

PROJECT NO. 26551

RULEMAKING TO AMEND § PUBLIC UTILITY COMMISSION
REQUIREMENTS FOR MASS §
CUSTOMER LIST § OF TEXAS

**ORDER ADOPTING §25.472,
RELATING TO PRIVACY OF CUSTOMER INFORMATION,
AS APPROVED AT THE NOVEMBER 7, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.472, relating to Privacy of Customer Information, with no changes to the proposed text as published in the September 27, 2002 publication of the *Texas Register* (27 TexReg 9068). The amendments clarify the requirements for issuance of a mass customer list by an electric utility and eliminate the requirement that a mass customer list be issued by a retail electric provider in a market open to retail competition. These amendments are adopted under Project Number 26551.

A public hearing on the amendments was held at commission offices on October 31, 2002 at 9:30 am. Representatives from American Electric Power Company, Green Mountain Energy Company, the Office of Public Utility Counsel (OPC), Reliant Resources, and TXU Energy Retail Company, LP (TXU Energy) attended the hearing. No party provided comments at the hearing.

The commission received written comments on the proposed amendments from the Alliance for Retail Markets (ARM), OPC, and TXU Energy.

ARM generally supported the proposed amendment, asserting that requiring a retail electric provider (REP) to issue a mass customer list is unnecessary, may reveal a REP's marketing strategy, may confuse customers, and would divert information technology resources from addressing pressing system problems.

The commission takes no position on ARM's comments, and finds that no changes to the proposed amendment are required.

TXU Energy deemed the proposed amendment "a reasonable step to adjust a rule...based on experience gained from competition," and requested that that REPs be excused from the December 31, 2002 deadline in the existing rule, if the commission elects not to adopt the proposed amendment.

The commission agrees with TXU Energy's assessment of the proposed amendment, and finds that TXU Energy's request regarding the December 31, 2002 deadline is not applicable.

OPC also supported the proposed amendment, but suggested that the commission retain the requirement that an electric utility provide a postage paid postcard as a means for an electric customer to exclude his or her name from a mass customer list.

The commission disagrees with OPC that a postage paid postcard is necessary. The proposed rule requires that both a toll free telephone number and an Internet website -address be made available as means for a customer to exclude him/herself from the mass customer list. The commission finds, therefore, that the additional expense to provide a postcard to each electric utility customer is unnecessary.

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

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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; PURA §39.001, which directs that electric services should be determined by customer choices and the normal forces of competition; PURA §39.101, which grants the commission authority to establish various specific protections for retail customers; and PURA §39.202, which governs the terms of the price-to-beat offering.

Cross Reference to Statutes: PURA §§14.002, 39.001, 39.101, and 39.202.

§25.472. Privacy of Customer Information.**(a) Mass customer lists.**

- (1) **Contents of mass customer list.** A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI). All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.
- (2) Prior to the release of a mass customer list, an electric utility shall issue a mailing to all customers who may be included on the list. The mailing shall:
 - (A) explain the issuance of the mass customer list;
 - (B) provide the customer with the option of not being included on the list and allow the customer at least 15 days to exercise that option;
 - (C) inform the customer of the availability of the no call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and shall provide the customer with information on how to request placement on the list;

(D) provide a toll free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.

(3) **Release date.** The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.

(4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.

(5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.

(b) **Individual customer information.**

(1) Except as specified in subsection (a) of this section, a REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection or Change of Retail Electric Provider). This prohibition shall not apply to the release of such information by a REP or aggregator to:

- (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;
 - (B) an agent of the REP or aggregator engaged to collect an overdue or unpaid amount or to perform any of the duties of the REP or aggregator if such duties are outsourced;
 - (C) credit reporting agencies pursuant to state and federal law;
 - (D) an energy assistance agency to allow a customer to qualify for and obtain other financial assistance provided by the agency;
 - (E) local, state, and federal law enforcement agencies pursuant to lawful process; or
 - (F) the transmission and distribution utility within whose geographic service territory the customer is located, pursuant to the provisions of the transmission and distribution utility's commission-approved Tariff for Retail Delivery Service.
- (2) A REP or aggregator shall not publicly disclose or make available for sale any customer-specific information about its customers including that obtained from the registration agent, the customer's transmission and distribution utility, or the customer. A REP or aggregator shall not disseminate, sell, deliver or authorize the dissemination, sale, or delivery of any customer-specific information or data obtained.

- (3) A REP shall, upon the request of the customer or another REP that has received authorization from the customer, submit to the requesting REP or to the customer directly, the monthly usage of the customer for the previous 12 months, or for as long as the REP has provided service to the customer, whichever is shorter. The methods of authorization of release of customer specific information shall be those methods described in §25.474 of this title. A customer shall be entitled to request this information free of charge at least once every 12 months.
- (4) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection of service or termination of contract for electric service with respect to the customer's account.
- (5) This section shall not be interpreted to prevent a REP's communication of proprietary customer information to the registration agent in order to effectuate a customer selection or change of a REP or the customer's switch to the provider of last resort.
- (6) A REP may release proprietary customer information, as defined in §25.272(c)(5) of this title, to the registration agent, under terms approved by the commission.

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 §25.472 relating to Privacy of Customer Information is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF NOVEMBER 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER