

PROJECT NO. 25503

**RULEMAKING TO REVIEW AND § PUBLIC UTILITY COMMISSION
AMEND SUBSTANTIVE RULES IN §
CHAPTER 25, SUBCHAPTER A § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO
CHAPTER 25, SUBCHAPTER A
AS APPROVED AT THE OCTOBER 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.1, relating to Purpose and Scope of Rules; §25.3, relating to Severability Clause; §25.4 relating to Statement of Nondiscrimination; and §25.5, relating to Definitions. Project Number 25503 is assigned to this proceeding.

In September 2001, under Project Number 22067, *Review of Agency Rules Pursuant to the Administrative Procedure Act §2001.039 for Fiscal Years 2000-2003*, the commission published notice of its intention to review Chapter 25, Substantive Rules Applicable to Electric Service Providers (26 TexReg 7283). Interested persons filed comments on the review of Chapter 25 in October 2001. As a result of comments filed, the commission is proposing amendments to §§25.1, 25.3, and 25.4 to clarify that Chapter 25 applies to entities in both the new market structure and among utilities not implementing customer choice in January 2002 and amends the nondiscriminatory requirements to conform to §25.471(c). The proposed amendment to §25.5 amends definitions to conform to the new market structure and incorporates non-section specific definitions scattered throughout Chapter 25 into §25.5.

Rosa Rohr, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Rohr has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing these sections will be rules that more accurately conform to the current market structure and provide a consistent nondiscriminatory policy. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with and benefits gained by

implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 25503.

These amendments 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; and specifically, PURA §11.002 which grants the commission authority to make and enforce rules necessary to protect customers of electric service consistent with the public interest; §17.004(a)(4) that states that all buyers of retail electric services are entitled to protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location; §17.004(b) which grants the commission authority to adopt and enforce rules as necessary and appropriate to carry out the customer protection standards set forth in §17.004; §39.101(a)(5) that requires the commission to ensure that retail customer protections are established that entitle a customer to protection from discrimination on the basis of race, color, sex, nationality, religion or marital status; §39.101(c) which provides that any entity that provides retail electric service may not discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status or because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002, 17.004, and 39.101.

§25.1. Purpose and Scope of Rules.

- (a) **Mission of the Public Utility Commission of Texas (~~commission~~)(PUC).** The mission of the ~~commission~~PUC is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the ~~commission~~PUC shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.
- (b) This chapter is intended to establish a comprehensive system to accomplish the mission of the ~~commission with respect to electric service~~ PUC and to establish the rights and responsibilities of ~~the electric utilities, including transmission and distribution utilities, non-utility wholesale and retail market participants, and electric customers~~ both the utility service providers and the consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, ~~creed~~nationality, color, ~~national origin, ancestry~~religion, sex, ~~or~~marital status, ~~lawful source of income, level of income, disability, or familial status.~~

§25.3. Severability Clause.

(a) The adoption of this chapter ~~does not will in no way~~ preclude the Public Utility Commission of Texas (commission) from altering or amending any sections of this chapter in whole or in part, or from requiring any other or additional ~~serviceservice~~, equipment, ~~facilitiesfacility~~, or ~~standardsstandard~~, either upon complaint or upon its own motion or upon application of any ~~personutility~~. Furthermore, this chapter will not relieve electric utilities, including transmission and distribution utilities, non-utility wholesale and retail market participants, or electric customers ~~in any way a utility or customer~~ from any ~~of its~~ duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission ~~or the substantive rights of any person~~.

(b) The commission may make exceptions to this chapter for good cause.

§25.4. Statement of Nondiscrimination.

- (a) No electric utility or retail electric provider shall discriminate on the basis of race, creed~~nationality~~, color, national origin, ancestry~~religion~~, sex, marital status, lawful source of income, level~~, or source~~ of income, disability, or familial status.
- (b) No electric utility or retail electric provider shall unreasonably discriminate on the basis of geographic location.

