



Mr. Crouch has also determined that for each year of the first five years the proposed section are in effect, there should be no effect on local economy, and therefore no local employment impact statement is required under the 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. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Friday, December 2, 2016. Reply comments may be submitted by Monday, December 12, 2016. Sixteen copies of comments and reply comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title relating to Filings of Pleadings, Documents, and Other Materials. Initial and reply comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project Number 45625.

The amendment is proposed under the Public Utilities Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (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 specifically, PURA §39.101, which requires the Commission to ensure that retail

customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections.

Cross Reference to Statutes: PURA §14.002 and §39.101.

**§25.474. Selection of Retail Electric Provider.**

(a)-(e) (No change.)

(f) **Enrollment via door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with the following requirements:

(1) (No change.)

(2) Use of a portable electronic device (PED) in door-to-door sales. A REP or aggregator may use a PED to conduct door-to-door sales at an applicant's residence. For the purpose of this section, a PED is defined as a nonstationary light-weight, electrically-powered device that is capable of communications, data storage and processing, and accessing, directly or indirectly, the REP or aggregator network. The devices include, but are not limited to: laptop computers, iPads, tablets, personal digital assistants, and smart phones.

(A) The REP or aggregator is responsible for ensuring that the PED complies with the requirements of this section.

(B) The PED shall be owned by the REP, aggregator, or third-party vendor retained by the REP or aggregator. The PED shall not be owned by an employee of the REP, aggregator, or vendor that has been retained by the REP or aggregator.

(C) The entire enrollment process shall be in plain, easily understood language, and be consistent with the requirements of §25.473 of this title (relating to Non-English Language Requirements.) The entire solicitation and enrollment process shall be conducted in the same language. The REP or

aggregator shall provide a means of documenting the applicant's language preference.

(D) All information disclosed to the applicant on the PED must be easily readable and conspicuously disclosed.

(E) The PED shall:

(i) be secure from unauthorized access;

(ii) have remote data wipe capabilities that allow the REP or aggregator to remove all data should the device be lost or stolen; and

(iii) have enabled mobile locating and tracking capabilities that allows the REP or aggregator to track the time and location of each customer enrollment.

(F) Any applicant or customer specific information entered into the PED shall be transferred expeditiously to the REP or aggregator's systems using Secure Socket Layer or similar encryption standard to ensure privacy of applicant or customer information. Once the transfer of data has been verified, the applicant or customer information on the PED shall be removed.

(G) The REP or aggregator is responsible for the protection of all applicant or customer information.

(32) **Required authorization disclosures.** Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator shall comply with all of the authorization disclosure requirements in either subsections (e)(1) – (5)(e)(5) or (h)(1) - (4) of this section.

- (A) A REP or aggregator may provide the disclosures required by subsection (e)(1) – (5) of this section using a PED; however, if an applicant expresses an inability to read or understand the disclosure information on the PED, the REP or aggregator shall either provide the required disclosures pursuant to subsection (e)(1) – (5) of this section in paper format, provide the disclosures pursuant to subsection (h)(1) – (4) of this section, or advise the applicant that they will not be able to complete enrollment.
- (B) If a REP or aggregator provides the disclosures using a PED, the REP or aggregator shall:
- (i) provide the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label (EFL), Prepaid Disclosure statements (PDS), if applicable, and any written or electronic materials disclosed;
  - (ii) answer any questions posed by the applicant about information contained in the documents;
  - (iii) advise the applicant that if the applicant is under contract with another REP, termination fees for that contract may apply; and
  - (iv) obtain an electronic signature from the applicant that adheres to Texas and federal guidelines affirming that the applicant has read and understands the disclosures, terms of service, EFL, PDS, if applicable, and all written or electronic materials disclosed prior to verification of authorization.

- ~~(43)~~ **Verification of authorization for door-to-door enrollment not using a PED.** A REP, or an independent third party retained by the REP, shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph.

(A)-(F)(No change.)

**(5) Verification of authorization for enrollments using a PED.**

(A) The REP or aggregator shall obtain confirmation from the applicant that the applicant is authorized to perform the enrollment and consents to the enrollment being verified using a PED. If the applicant does not consent to the enrollment being verified using a PED or expresses an inability to read or understand the verification of authorization information on the PED at any time, the representative shall verify authorization of enrollment pursuant to paragraph (4) of this subsection or advise the applicant that they will not be able to complete enrollment.

(B) If the applicant consents to verification being conducted using a PED, the REP or aggregator shall:

(i) obtain or confirm the applicant's email address or other agreed upon means of communication, billing name, billing address, service address, and name of any authorized representative;

(ii) obtain or confirm the applicant's electric service identifier (ESI-ID), if available;

(iii) obtain or confirm at least one of the following account access verification data for the applicant: last four digits of the social

security number, mother's maiden name, city or town of birth, month and day of birth, driver's license number or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number; and

(iv) obtain applicant's electronic signature that adheres to Texas and federal guidelines affirming that the applicant has read and understands the disclosures, terms of service, EFL, PDS, if applicable, and all written or electronic materials disclosed and that the applicant is authorized to select or change REPs for the service address and authorizes the new REP to perform necessary tasks to complete a switch or move-in for the applicant's service with the new REP.

(C) The REP shall not submit a move-in or switch request until it has obtained the applicant's verification of the enrollment.

(D) After enrollment, the REP or aggregator shall send a confirmation by first class mail, email, or other agreed upon means of communication to the applicant of the applicant's request to select the REP. If the confirmation is sent by any means other than first class mail, the confirmation must allow for the applicant to confirm receipt and the three-day right of rescission period shall not begin until the REP receives the applicant's confirmation. The REP or aggregator may assume that any delivery of the confirmation

deposited first class within the United States Postal service will be received within three federal business days. The confirmation shall include:

- (i) a clear and conspicuous notice in the body of the confirmation of the customer's three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or Certain Other Locations (16 C.F.R. Part 429). The notice shall state that the customer may exercise their right to rescission within three federal business days after receiving the terms of service without penalty and offer the customer the option of exercising this right by toll-free number, email, Internet website, facsimile transmission, or regular mail. The notice shall be accessible to the applicant without need to open an attachment or link to any other document; and
- (ii) the terms of service document, EFL, PDS, if applicable, and Your Rights as a Customer disclosure.

- (g) **Personal solicitations other than door-to-door marketing.** A REP or aggregator that engages in personal solicitation at a location other than a customer's residence (such as malls, fairs, or places of business) without the use of a PED as defined in subsection (f)(2) of this section shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. A REP or aggregator that uses a PED in personal solicitations at a location other than a customer's residence shall comply with the requirements of use of a PED in subsection (f) of this section. In addition, the REP or aggregator shall comply with the following additional requirements:

(1)-(4) (No change.)

(h)-(q) (No change.)

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 28TH DAY OF OCTOBER 2016**

**BY THE PUBLIC UTILITY COMMISSION OF TEXAS**

**ADRIANA A. GONZALES**