

**PROJECT NO. 24376**

<b>IMPLEMENTATION OF HB 472,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RELATING TO THE REGULATION</b>	<b>§</b>	
<b>OF TELEMARKETING</b>	<b>§</b>	
<b>SOLICITATION AND PROVIDING</b>	<b>§</b>	
<b>PENALTIES</b>	<b>§</b>	<b>OF TEXAS</b>

**PROPOSAL FOR PUBLICATION  
AS APPROVED AT THE MARCH 21, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §25.484 relating to Do Not Call List and new §25.484, relating to the Texas Electric No-Call List. The proposed new rule will replace the former §25.484 by implementing provisions of House Bill 472 (HB 472), §43.103, later codified in the Texas Business & Commerce Code Annotated (Bus. & Com. Code) §43.103 (Vernon 1998 & Supplement 2002) pertaining to rules, customer information and isolated violations. The proposed new section will also implement the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2002) (PURA) §39.1025, relating to Limitations on Telephone Solicitation. Project Number 24376 is assigned to this proceeding.

Constance Trimble Corona, Director, Electric Policy Analysis, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section. As provided in the Bus. & Com. Code §43.101 relating to Commission to Establish Texas No-call Lists, the state has contracted with a private vendor to

maintain the no-call database. The no-call program is self-funding in that any costs resulting from the contract with the vendor will be offset by the fees paid by customers and telemarketers.

Ms. Corona has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be that electric customers can limit unwanted or uninvited telemarketing calls from retail electric providers (REPs). Ms. Corona has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be some economic cost to persons who are required to comply with the proposed section since REPs who participate in telemarketing activities will be required to purchase the quarterly publication of the no-call list. However, the cost will be a set fee and subscribing to the list will assist the REP in identifying customers who do not wish to receive calls. Thus, it is believed that the benefits of implementing the proposed section will outweigh the costs.

Ms. Corona has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking pursuant to Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701

North Congress Avenue, Austin, Texas 78701, in the Commissioners' Hearing Room, on Monday, May 6, 2002, at 1:30 p.m.

Comments on the proposed new section (16 copies) 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 21 days after publication. Reply comments may be submitted within 28 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 24376, Texas electric no-call list.

This repeal and new section are proposed 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. The commission also proposes this rule pursuant to PURA §39.1025 which provides the commission with the authority to operate the no-call database and prohibits the telephone solicitation of an electricity customer who has previously advised the commission that he/she does not want to receive such solicitations. In addition, the Texas Business & Commerce Code Annotated §43.103 (Vernon 1998 &

Supplement 2002) (Bus. & Com. Code) grants the commission the authority to adopt rules to administer the no-call list.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.1025; Texas Business & Commerce Code Annotated, §43.103.

**§25.484. Do Not Call List. (Repeal)**

**§25.484. Texas Electric No-Call List.**

- (a) **Purpose.** This section implements the Public Utility Regulatory Act (PURA) §39.1025, relating to Limitations on Telephone Solicitation, and the Texas Business & Commerce Code Annotated (Bus. & Com. Code) §43.103 relating to rules, customer information, and isolated violations of the Texas no-call list.
- (b) **Application.** This section applies to retail electric providers (REPs) as defined in §25.5 of this title (relating to Definitions). A REP acting as a telemarketer, as defined by §26.37 of this title (relating to Texas No-Call List), is also subject to the provisions of §26.37.
- (c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Consumer good or service** — For purposes of this section, consumer good or service has the same meaning as Bus. & Com. Code §43.002(3) relating to Definitions.
- (2) **Electric no-call database** — Database administered by the commission or its designee that contains the names, addresses, telephone numbers and dates of

registration for all Texas electric no-call subscribers. Lists or other information generated from the electric no-call database shall be deemed to be a part of the database for purposes of enforcing this section.

- (3) **Electric no-call list** — List that is distributed as required by subsection (f)(2) of this section.
- (4) **Electric no-call subscriber** — A telephone customer who has registered, by application and payment of accompanying fee, for the Texas electric no-call list.
- (5) **Established business relationship** — A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.
- (6) **Telemarketing call** — An unsolicited telephone call made to:
  - (A) solicit a sale of a consumer good or service;
  - (B) solicit an extension of credit for a consumer good or service; or,
  - (C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.
- (7) **Telephone call** — A call or other transmission that is made to or received at a telephone number, including:
  - (A) a call made by an automatic dial announcing device (ADAD); or,
  - (B) a transmission to a facsimile recording device.