§25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Above-market purchased power costs** — Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Accessible utility information — Information compiled by an electric utility, including a transmission and distribution utility (TDU), or a non-utility wholesale or retail market participant during the normal course of providing electric service. This includes, but is not limited to, information used to prepare electric tariffs, to provide electric service to customers, or to market, sell, or demonstrate any electric or energy-related service or product. Accessible utility information does not include:

(A) administrative information necessary for the operation of the electric utility, including a TDU, or non-utility wholesale or retail market participant;

(B) proprietary customer information;

(C) trade secrets; or

(D) information that the electric utility, including a TDU, or non-utility wholesale or retail market participant demonstrates is competitively sensitive.

~~(2) **Administrative review** — A process under which an application may be approved without a formal hearing.~~

(3) **Affected person** — means:

- (A) a public utility or electric cooperative affected by an action of a regulatory authority;
- (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
- (C) a person who:
 - (i) is a competitor of a public utility with respect to a service performed by the utility; or
 - (ii) wants to enter into competition with a public utility.

(4) **Affiliate** — means:

- (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
- (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
- (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
- (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

- (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
 - (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- ~~(5)~~ **Affiliated electric utility** — The electric utility from which an affiliated retail electric provider was unbundled in accordance with Public Utility Regulatory Act §39.051.
- ~~(6)~~~~(5)~~ **Affiliated power generation company (APGC)** — A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.
- ~~(7)~~~~(6)~~ **Affiliated retail electric provider (AREP)** — A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.
- ~~(7)~~ ~~**Aggregator** — A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.~~
- (8) **Aggregation** — Includes the following:

- (A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or
- (B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

(9) Aggregator — A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(10)(9) Ancillary service — A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

(11)(10) Base rate — Generally, a rate designed to recover the costs of electricity other than costs recovered through a fuel factor, power cost recovery factor, or surcharge.

(12) Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP) — A municipally owned utility/electric cooperative that is

conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(13) Calendar year — January 1 through December 31.

(14)(11) Commission — The Public Utility Commission of Texas.

(15) Competition transition charge (CTC) — Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition

charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

(16) **Competitive affiliate** — An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

(17) **Competitive energy efficiency services** — Energy efficiency services that are defined as a competitive energy service pursuant to §25.341 of this title (relating to Definitions).

(18) **Competitive retailer** — A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.

(19) **Congestion zone** — An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(20)(12) **Control area** — An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from

entities outside the electric power system(s), with the load within the electric power system(s);

- (B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;
- (C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and
- (D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

~~(21)(13)~~ **Corporation** — A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

(22) **Critical loads** — Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

~~(23)(14)~~ **Customer choice** — The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's

choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(24)~~(15)~~ **Customer class** — A group of customers with similar electric ~~usage~~-service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.

(25) **Day-ahead** — The day preceding the operating day.

(26) **Deemed savings** — A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(27) **Demand** — The rate at which electric energy is delivered to or by a system, part of a system, or piece of equipment, at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(28) **Demand savings** — A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or average over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

~~(29)~~(16) **Demand-side management (DSM)** — Activities that affect the magnitude and/or timing of customer electricity usage.

~~(30)~~(17) **Demand-side resource or demand-side management resource** — Activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

~~(31)~~ **Disconnection of service** — Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.

~~(32)~~(18) **Distribution line** — A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

~~(33)~~(19) **Distributed resource** — A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts ~~and below~~), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

~~(34)~~(20) **Distribution service provider (DSP)** — ~~An~~ electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the

distribution of electricity to retail customers, as defined in this section, including retail customers served at transmission voltage levels.

(35) Economically distressed geographic area — Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.

(36)~~(21)~~ **Electric cooperative —**

- (A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;
- (B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or
- (C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(37) Electric generating facility — A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(38) Electricity Facts label — A standardized format, as described in §25.475(e) of this title (relating to Information Disclosures to Residential

and Small Commercial Customers), for disclosure information and contract terms made available to customers to help them choose a provider and an electricity product.

(39) Electricity product — A product offered by a competitive retailer to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.

