a new plan.
- (d) **Business separation.**
- (1) An electric utility may not offer competitive energy services; however, an electric utility may petition the commission pursuant to §25.343(d) of this title (relating to Competitive Energy Services) for authority to provide to its Texas customers or some subset of its customers any service otherwise identified as a competitive energy service.
 - (2) Each electric utility shall separate its business activities and related costs into the following units: power generation company; retail electric provider; and transmission and distribution utility company. An electric utility may accomplish this separation either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission utility and distribution utility companies.
 - (3) Each electric utility, subject to PURA §39.157(d), shall comply with this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with PURA §39.157(d) and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).
 - (4) All transfers of assets and liabilities to separate affiliated or nonaffiliated companies, a power generation company, retail electric provider, or a transmission and distribution utility company during the initial business separation process shall be recorded at book value.
 - (5) The commission, in approving a plan under subsection (c) of this section, may prescribe dates for the discontinuation of competitive energy services and the separation of business activities.
- (e) **Business separation plans.** Each electric utility subject to PURA §39.051(e) that has not separated its business functions shall file a business separation plan with the commission according to a commission-approved Business Separation Plan Filing Package (BSP-FP) on a date prescribed by the commission. An electric utility for which the commission has previously approved a business separation plan is not required to file an additional plan under this section. If necessary, however, the commission may require such electric utility to file updated information or modifications to its existing business separation plan.

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- (1) The business separation plan shall include, but shall not be limited to, the following:
 - (A) A description of the financial and legal aspects of the business separation, the functional and operational separations, physical separation, information systems separation, asset transfers during the initial unbundling, separation of books and records, and compliance with §25.272 of this title both during and after the transition period.
 - (B) A description of all services provided by the corporate support services company, as well as any corporate support services provided by another separate affiliate including pricing methodologies.
 - (C) A proposed internal code of conduct that addresses the requirements in §25.272 of this title and the spirit and intent of PURA §39.157. The internal code of conduct shall address each provision of §25.272 of this title, and shall provide detailed rules and procedures, including employee training, enforcement, and provisions for penalties for violations of the internal code of conduct.
 - (D) A description of each competitive energy service provided within Texas by the electric utility, including a detailed plan for completely and fully separating these competitive energy services, as set forth in §25.343 of this title.
 - (E) Descriptions of all system services, discretionary services, and other services pursuant to subsection (f) of this section to be provided within Texas by the transmission and distribution utility.
 - (2) To the extent that not all of the detailed information required to be filed on the date prescribed by the commission is available, the electric utility shall provide a firm schedule for supplemental filings. The commission shall approve only portions of the business separation plan for which complete information is provided.
- (f) **Separation of transmission and distribution utility services.**
- (1) **Classification of services.** Each service offered, or potentially offered, by a transmission and distribution utility shall be classified as one of the following:
 - (A) **System service.** The costs associated with providing system service are system-wide costs that are borne by the retail electric provider serving all transmission and distribution customers.
 - (B) **Discretionary service.**
 - (i) The cost associated with each discretionary service is customer-specific and should be borne only by the retail electric provider serving the transmission and distribution customer who purchases the discretionary service.
 - (ii) Each discretionary service shall be provided by the transmission and distribution utility on a nondiscriminatory basis pursuant to a commission-approved embedded cost-based tariff.
 - (iii) The costs associated with providing discretionary services are tracked separately from costs associated with providing system services.
 - (iv) A discretionary service is not a competitive energy service as defined by §25.341 of this title (relating to Definitions).
 - (C) **Petitioned service.** Service in which a petition to provide a specific competitive energy service has been granted by the commission pursuant to §25.343(d)(1) of this title.

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- (D) **Other service.**
- (i) The offering of any other services shall be limited to those services which:
 - (I) maximize the value of transmission and distribution system service facilities; and
 - (II) are provided without additional personnel and facilities other than those essential to the provision of transmission and distribution system services.
 - (ii) If the transmission and distribution utility offers a service under clause (i) of this subparagraph, the transmission and distribution utility shall:
 - (I) track revenues and to the extent possible the costs for each service separately;
 - (II) offer the service on a non-discriminatory-basis, and if the commission determines that it is appropriate, pursuant to a commission-approved tariff, and;
 - (III) credit all revenues received from the offering of this service during the test year after known and measurable adjustments are made to lower the revenue requirement of the transmission and distribution utility on which the rates are based.
- (2) **Competitive energy services.** A transmission and distribution utility shall not provide competitive energy services as defined by §25.341 of this title except as permitted pursuant to §25.343 of this title.