

**PROJECT NO. 38676**

<b>FORM FOR CRITICAL CARE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CUSTOMERS, RELATED STANDARD</b>	<b>§</b>	
<b>ELECTRIC DELIVERY TARIFF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AMENDMENTS, AND OTHER</b>	<b>§</b>	
<b>IMPLEMENTATION MATTERS</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.214 AND §25.272  
AS APPROVED AT THE SEPTEMBER 29, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities and §25.272 relating to Code of Conduct for Electric Utilities and Their Affiliates. The amendments to the Tariff make changes to conform the Tariff to new §25.497, relating to critical care customers adopted by the commission in Project Number 37622, *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*. The amendments to §25.272 allow a utility to submit customer information to First Responders. The amended §25.497 provides additional protections to customers who have been designated as critical load customers, chronic condition residential customers, and critical care residential customers. The proposed amendments to §25.272 and §25.214 are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 38676 is assigned to this proceeding. The commission is also proposing a form by which customers may request a designation as a chronic care residential customer or critical care residential customer. Persons who provide comments on both the proposed Tariff and proposed form are encouraged to submit the comments in a single document.

The commission is seeking comments on the amended rule, as well as comments on the following question, which may result in changes to the amended rule:

The Order Adopting the Repeal of §25.497 and New §25.497 in Project No. 37622, *Rulemaking Related to Critical Care Customers*, states: “the commission concludes that the process for turning lists over to first responders should be more thoroughly considered in the compliance project, to be opened following adoption of this rulemaking. The commission is concerned that the current substantive rules addressing proprietary customer information, most notably §25.272(g)(1), relating to privacy of customer information, may prohibit a Transmission and Distribution Utility (TDU) from providing the list. Therefore, the commission finds that the upcoming project to develop the critical care form shall address these issues, as well as the Joint TDUs’ concerns relating to how this information would be provided to the correct people.” This proposed rule includes changes to P.U.C. Subst. R. §25.272 to allow the utility to provide customer information to a First Responder.

- (1) Are there any hurdles in commission rules, the Public Utility Regulatory Act, or other law that would prevent a utility from sharing this information to a First Responder, even with customer consent?

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

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

Ms. Wright has also determined that, for each year of the first five years the amended 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.

Initial comments on the amended rules may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amended rule. The commission will

consider the costs and benefits in deciding whether to adopt the amended rule. All comments should refer to Project Number 38676.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, (Vernon 2007 and Supp. 2010) (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 §39.101 which requires the commission ensure customer's have safe, reliable and reasonably priced electricity in cases of medical emergency; §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; §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to the termination of service; and §39.203, which directs the commission to establish terms and conditions for transmission and distribution service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.101(e), and 39.203.

**§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.**

(a)-(c) (No change.)

(d) **Pro-forma Retail Delivery Tariff.**

**Tariff for Retail Delivery Service**

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Company may curtail, reduce voltage, or interrupt Delivery Service in the event of an emergency arising anywhere on the Company's Delivery System or the interconnected systems of which it is a part, ~~when the~~~~which~~ emergency poses a threat to the integrity of its Delivery System or the systems to which it is directly or indirectly connected if, in its sole judgment, such action may prevent or alleviate the emergency condition. Company may interrupt service when necessary, in the Company's sole judgment, for inspection, test, repair, or changes in the Delivery System, or when such interruption will lessen or remove possible danger to life or property, or will aid in the restoration of Delivery Service.

Company shall provide advance notice to Competitive Retailer of such actions, if reasonably possible. Such notice may be ~~provided~~~~met~~ by electronic notice to all certificated Competitive Retailers operating within the Company's service territory with specific identification of

location, time and expected duration of the outage. Notice shall also be provided, if reasonably possible, to those Retail Customers designated as critical care residential customers, chronic condition residential customers, critical load industrial customers, or critical load public safety customers~~for whom a Competitive Retailer has provided notice to the Company that interruptions or suspensions of service will create a dangerous or life-threatening condition on the Retail Customer's Premises.~~

Nothing herein shall prevent the Company from being liable if found to be grossly negligent or to have committed intentional misconduct with respect to its exercise of its authority in this Tariff.

The operation of Broadband over Powerline (BPL) shall not interfere with or diminish the reliability of Company's Delivery System. Should a disruption in the provision of Delivery Service occur due to BPL, Company shall prioritize restoration of Delivery Service prior to restoration of BPL-related systems.

