

PROJECT NO. 37622

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
CUSTOMER PROTECTION RULES	§	
RELATING TO DESIGNATION OF	§	OF TEXAS
CRITICAL CARE CUSTOMERS	§	

**PROPOSAL FOR PUBLICATION OF REPEAL OF §25.497 AND NEW §25.497
AS APPROVED AT THE APRIL 1, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §25.497 relating to Critical Care Customers and proposes new §25.497 relating to Critical Care and Chronic Condition Customers. The new rule will provide uniform requirements regarding residential customers with certain medical conditions who face disconnection of electric service by a transmission and distribution utility (TDU). The commission is separately proposing related amendments to §25.454 relating to Rate Reduction Program, §25.480 relating to Bill Payment and Adjustments, and §25.483 relating to Disconnection of Service that address protections for customers with serious medical conditions facing disconnection of electric service. New §25.497 is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 37622 is assigned to this proceeding.

The commission is seeking comments on the repeal and proposed new rule listed above, as well as comments on the following questions, which may result in changes to the proposed rules:

- (1) This proposal includes two designations: chronic condition and critical care residential customers. Some parties have suggested only one category. Please provide feedback on the benefits of each approach.

- (2) If the commission proceeds with two designations, what is the proper treatment or transition mechanism for customers currently on the critical care list prior to their regular renewal date? Which protections should they be afforded? Should they be required to reapply before their regular renewal date?
- (3) In the proposal, customers who are dependent upon an electric-powered medical device to sustain life and have battery back-up available are not classified as critical care. Should this provision be reconsidered? Please provide alternative recommendations.

Christine Wright, Senior Market Analyst, Competitive Markets Division, has determined that, for each year of the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Wright has determined that, for each year of the first five years the rules are in effect, the public benefits anticipated as a result of enforcing the rule will be consistent treatment of customers by retail electric providers and TDUs, and a more expeditious and effective process for individuals suffering from debilitating medical conditions to qualify as critical care customers. No adverse economic impact is anticipated on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Ms. Wright has also determined that, for each year of the first five years the rules are 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 (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 on Monday, May 17, 2010. The request for a public hearing must be received within 20 days after publication.

Initial comments on the repeal and new rule 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 May 6, 2010, (20 days after publication). Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by May 21, 2010 (35 days after publication). Comments should be organized in a manner consistent with the organization of the new rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 37622.

The repeal and new rule are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, (Vernon 2007 and Supp. 2009) (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 §14.001, which provides the commission the general

power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to the termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.101.

§25.497. Critical Care Customers. REPEAL**§25.497. Critical Care and Chronic Condition Customers.**

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise.
- (1) **Critical load customer** -- A critical load public safety customer or a critical load industrial customer.
 - (2) **Critical load public safety customer** -- A customer for whom electric service is considered crucial for the protection or maintenance of public safety, including but not limited to hospitals, police stations, fire stations, and critical water and wastewater facilities.
 - (3) **Critical load industrial customer** -- An industrial customer for whom an interruption or suspension of electric service would create a dangerous or life-threatening condition on the customer's premises.
 - (4) **Critical care industrial customer** -- An industrial customer, for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical care industrial customer."
 - (5) **Chronic condition residential customer** -- A residential customer or person who currently resides and has been in residence with that customer for the most recent three consecutive months who has been diagnosed by a physician with a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the person's medical condition. If the serious medical condition that impairs a major life function is diagnosed by the customer's physician as a life-long condition, the designation under this definition may apply up to one year. Otherwise, the designation under this definition shall apply for no longer than 90 days.

- (6) **Critical care residential customer** -- A residential customer or person who currently resides and has been in residence with that customer for the most recent three months who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life. If a medical device has battery back-up available in the marketplace, the device is not considered to require electric service. A designation under this definition shall be for a two year period.
- (b) **Eligibility for protections.** In order to be considered for designation as a critical care or chronic condition residential customer, a customer must submit the commission-approved application form to the transmission and distribution utility (TDU) that serves the customer's premises.
- (c) **Benefits for critical care and chronic condition customers.** A critical care or chronic condition customer qualifies for notification of interruptions or suspensions of service, as provided in Sections 4.2.5 and 5.2.5, and protections against suspension or disconnection, as provided in Section 5.3.7.4(1)(D) and (E), of the TDU's tariff for retail electric delivery service. A customer for whom an application filed pursuant to this section is approved is also eligible for certain protections as described in §25.483 of this title (relating to Disconnection of Service).
- (d) **Notice to customers concerning critical care and chronic condition status.**
- (1) A Retail Electric Provider (REP) shall notify each residential applicant for service of the right to apply for critical care or chronic condition designation. This notice to an applicant for residential service shall be included in the terms of service documents.
 - (2) All REPs that serve residential customers shall provide information about critical care and chronic condition customer designation to each residential customer three times a year. The REP may include the information related to the low income rate reduction program in the same notification.
 - (3) Upon a customer's request, the REP shall provide to the customer the application form for critical care and chronic condition designation.

