

**PROJECT NO. 41659**

<b>RULEMAKING TO IMPLEMENT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CEASE AND DESIST AUTHORITY</b>	<b>§</b>	
<b>UNDER PURA CHAPTER 15 AS</b>	<b>§</b>	<b>OF TEXAS</b>
<b>REQUIRED BY HB 1600 (83<sup>RD</sup></b>	<b>§</b>	
<b>REGULAR LEGISLATIVE SESSION)</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §25.54  
AS APPROVED AT THE OCTOBER 3, 2013 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.54, relating to Cease and Desist Orders. The proposed new rule will implement statutory provisions granting the commission the authority to issue cease and desist orders to electric market participants in certain circumstances. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 41659 is assigned to this proceeding.

Jennifer Littlefield, Attorney, Oversight and Enforcement 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 the section.

Ms. Littlefield 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 the section will be an increased ability for the commission to prevent or halt a market participant's conduct that poses a threat to continuous and adequate electric service, is hazardous, creates an immediate danger to the public safety, or can reasonably be expected to cause an immediate irreparable injury to a customer of electric services. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is

required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Littlefield 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 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, December 9, 2013. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section 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 30 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. 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. 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 41659.

The commission also solicits comments on the following questions:

(1) Should the commission further delineate the following terms in proposed §25.54(b)(1)-(4):

a. “A threat to continuous and adequate electric service,”

b. “Hazardous,”

c. “Immediate danger to the public safety,” and

d. “An immediate injury to a customer of electric services” that is “incapable of being repaired or rectified by monetary compensation?”

For example, is a definition needed for the term “incapable of being repaired or rectified by monetary compensation” to clarify whether a Retail Electric Provider (REP) that is going out of business, comingling customer deposit funds, and depleting the remaining deposits would satisfy the conditions required to issue a cease and desist order? Alternatively, would the approaching expiration of a REP’s letter of credit meet any of the conditions?

(2) If the commission should further define the terms listed above, please provide suggestions.

(3) If a cease and desist order is issued by the executive director, should the executive director be required to immediately notify each commissioner of the order to provide them an opportunity to arrange to discuss the order as soon as possible, whether at a regularly scheduled open meeting or an emergency open meeting?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2012) (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 §§15.101-15.107, which grants the commission the authority to issue cease and desist orders and requires the commission to adopt rules regarding implementation of that authority.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.003, 15.101-15.107, and 32.001.

**§25.54. Cease and Desist Orders.**

- (a) **Application.** This section is applicable to electric utilities, transmission and distribution utilities, power generation companies, retail electric providers, municipally owned utilities, electric cooperatives, the independent system operator, and any other person regulated under the Public Utility Regulatory Act (PURA), Subtitle B, collectively referred to as “market participants,” and shall refer to the definitions provided in PURA §11.003 and §31.002.
- (b) **Authority to issue order.** The commission or executive director may issue a cease and desist order if the commission or executive director determines that the conduct of a market participant meets one or more of the following conditions:
- (1) The conduct poses a threat to continuous and adequate electric service;
  - (2) The conduct is hazardous;
  - (3) The conduct creates an immediate danger to the public safety; or
  - (4) The conduct is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.
- (c) **Procedure.** The commission must provide notice and opportunity for a hearing before issuing a cease and desist order if such notice is practicable. If such notice is not practicable, the commission may issue a cease and desist order without providing notice and opportunity for a hearing.

- (1) **If notice and opportunity for a hearing is practicable.** If notice and opportunity for a hearing is practicable, the commission shall follow the following procedures:
- (A) **Content of order.** A cease and desist order shall be served upon the market participant affected by that order and shall:
- (i) Contain a statement of the charges;
  - (ii) Require the market participant immediately to cease and desist from the acts, methods, or practices stated in the order.
- (B) **Service.** A hearing on a cease and desist order is a contested case under Chapter 2001, Texas Government Code. The commission may hold a hearing on a cease and desist order or may refer the case to be heard by the State Office of Administrative Hearings.
- (i) The commission shall serve the cease and desist order by registered or certified mail, return receipt requested, to the market participant's last known address.
  - (ii) A cease and desist order is effective upon the earlier of receipt of actual notice, including telephonic notice, or three days after the order is mailed.
- (C) **Proposed order.** If the market participant requests a hearing before issuance of a cease and desist order, notice of a proposed order shall be served upon the market participant affected by the order and shall be given not later than the 10<sup>th</sup> day before the date set for a hearing.

- (2) **Notice and opportunity for a hearing not practicable.** If notice and opportunity for a hearing is not practicable, the commission shall follow the following procedures:
- (A) **Contents of order.** A cease and desist order shall be served upon the market participant affected by that order and shall:
- (i) Contain a statement of the charges;
  - (ii) Require the market participant immediately to cease and desist from the acts, methods, or practices stated in the order; and
  - (iii) Contain a statement indicating that notice and an opportunity for a hearing was not practicable.
- (B) **Service.** Chapter 2001, Texas Government Code, does not apply to the issuance of a cease and desist order issued by the commission without notice and an opportunity for a hearing.
- (i) The commission shall serve the cease and desist order by registered or certified mail, return receipt requested, to the market participant's last known address.
  - (ii) A cease and desist order is effective upon the earlier of receipt of actual notice, including telephonic notice, or three days after the order is mailed.
- (C) **Hearing Requested.** The market participant affected by the cease and desist order may request a hearing to affirm, modify, or set aside the order. A request must be submitted not later than the 30th day after the date the market participant receives the order.

- (i) If the market participant affected by a cease and desist order requests a hearing the commission shall set the hearing for a date that is not later than the 10th day after the date the commission receives a request for a hearing or agreed to by the market participant and the commission.
  - (I) A hearing conducted after the issuance of a cease and desist order is a contested case under Chapter 2001, Texas Government Code. The commission may hold a hearing on a cease and desist order or may refer the case to be heard by the State Office of Administrative Hearings.
  - (II) Pending a hearing on a cease and desist order, the cease and desist order continues in effect unless stayed by the commission.
  - (III) At or following the hearing, the commission shall wholly or partly affirm, modify, or set aside the cease and desist order.
- (ii) If the market participant affected by a cease and desist order does not request a hearing and the commission does not hold a hearing on the order, the order is affirmed without further action by the commission.

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 7th DAY OF OCTOBER 2013 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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