(40)(22) **Electric Reliability Council of Texas (ERCOT)** — Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

(41) Electric service identifier (ESI ID) — Premise-based identification number assigned to each electric service delivery point between a transmission and distribution utility and an end-use load, which is used in the Texas customer registration system and the Electric Reliability Council of Texas (ERCOT) settlement system.

(42)(23) **Electric utility** — Except as otherwise provided in Subchapter I, Division 1 of this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas

Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

- (A) a municipal corporation;
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) the state of Texas or an agency of the state; or
- (J) a person not otherwise an electric utility who:
 - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
 - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

- (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.

(43) Energy efficiency — Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(44) Energy efficiency measures — Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

(45) Energy efficiency project — An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in a reduction in customers' electric energy consumption or peak demand, or both, and energy costs.

(46) Energy efficiency service provider (EESP) — A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or a

large commercial customer, if the person has executed a standard offer contract with the grantee.

(47) Energy savings — A quantifiable reduction in a customer's consumption of energy.

(48)(24) **ERCOT protocols** — Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants. The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission.

(49)(25) **ERCOT region** — The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.

(50)(26) **Exempt wholesale generator** — A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and

Reporting by Power Marketers, ~~Exempt Wholesale Generators and Qualifying Facilities~~).

~~(51)~~(27) **Existing purchased power contract** — A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

~~(52)~~(28) **Facilities** — All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

~~(53)~~ **Financing order** — An order of the commission adopted under the Public Utility Regulatory Act §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

~~(54)~~(29) **Freeze period** — The period beginning on January 1, 1999, and ending on December 31, 2001.

~~(55)~~ **Fully allocated cost** — The cost of a product, service, or asset based on book values for the component elements established through generally accepted accounting principles (GAAP); or alternatively, an internal transfer price based upon the actual or expected (budgeted) operating and maintenance expenses and a capital component, as appropriate, divided by the expected or actual units for the service or product produced. Such transfer prices may be set as needed but shall not be used beyond a three

year period without review. The operating and maintenance expenses shall be fully loaded with applicable overheads. The capital component shall consider the original cost of the associated assets and a reasonable return. Such internal prices may include an allowance for transfers to a municipal general fund at the discretion of the municipality.

~~(56)~~(30) **Generation assets** — All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

~~(57)~~ **Generation service** — The production and purchase of electricity for retail customers and the production, purchase and sale of electricity in the wholesale power market.

~~(58)~~(31) **Good utility practice** — Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the

exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

~~(59)~~(32) **Hearing** — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

~~(60)~~(33) **Independent organization** — An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.

~~(61)~~(34) **Independent system operator** — An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

~~(62)~~ Installed generation capacity — All potentially marketable electric generation capacity, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(63) **Interconnection agreement** — The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(64)(35) **License** — The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(65)(36) **Licensing** — The commission process ~~for respecting the~~ granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(66) **Load factor** — The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(67) **Low-income customer** — An electric customer, whose household income is not more than 125% of the federal poverty guidelines, or who receives food stamps from the Texas Department of Human Services (TDHS) or medical assistance from a state agency administering a part of the medical assistance program.

(68) **Low-Income Discount Administrator (LIDA)** — A third-party administrator contracted by the commission to administer aspects of the

rate reduction program established under Public Utility Regulatory Act §39.903.

~~(69)~~(37) **Market power mitigation plan** — A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.

~~(70)~~(38) **Market value** — For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

~~(71)~~ **Master meter** — A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

~~(72)~~(39) **Municipality** — A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

~~(73)~~(40) **Municipally-owned utility (MOU)** — Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

~~(74)~~ **Nameplate rating** — The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

~~(75)~~(41) **Native load customer** — A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

~~(76)~~ **Natural gas energy credit (NGEC)** — A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by the Public Utility Regulatory Act §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

~~(77)~~ **Net book value** — The original cost of an asset less accumulated depreciation.