#### **4.3.8 SUSPENSION OF DELIVERY SERVICE**

##### **4.3.8.1 *SUSPENSIONS WITHOUT PRIOR NOTICE***

Company may, without prior notice, intentionally suspend Delivery Service to a Competitive Retailer's Retail Customer where a known dangerous condition exists for as long as the condition exists, provided that such suspension does not result in other dangerous or life-threatening conditions. Company shall notify, as soon as practicably possible, the affected Retail Customer's Competitive Retailer of suspensions for the above reason.

Company may also suspend service without prior notice when such suspension is authorized by Applicable Legal Authorities.

If suspensions or interruptions are conducted pursuant to Section 4.2.5, EMERGENCIES AND NECESSARY INTERRUPTIONS and advance notice was not able to be

reasonably provided, the Company shall provide notice as soon as reasonably possible after the suspension. Such notice may be ~~provided~~<sup>met</sup> by electronic notice to all certificated Competitive Retailers operating within Company's service territory ~~with~~ specifically identifying ~~location~~ of ~~the~~ location, time and expected duration of ~~the~~ outage.

~~Competitive Retailer shall convey any notice received by Retail Customer to Company that suspension or interruption of service of Retail Customer will create a dangerous or life threatening condition on Retail Customer's Premises.~~

Nothing in this section is intended to take precedence over the timely restoration of service.

#### 4.3.9 CRITICAL CARE/CHRONIC CONDITON/CRITICAL LOAD CUSTOMER DESIGNATION

##### 4.3.9.1 CRITICAL CARE OR CHRONIC CONDITION RESIDENTIAL CUSTOMER STATUS

Upon receipt of an application for eligibility for critical care or chronic condition residential status ~~from the Retail Customer's Competitive Retailer~~, Company shall:

- (1) Follow the procedures outlined in Company established process P.U.C. Subst. R. 25.497 for processing ~~evaluating~~ the application ~~for critical care status~~ and designating ~~determine~~ a Retail Customer's as a critical care residential customer or chronic condition residential customer and for notifying the Competitive Retailer and Retail Customer of any change in Retail Customer's designation ~~eligibility for the appropriate critical care designation within one month from Company's receipt of the application;~~
- (2) Follow the requirements under P.U.C. SUBST. R. 25.497 for ~~Company established process for re-evaluating~~ sending renewal notices to a Retail Customer designated as a critical care residential customer or chronic condition residential customer ~~eligibility and communicate the renewal determination first to Retail Customer's Competitive Retailer and then to Retail Customer;~~ and

- ~~(3) Follow Company established process for appeal and notify the Competitive Retailer and Retail Customer of any change in qualification based on the appeal; and~~
- ~~(4)~~(3) Ensure ESI IDs are properly identified for critical care or chronic condition status in Company systems and on applicable Retail Market transactions.

#### **4.3.9.2 CRITICAL LOADCARE INDUSTRIAL CUSTOMER OR CRITICAL LOAD PUBLIC SAFETY**

Upon receipt of a request for designation as a critical loadcare industrial customer or critical load public safety customer Company shall:

- (1) Follow the Company-established process for evaluating the request for Critical LoadCare status in collaboration with the Retail Customer's Competitive Retailer and Retail Customer and determine Retail Customer's eligibility for the appropriate Critical LoadCare designation within one month of Company's receipt of the application;
- (2) Follow the Company-established process for appeal and notify the Competitive Retailer and Retail Customer of any change in qualification based on the appeal; and
- (3) Ensure ESI IDs are properly identified for ~~critical care or~~ critical load status in Company systems and on applicable Retail Market transactions.

#### **5.2.5 EMERGENCIES AND NECESSARY INTERRUPTIONS**

Company may curtail, reduce voltage, or interrupt Delivery Service in the event of an emergency arising anywhere on the Delivery System or the interconnected systems of which it is a part, when the~~which~~ emergency poses a threat to the integrity of its system or the systems to which it is directly or indirectly connected if, in its sole judgment, such action may prevent or alleviate the emergency condition. Company may interrupt service when necessary, in Company's sole judgment, for inspection, test, repair, or changes in Company's Delivery System, or when such interruption will lessen or remove possible danger to life or property, or will aid in the restoration of Delivery Service.