- (d) **Requirement of REPs.** A REP shall not make or cause to be made a telemarketing call to a telephone number that has been on the Texas electric no-call list more than five days.
- (e) **Exemptions.** This section shall not apply to a telephone call made:
- (1) By an electric no-call subscriber that is the result of a solicitation by a REP or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;
  - (2) In connection with:
    - (A) An established business relationship; or,
    - (B) A business relationship that has been terminated, if the call is made before the later of
      - (i) the date of publication of the first Texas electric no-call list on which the electric no-call subscriber's telephone number appears; or
      - (ii) one year after the date of termination; or,
  - (3) To collect a debt.
- (f) **Electric no-call database.**

- (1) **Administrator.** The commission or its designee shall establish and provide for the operation of the electric no-call database.
- (2) **Distribution of database.**
  - (A) **Timing.** Beginning on April 1, 2002, the administrator of the electric no-call database will update and publish the Texas electric no-call database on January 1, April 1, July 1, and October 1 of each year;
  - (B) **Fees.** The no-call electric database shall be made available to REPs for a set fee not to exceed \$75 per list per quarter;
  - (C) **Format.** The commission or its designee will make the no-call database available to subscribing REPs by:
    - (i) electronic internet access in a downloadable format;
    - (ii) Compact Disk Read Only Memory (CD-ROM) format;
    - (iii) paper copy, if requested by the REP; and,
    - (iv) any other format agreed upon by the current administrator of the no-call database and the REP.
- (3) **Intended use of the electric no-call database.**
  - (A) The electric no-call database shall be used only for the intended purpose of promoting and furthering statutory mandates in accordance with PURA §39.1025 and the Bus. & Com. Code, chapter 43 relating to Telemarketing. The electric no-call database shall not be transferred or resold to any other entity, group, or individual.

- (B) The no-call database is not open to public inspection or disclosure.
  - (C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.
- (4) **Penalties for misuse of information.** Improper use of the electric no-call database by the administrator, REPs, or any other person, regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).
- (g) **Notice.** A REP shall provide notice to its customers as specified by this subsection. In addition to the required notice, the REP may engage in other forms of customer notification.
- (1) **Content of notice.** A REP shall provide notice in compliance with §25.473 of this title (relating to Non-English Language Requirements) that, at a minimum, clearly explains the following:
- (A) Beginning January 1, 2002, customers may add their name, address and telephone number to a state-sponsored electric no-call list that is intended to limit the number of telemarketing calls received relating to the customer's choice of REPs;

- (B) When a customer who subscribes to the electric no-call list can expect to stop receiving telemarketing calls;
  - (C) A customer must pay a fee to register for the electric no-call list;
  - (D) Registration of a telephone number on the electric no-call list expires on the fifth anniversary of the date the number is first published on the list;
  - (E) Registration of a telephone number on the electric no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;
  - (F) The customer registration fee, which cannot exceed five dollars per term, must be paid by credit card when registering online or by telephone. When registering by mail, the fee must be paid by credit card, check or money order;
  - (G) The toll-free telephone number, website address, and mailing address for registration; and,
  - (H) A customer that subscribes to the electric no-call list will continue to receive calls from telemarketers other than REPs, and a statement that the customer may instead or may also register for a no-call list that is intended to limit telemarketing calls regarding consumer goods and services in general, including electric service.
- (2) **Publication of notice.**

- (A) Terms of service document. A REP shall include notice in its terms of service document or Your Rights as a Customer disclosure. The notice shall be easily legible, prominently displayed and comply with the requirements listed in paragraph (1) of this subsection.
  - (B) Annual notice to individual customers. A REP shall provide notice of the Texas no-call lists to each of its customers in Texas in the form of a bill message or an insert in the customer's billing statement. Electronic notification is permissible for any customer who, during the notification period, is receiving billing statements from the REP in an electronic format.
- (3) **Timing of annual notice.** A REP shall provide annual notice to its customers between June 1 and August 31 of each year, beginning in 2002.
- (4) **Compliance and enforcement.**
- (A) Commission review of the notice. The REP shall file a copy of the annual notice with the commission at least 45 days prior to the intended date of distribution. The REP shall also inform the commission of its intended method and timing of customer notification. The notice will be reviewed by commission staff before distribution to customers. Commission staff will notify the REP within ten days of submission if the proposed notice must be modified, and the specific modifications required.

(B) Records of customer notification. A REP shall provide a copy of records maintained under the requirements of this subsection as specified by §25.491 of this title (relating to Record Retention and Reporting Requirements).

(h) **Violations.**

(1) **Separate occurrence.** Each telemarketing call to a telephone number on the electric no-call list shall be deemed a separate occurrence.

(2) **Isolated occurrence.** A telemarketing call made to a number on the electric no-call list is not a violation of this section if the telemarketing call is determined by the commission to be an isolated occurrence.

(A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one incident, but it does not involve a pattern or practice.

(B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the REP who made the call. In order for a REP to claim that a potential violation of this section was an isolated occurrence, the REP must first provide evidence of the following:

- (i) The REP has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;
  - (ii) The REP has trained its personnel in the established procedures; and,
  - (iii) The telemarketing call that violated this section was made contrary to the policies and procedures established by the REP.
- (i) **Enforcement and penalties.** The commission has exclusive jurisdiction to investigate violations of this section made by REPs, as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 22nd DAY OF MARCH 2002 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**