(e) **Procedure for obtaining critical care or chronic condition residential customer designation.**

- (1) The commission-approved application form shall instruct the customer to have the physician electronically submit the application form to the TDU. If the physician submits the form to the REP, the REP shall forward it to the TDU electronically or by expedited mail, no later than two business days from receipt of the form. The application form shall include a telephone number that is answered by a person capable of responding to questions from a physician or customer about the form.
- (2) After the TDU receives the form, it shall evaluate the form for completeness and shall verify information to the extent appropriate. If the form is materially incomplete, no later than two business days after receiving the form, the TDU shall return the form to the customer and explain in writing what information is needed to complete the form.
- (3) If the TDU has not approved or disapproved the application or returned the form as materially incomplete within two business days from receipt of the form, the application shall be considered approved on a temporary basis pending final determination by the TDU. The TDU shall notify the customer's REP of such temporary approval using a standard market transaction.
- (4) If the TDU determines that the form is materially complete, it nevertheless shall request any additional information that is necessary to make a final determination on the application. If the customer does not provide the requested information within 14 calendar days of the request, the application shall be considered denied. If the customer subsequently provides the requested information, the application shall again be considered approved on a temporary basis pending a final determination by the TDU. The TDU shall notify the customer's REP of such temporary approval using a standard market transaction.
- (5) Reasons that a TDU shall consider a form materially incomplete for an application for critical care or chronic condition residential customer designation include the omission of the name, contact information (including a secondary

contact), signature, and medical board license number of the customer's physician.

- (6) The TDU shall not challenge the diagnosis of the physician, but shall ensure that any designation as a critical care or chronic condition residential customer is consistent with the information provided on the form and the definitions in this section. If there are inconsistencies, the TDU shall return the form to the customer and explain the inconsistencies in writing. If the customer or the physician does not provide the requested clarifications within 14 calendar days of the request, the application shall be considered denied. If the customer subsequently provides clarifications, the application shall again be considered approved on a temporary basis pending a final determination by the TDU. The TDU shall notify the customer's REP of such temporary approval using a standard market transaction.
- (7) The TDU shall notify the customer's REP using a standard market transaction and the customer of its final determination concerning the customer's application for critical care or chronic condition residential customer designation, including the type of designation approved. The TDU shall provide the secondary contact information to the REP using a standard market transaction. If the customer switches to a different REP, the TDU shall provide the new REP with the secondary contact information using a standard market transaction.
- (8) The TDU shall inform the customer of the customer's right to file a complaint with the commission pursuant to §22.242 of this title (relating to Complaints) at the same time the TDU notifies the customer of its final determination.
- (9) The TDU shall notify critical care and chronic condition residential customers of the expiration of their designation in accordance with this paragraph.
 - (A) The TDU shall provide a renewal notice to a chronic condition residential customer whose designation was for a period longer than 90 days at least 45 days prior to the expiration date of the chronic condition residential customer designation. The renewal notice shall also be provided to the secondary contact included on the commission-approved application form. The renewal notice shall include the application form and an explanation

of how to reapply for critical care and chronic condition customer designation.

- (B) The TDU shall provide a renewal notice to a critical care residential customer at least 45 days prior to the expiration date of the critical care customer designation. The renewal notice shall also be provided to the secondary contact included on the commission-approved application form. The renewal notice shall include the application form and an explanation of how to reapply for critical care and chronic condition customer designation.

- (f) **Effect of critical care and chronic condition status on payment obligations.** A critical care or chronic condition customer designation pursuant to this section does not relieve a customer of the obligation to pay the REP for services provided, and a customer's service may be disconnected pursuant to §25.483 of this title.
- (g) **TX SET changes.** In the next TX SET release, market transactions shall be developed to allow the automatic provision from the TDU to the REP of the secondary contact information included on a commission-approved application form for critical care and chronic care residential customer designation.

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 5th DAY OF APRIL 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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