Company shall provide advance notice to Retail Customer's Competitive Retailer, if reasonably possible. Such notice may be made by electronic notice to all certificated Competitive Retailers operating within Company's service territory with specifically identifying the ~~identification of~~ location, time and expected duration of outage. Notice shall also be provided, if reasonably possible, to those Retail Customers designated as critical care residential customers, chronic condition residential customers, critical load industrial customers, or critical load public safety customers ~~for whom a Competitive Retailer has provided notice to the Company that interruptions or suspensions of service will create a dangerous or life-threatening condition on the Retail Customer's Premises~~. Retail Customer ~~shall~~ should notify Company ~~their Competitive Retailer~~ if Retail Customer believes it qualifies for designation as a critical care residential customer, chronic condition residential customer, critical load industrial customer, or critical load public safety customers under P.U.C. SUBST. R. 25.497a ~~a condition exists on the Retail Customer's Premises such that a suspension or interruption of service will create a life-threatening or dangerous condition~~.

### **5.3.7 SUSPENSION OF SERVICE**

#### **5.3.7.1 SUSPENSIONS WITHOUT PRIOR NOTICE**

Company may, without prior notice, intentionally suspend Delivery Service to Retail Customer where a known dangerous condition exists and for as long as it exists, provided that such suspension does not result in another dangerous or life-threatening condition. Where reasonable, given the nature of the hazardous condition, Company shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each Retail Customer as soon as possible after service has been disconnected.

Company may also suspend service when such suspension is authorized by Applicable Legal Authorities.

Where Company expects that large numbers of Retail Customers will ~~to~~ be affected by a suspension for a significant amount of time, Company will notify Retail Customers about the

suspension through the use of door hangers, letters, personal canvassing, news media, or other appropriate methods.

Retail Customers shall inform Company ~~their designated Competitive Retailer~~ if Retail Customer believes it qualifies for designation as a critical care residential customer, chronic condition residential customer, critical load industrial customer, or critical load public safety customer under P.U.C. SUBST. R. 25.497 ~~of any conditions on Retail Customer's Premises such that a suspension or interruption of service may cause a dangerous or life threatening condition.~~

Notice of a suspension of service shall be provided to Retail Customers currently designated as critical care, or chronic condition, or critical load if reasonably possible.

Nothing in this section is intended to take precedence over the timely restoration of service.

#### **5.3.7.4 PROHIBITED SUSPENSION OR DISCONNECTION**

- (1) Except in the case of suspensions of service related to dangerous conditions, clearance requests, or move-out requests, Company shall not disconnect or suspend Delivery Service to Retail Customer in the following situations:
  - (A) On a day, or on a day immediately preceding a day, when personnel of Company are not available to the public for the purpose of reconnecting Delivery Service;
  - (B) for delinquency of payment to Company by Retail Customer's Competitive Retailer;
  - (C) during "extreme weather conditions" as defined in the Commission's customer protection rules;
  - (D) at a permanent, individually metered dwelling unit of a Retail Customer for non-payment of amounts billed directly to Retail Customer by Company pursuant to the Company's Tariff, when that Retail Customer establishes that disconnection of Delivery Service will cause some person residing at that residence to become seriously ill or more seriously ill.
    - (i) Each time a Retail Customer seeks to avoid disconnection of Delivery Service under subsection (D), the Retail Customer must accomplish all of the following by the stated date of disconnection:

- (I) have the subject person's attending physician (for purposes of this subsection the term "physician" shall mean any public health official, including, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the Company by the date of the disconnection;
  - (II) have the subject person's attending physician submit a written statement to Company; and
  - (III) enter into a deferred payment plan.
- (ii) The prohibition against Delivery Service disconnection provided by subsection (D) shall last 63 days from the issuance of the bill by Company or a shorter period as agreed upon by Company and Retail Customer or subject person's physician;
- or
- (E) when Retail Customer is designated as a critical care residential customer, unless all of the procedures required by Company pursuant to P.U.C. Subst. R. 25.497 and P.U.C. Subst. R. 25.483 have been completed, or when Retail Customer is designated as a critical load industrial customer or a critical load public safety customer, unless all Company-established processes are followed,~~such disconnection will cause a dangerous or life-threatening condition on that Retail Customer's premise, without prior notice of reasonable length such that Retail Customer can ameliorate the condition.~~ Retail Customer is responsible for notifying Company~~its designated Competitive Retailer~~ if Retail Customer believes it qualifies for designation as a critical care residential customer, critical load industrial customer, or critical load public safety customer under P.U.C. SUBST. R. 25.497a~~disconnection to its facility will result in such a condition.~~