~~(78)~~ **Net dependable capability** — The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

~~(79)~~ **New generating capacity** — Nameplate generating capacity of a facility installed in this state after January 1, 2000, except capacity based on a renewable energy technology. This definition of new generating capacity does not include modifications to previously installed generating facilities that merely increase the efficiency of, or reduce emissions from, such facilities. For the purposes of this title the phrase "new generating capacity purchased" refers to the purchase of all or part of an installed unit, and not to the purchase of capacity or energy from an installed unit.

(80) New on-site generation — Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A) A fully operational facility, or

(B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

(81) Off-grid generation — The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(82) Other generation sources — A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

(83)(42) Person — Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

~~(43) Pleading — A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.~~

~~(84)~~(44) **Power cost recovery factor (PCRF)** — A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

PCRF does not apply to utility territories open to full competition in January 2002.

~~(85)~~(45) **Power generation company (PGC)** — A person that:

- (A) generates electricity that is intended to be sold at wholesale;
- (B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and
- (C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

~~(86)~~(46) **Power marketer** — A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

~~(87)~~(47) **Power region** — A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

~~(88)~~ **Pre-interconnection study** — A study or studies that may be undertaken by a company in response to its receipt of a completed application for

interconnection and parallel operation with the utility system. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.

~~(89)~~(48) **Premises** — A tract of land or real estate including buildings and other appurtenances thereon.

~~(90)~~ **Price to beat (PTB)** — A price for electricity, as determined pursuant to the Public Utility Regulatory Act §39.202, charged by an affiliated retail electric provider to customers in its service area.

~~(91)~~(49) **Proceeding** — A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

~~(92)~~ **Projected stranded costs** — The value produced by the ECOM model and approved by the commission in the proceeding conducted pursuant to the Public Utility Regulatory Act §39.201.

~~(93)~~ **Proprietary customer information** — Any information compiled by an electric utility or by a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or compiled by an aggregator on a customer in the course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's

name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(94) **Provider of last resort (POLR)** — A retail electric provider certified in Texas that has been designated by the commission to provide a basic, standard retail service package to requesting or default customers.

(95) **Public retail customer** — A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.

(96)(50) **Public utility or utility** — ~~An means an~~ electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

(97)(51) **Public Utility Regulatory Act (PURA)** — The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 *et. seq.*

(98)(52) **Purchased power market value** — The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted

average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(99) **Qualified scheduling entity** — A market participant that is qualified by the Electric Reliability Council of Texas (ERCOT) in accordance with Section 16, Registration and Qualification of Market Participants of ERCOT's Protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.

(100)(53) **Qualifying cogenerator** — The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(101)(54) **Qualifying facility** — A qualifying cogenerator or qualifying small power producer.

(102)(55) **Qualifying small power producer** — The meaning as assigned this term by 16 U.S.C. §796(17)(D).

(103)(56) **Rate** — A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

~~(104)~~(57) **Rate class** — A group of customers taking electric service under the same rate schedule.

~~(105)~~ **Rate reduction program** — A program to provide reduced electric rates for eligible low-income customers, in accordance with the Public Utility Regulatory Act §39.903(h).

~~(106)~~(58) **Rate year** — The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

~~(107)~~(59) **Ratemaking proceeding** — A proceeding in which a rate may be changed.

~~(108)~~ **Reasonable performance standards** — Those standards which would reasonably be expected to maximize energy output consistent with industry standards widely accepted at the time of installation and for the technology employed.

~~(109)~~ **Registration agent** — Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.

~~(110)~~(60) **Regulatory authority** — In accordance with the context where it is found, either the commission or the governing body of a municipality.

~~(111)~~ **Renewable demand side management (DSM) technologies** — Equipment that uses a renewable energy resource, that when installed at a

customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(112) **Renewable energy** — Energy derived from renewable energy technologies.

(113) **Renewable energy credit (REC)** — A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the Public Utility Regulatory Act §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).

(114) **Renewable energy credit account (REC account)** — An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(115) **Renewable energy resource (renewable resource)** — A resource that produces energy derived from renewable energy technologies.

