

**PROJECT NO. 22187**

<b>RULEMAKING TO ESTABLISH</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TERMS AND CONDITIONS OF</b>	<b>§</b>	
<b>TRANSMISSION AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>DISTRIBUTION UTILITIES'</b>	<b>§</b>	
<b>RETAIL DISTRIBUTION SERVICE</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §25.215 RELATING TO TERMS AND CONDITIONS OF ACCESS BY A COMPETITIVE RETAILER TO THE DELIVERY SYSTEM OF A MUNICIPALLY OWNED UTILITY OR ELECTRIC COOPERATIVE THAT HAS IMPLEMENTED CUSTOMER CHOICE**

The Public Utility Commission of Texas (commission) proposes new §25.215, relating to Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice. The proposed new rule will implement the Public Utility Regulatory Act, Texas Utilities Code Annotated, §39.203 (Vernon 1998, Supplement 2001) (PURA) as it relates to the establishment of reasonable and nondiscriminatory terms and conditions of open access to the transmission and/or distribution system of a municipally owned utility (MOU) or an electric cooperative (Coop) that has chosen to engage in retail competition (opted-in). This rulemaking is a continuation of Project Number 22187.

The proposed rule itself is short and is intended to incorporate a standard access tariff (pro-forma access tariff), which contains the terms and conditions of open access. Not later than 90 days before the date an MOU or Coop begins offering customer choice, the MOU or Coop shall file with the commission its access tariff, using the pro-forma access tariff set forth in subsection (d) of the proposed rule. Chapters 1, 3 and 4 of the pro-forma access tariff shall be used exactly as written, except for insertion of the name of the

MOU or Coop where called for; however, the MOU or Coop may add to or modify Chapters 2 and 5 so as to reflect a description of its certificated service area and rate schedules. The pro-forma access tariff is divided into five chapters as follows: Chapter 1 defines various terms used throughout the pro-forma access tariff; Chapter 2 describes the particular MOU's or Coop's certificated service area; Chapter 3 sets forth general rules and regulations regarding access by competitive retailers to an MOU's or Coop's delivery system; Chapter 4 sets forth specific rules and regulations regarding access by competitive retailers to an MOU's or Coop's delivery system; and Chapter 5 sets forth the particular MOU's or Coop's rate schedules as determined by that MOU or Coop.

As part of the drafting process, commission staff met with representatives of the MOUs and Coops on three occasions to discuss areas of the proposed pro-forma access tariff that should differ from those adopted in the investor-owned-utility pro-forma delivery service tariff due to the MOUs' and Coops' unique circumstances, particularly their provision of delivery service directly to the retail customer.

Evan Farrington, Attorney, Policy Development 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.

Mr. Farrington has also 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 increased competition in the sale of electric power to retail customers in those areas served by MOUs or Coops that opt-in to retail competition.

Furthermore, Mr. Farrington has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section, but these costs are likely to vary from business to business and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Farrington, has 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. No local employment impact statement is required under Administrative Procedure Act §2001.022 to assess the potential effect on a local economy due to implementation of this section.

The commission seeks comments on the proposed rule from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rule. When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving

"leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. Should the Access Tariff contain an indemnity clause that would require Competitive Retailers to indemnify the Utility for any liability incurred from the Utility's disconnection of a Retail Customer at the Competitive Retailer's request? How might such an indemnity clause affect the competitive market?
2. Should Competitive Retailers have the same options for outage reporting that they have in the Tariff for Retail Delivery Service approved for Investor-Owned Utilities (IOUs) (P.U.C. Substantive Rule §25.214)?
3. Should the Access Tariff contain an option for the Competitive Retailer to provide a consolidated bill under the same conditions as in the IOU tariff?
4. What should be the default option if a Retail Customer fails to choose to receive either a single or consolidated bill?
5. When the Utility provides a consolidated bill (*i.e.*, one that includes both the Utility's delivery service charges and the Competitive Retailer's charges), how

- many days should the Utility have to remit payment to the Competitive Retailer for the Competitive Retailer's charges?
6. If the Competitive Retailer provides a consolidated bill, should Competitive Retailer be allowed to address Retail Customer's billing inquiries?
  7. If Utility provides a consolidated bill, should the Competitive Retailer be provided a copy of the entire bill sent to the customer?

Comments on the proposed new rule (16 copies) 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. 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 22187.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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. The commission also proposes this rule pursuant to PURA §39.203, which provides that an MOU offering customer choice or a Coop offering customer choice shall provide transmission and/or distribution

service at retail in accordance with the commission's rules applicable to terms and conditions of access; §40.004(5), which grants the commission jurisdiction over MOUs to establish terms and conditions for open access to transmission and distribution facilities for MOUs providing customer choice, as provided by §39.203; §40.054(c), which grants the commission jurisdiction over MOUs participating in customer choice to establish terms and conditions for access by other retail electric providers to the MOU's distribution facilities; §40.058, which provides that before the 90th day preceding the date an MOU offers customer choice, it shall file with the commission both the tariffs implementing the open access rules established by the commission under §39.203 and the rates for open access on distribution facilities as set by the municipal regulatory authority; §41.004(4), which grants the commission jurisdiction over Coops to establish terms and conditions for open access to distribution facilities for Coops providing customer choice; §41.054(c), which grants the commission jurisdiction over Coops participating in customer choice to establish terms and conditions for access by other electric providers to the Coop's distribution facilities; and §41.058, which provides that before the 90th day preceding the date a Coop offers customer choice, it shall file with the appropriate regulatory authorities having jurisdiction over the transmission and distribution service of the Coop tariffs implementing the open access rules established by the commission under §39.203.

Cross Reference to Statutes: PURA §§14.002, 39.203, 40.004(5), 40.054(c), 40.058, 41.004(4), 41.054(c), and 41.058.

**§25.215. Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice.**

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of access by competitive retailers to the delivery systems of municipally owned utilities and electric cooperatives that have implemented customer choice. Retail delivery service, including delivery service to a retail customer at transmission voltage, shall be provided directly to retail customers by a municipally owned utility or an electric cooperative that has implemented customer choice. A municipally owned utility or an electric cooperative that has implemented customer choice shall provide retail delivery service in accordance with the rates, terms and conditions set forth in the delivery service tariffs promulgated by the municipally owned utility or an electric cooperative.
- (b) **Application.** This section and the pro-forma access tariff set forth in subsection (d) of this section governs the terms and conditions of access by competitive retailers at the point of supply to retail customers connected to the delivery systems of municipally owned utilities and electric cooperatives that have implemented customer choice.

- (c) **Access tariff.** Not later than the 90th day before the date a municipally owned utility or electric cooperative in Texas begins offering customer choice, such municipally owned utility or electric cooperative shall file with the Public Utility Commission of Texas (commission) its access tariff, using the pro-forma access tariff in subsection (d) of this section, governing access by competitive retailers to retail customers connected to the delivery system of the municipally owned utility or electric cooperative. A municipally owned utility or an electric cooperative may add to or modify only Chapters 2 and 5 of the access tariff, reflecting individual characteristics and rates. Chapters 1, 3, and 4 of the pro-forma access tariff shall be used exactly as written; these Chapters can be changed only through the rulemaking process. The access tariff, however, shall contain the name of the municipally owned utility or electric cooperative in lieu of "{Utility}".
- (d) **Pro-forma access tariff.** The commission adopts by reference the form "Tariff for Competitive Retailer Access," effective date of May 8, 2001. This form is available in the commission's Central Records division and on the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us).

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 11th DAY OF MAY 2001 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**