**§25.272. Code of Conduct for Electric Utilities and Their Affiliates.**

(a)-(f) No change

(g) **Information safeguards.**

- (1) **Proprietary customer information.** A utility shall provide a customer with the customer's proprietary customer information, upon request by the customer. Unless a utility obtains prior affirmative written consent or other verifiable authorization from the customer as determined by the commission, or unless otherwise permitted under this subsection, it shall not release any proprietary customer information to a competitive affiliate or any other entity, other than the customer, an independent organization as defined by PURA §39.151, or a provider of corporate support services for the sole purpose of providing corporate support services in accordance with subsection (e)(2)(A) of this section. The utility shall maintain records that include the date, time, and nature of information released when it releases customer proprietary information to another entity in accordance with this paragraph. The utility shall maintain records of such information for a minimum of three years, and shall make the records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party. When the third party requesting review of the records is not the customer, commission, or Office of Public Utility Counsel, the records may be redacted in such a way as to protect the customer's identity. If proprietary customer information is released to an independent organization or a provider of corporate support services, the independent

organization or entity providing corporate support services is subject to the rules in this subsection with respect to releasing the information to other persons.

- (A) **Exception for law, regulation, or legal process.** A utility may release proprietary customer information to another entity without customer authorization where authorized or requested to do so by the commission or where required to do so by law, regulation, or legal process.
- (B) **Exception for release to governmental entity.** A utility may release proprietary customer information without customer authorization to a federal, state, or local governmental entity or in connection with a court or administrative proceeding involving the customer or the utility; provided, however, that the utility shall take all reasonable actions to protect the confidentiality of such information, including, but not limited to, providing such information under a confidentiality agreement or protective order, and shall also promptly notify the affected customer in writing that such information has been requested.
- (C) **Exception to facilitate transition to customer choice.** In order to facilitate the transition to customer choice, a utility may release proprietary customer information to its affiliated retail electric provider or providers of last resort without authorization of those customers only during ~~the period from September 1, 2001, through December 31, 2001, or during a different~~ period prescribed by the commission.
- (D) **Exception for release to providers of last resort.** On or after January 1, 2002, a utility may provide proprietary customer information to a provider of

last resort without customer authorization for the purpose of serving customers who have been switched to the provider of last resort.

(E) Exception for release to first responders. Beginning January 1, 2011, a utility may provide proprietary customer information with customer authorization to a requesting state, federal, or local government agency for purposes of identifying the customer as a critical load industrial customer, or critical load public safety customer, critical care residential customer, or chronic condition residential customer pursuant to §25.497 (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers).

- (2) **Nondiscriminatory availability of aggregate customer information.** A utility may aggregate non-proprietary customer information, including, but not limited to, information about a utility's energy purchases, sales, or operations or about a utility's energy-related goods or services. However, except in circumstances solely involving the provision of corporate support services in accordance with subsection (e)(2)(A) of this section, a utility shall aggregate non-proprietary customer information for a competitive affiliate only if the utility makes such aggregation service available to all non-affiliates under the same terms and conditions and at the same price as it is made available to any of its affiliates. In addition, no later than 24 hours prior to a utility's provision to its competitive affiliate of aggregate customer information, the utility shall post a conspicuous notice on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days, providing the following information: the name of the

competitive affiliate to which the information will be provided, the rate charged for the information, a meaningful description of the information provided, and the procedures by which non-affiliates may obtain the same information under the same terms and conditions. The utility shall maintain records of such information for a minimum of three years, and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party.

- (3) **No preferential access to transmission and distribution information.** A utility shall not allow preferential access by its competitive affiliates to information about its transmission and distribution systems.
- (4) **Other limitations on information disclosure.** Nothing in this rule is intended to alter the specific limitations on disclosure of confidential information in the Texas Utilities Code, the Texas Government Code, Chapter 552, or the commission's substantive and procedural rules.
- (5) **Other information.** Except as otherwise allowed in this subsection, a utility shall not share information, except for information required to perform allowed corporate support services, with competitive affiliates unless the utility can prove to the commission that the sharing will not compromise the public interest prior to any such sharing. Information that is publicly available, or that is unrelated in any way to utility activities, may be shared.

(h)-(i) (No change.)

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 30<sup>th</sup> DAY OF SEPTEMBER 2010 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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