(116)(61) **Renewable energy technology** — Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on

energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

~~(62)~~ **Renewable resource** — ~~A resource that relies on renewable energy technology.~~

(117) **Repowering** — Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(118) **Residential customer** — Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.

(119) **Residential net price to beat (PTB)** — The average residential PTB rate (expressed in cents per kWh) less the average nonbypassable charges (expressed in cents per kWh) applicable to residential customers.

(120)~~(63)~~ **Retail customer** — The separately metered end-use customer who purchases and ultimately consumes electricity.

(121)~~(64)~~ **Retail electric provider (REP)** — A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(122)~~(65)~~ **Retail stranded costs** — That part of net stranded cost associated with the provision of retail service.

(123) Retrofit — The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

(124)(66) **River authority** — A conservation and reclamation district created pursuant to the Texas Constitution, Article 16, Section 59, including any nonprofit corporation created by such a district pursuant to the Texas Water Code, Chapter 152, that is an electric utility.

(125)(67) **Rule** — A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

~~(68) **Rulemaking proceeding** — A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.~~

(126)(69) **Separately metered** — Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(127)(70) **Service** — Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the

Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(128) Small commercial net price to beat (PTB) — The average small commercial PTB rate (expressed in cents per kWh) less the average nonbypassable charges (expressed in cents per kWh) applicable to small commercial customers.

(129)(71) Spanish-speaking person — A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(130) Standard meter — The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(131)(72) Stranded cost — The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a

market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

~~(132)(73)~~ **Submetering** — Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

~~(133)~~ **Summer net dependable capability** — The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

~~(134)(74)~~ **Supply-side resource** — A resource, including a storage device, that provides electricity from fuels or renewable resources.

~~(135)~~ **System benefit account** — An account with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission.

~~(136)~~ **System benefit fee** — A nonbypassable fee set by the commission to finance the system benefit account or fund. The fee shall be charged to electric retail customers based on the amount of kilowatt hours (kWh) of electric energy used, as measured at the meter and adjusted for voltage level losses.

~~(137)~~ **System emergency** — A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

~~(138)(75)~~ **Tariff** — The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

~~(139)~~ **Termination of service** — The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.

~~(140)(76)~~ **Tenant** — A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

~~(141)(77)~~ **Test year** — The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

~~(142)~~ **Texas jurisdictional installed generation capacity** — The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

~~(143)~~ **Transition bonds** — Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness

or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

(144) Transition charges — Nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

(145) Transmission — System and discretionary services associated with facilities at or above 60 kilovolts (kV) necessary to transform and move electricity from the point of interconnection of a generation source or third party electric grid facilities, to the point of interconnection with distribution, retail customer or other third party facilities, and related processes necessary to perform such transformation and movement. Transmission does not include activities related to transmission and distribution utility billing system services, additional billing services, transmission and distribution utility metering system services, and transmission and distribution utility customer services.

(146) Transmission and distribution business unit (TDBU) — The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except

for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under the Public Utility Regulatory Act §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.

(147)(78) **Transmission and distribution utility (TDU)** — A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.

(148) **Transmission and distribution utility region (TDU region)** — The affiliated transmission and distribution utility's service territory.

~~(149)~~(79) **Transmission line** — A power line that is operated at 60 kilovolts
(kV) ~~60,000 volts~~ or above, when measured phase-to-phase.

~~(150)~~(80) **Transmission service** — Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the Electric Reliability Council of Texas (ERCOT)~~ERCOT~~ region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

~~(151)~~(81) **Transmission service customer** — A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A

retail customer, as defined in this section, may not be a transmission service customer.

~~(152)(82)~~ **Transmission service provider (TSP)** — An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

~~(153)(83)~~ **Transmission system** — The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

~~(154)~~ Utility metering — Individual apartment dwelling unit metering of electric utility service performed by an electric utility company.

~~(155)~~ Working day — A day on which the commission is open for the conduct of business.

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 24TH DAY OF OCTOBER 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**