

**PROJECT NO. 41615**

**RULEMAKING TO REVISE PUC § PUBLIC UTILITY COMMISSION  
SUBST R. 25.107, CERTIFICATION §  
OF RETAIL ELECTRIC PROVIDERS § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.107  
AS APPROVED AT THE OCTOBER 25, 2013 OPEN MEETING  
(WITH ATTACHED REP APPLICATION AND AMENDMENT FORM)**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.107, relating to Certification of Retail Electric Providers (REPs). The proposed amendment to the rule will clarify the definition of principal; modify the reporting requirement to extend the relevant time period for complaint history, disciplinary record, and compliance record; add an affidavit reporting requirement identifying all principals and current employees of the applicant REP that experienced a mass transition of the REP's customers to a provider of last resort (POLR); and provide additional bases for the suspension or revocation of a REP certificate. Additionally, the proposed amendment will standardize the REP Application and Amendment form. Project Number 41615 is assigned to this proceeding.

Janis Ervin, Senior Utility Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ervin has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be greater customer protection as there will be greater scrutiny of REP principals that were

associated with REPs that previously defaulted customers to a POLR provider. The amendment clarifies the definition of principal and provides greater reporting requirements in order to protect consumers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amended section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed amendment 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 Wednesday, January 8, 2014. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment 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 amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 41615.

The amendment 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, specifically, PURA §39.352, which grants the commission the authority to certify a person as a REP if the person demonstrates, among other things, the financial and technical resources to provide continuous and reliable electric service, the managerial and technical ability to supply electricity at retail in accordance with customer contracts, and the resources needed to meet customer protection requirements and which requires a person applying for certification as a REP to comply with all customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and PURA; PURA §17.004, which authorizes the commission to adopt and enforce rules concerning REPs that protect customers against fraudulent, unfair, misleading, deceptive, or anticompetitive practices and that impose minimum service standards relating to customer deposits and termination of service; PURA §§17.051-17.053, which authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections and

entitles a customer: to safe, reliable, and reasonably priced electricity, to other information or protections necessary to ensure high-quality service to customers including protections relating to customer deposits and quality of service, and to be protected from unfair, misleading, or deceptive practices, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 17.051–17.053, 39.101, and 39.352.

**§25.107. Certification of Retail Electric Providers (REPs).**

(a) (No change.)

(b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:

(1) – (10) (No change.)

(11) Principal -- An executive officer; partner; owner; director; a person with management or supervisory responsibilities; shareholder of a privately held company; shareholder of a publicly traded company who owns more than 5% of a class of equity securities; or an agent, a permanent employee, contractor, consultant, accountant, entity or person~~A person or a member of a group of persons~~ that controls the person in question.

(12) – (15) (No change.)

(c) – (e) (No change.)

(f) **Financial requirements.**

(1)-(5) (No change.)

(6) Proceeds from an irrevocable stand-by letter of credit.

(A) (No change.)

(i) first to pay the deposits to retail electric providers that volunteer to provide service in a mass transition event under

§25.43 of this title (relating to Provider of Last Resort (POLR)) of low income customers enrolled in the system benefit fund rate reduction program pursuant to §25.454(f) of this title (relating to Rate Reduction Program);

(ii) - (vi) (No change.)

(B) (No change.)

(g) **Technical and managerial requirements.** A REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, ERCOT protocols, and other applicable laws.

(1) (No change.)

(2) An applicant shall include the following in its initial application for REP certification:

(A) (No change.)

(B) Any complaint history, disciplinary record and compliance record during the ten years~~60 months~~ immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) – (iii) (No change.)

(C) – (E) (No change.)

(F) An affidavit stating that the applicant will register with or be certified by ERCOT or other applicable independent organization and will comply with the technical and managerial requirements of this subsection; or that entities with whom the applicant has a contractual relationship are registered with or certified by the independent organization and will comply with all system rules established by the independent organization; ~~and~~

(G) An affidavit identifying all principals and current employees of the applicant that had a relationship with a REP that experienced a mass transition of the REP's customers to POLR. If such a relationship existed, the applicant shall include in the affidavit the name of the REP that experienced a mass transition of the REP's customers to POLR and provide factual statements as to whether and, if so, how the REP that experienced a mass transition of the REP's customers to POLR settled all outstanding obligations including the return of any owed customer deposits; and

~~(H)~~(G) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements of this subsection.

(h) – (i) (No change.)

(j) **Suspension and revocation.** A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for a significant

violation of PURA, commission rules, or rules adopted by an independent organization. A suspension of a REP certificate requires the cessation of all REP activities associated with obtaining new customers in the state of Texas. A revocation of a REP certificate requires the cessation of all REP activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for a significant violation of PURA, commission rules, or rules adopted by an independent organization. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a REP's certificate. Significant violations include the following:

- (1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;
- (2) – (13) (No change.)
- (14) Failure to serve as a POLR~~provider of last resort~~ if required to do so by the commission;
- (15) – (16) (No change.)
- (17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);~~and~~
- (18) Failure to comply with §25.272 of this title; and
- ~~(19)~~(18) Other significant violations, including the failure or a pattern of failures to meet the requirements of this section or other commission rules or orders.

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 25<sup>TH</sup> DAY OF OCTOBER 2013 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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