PROJECT NO. 41616

RULEMAKING TO REVISE PUC SUBST R. 25.272, CODE OF CONDUCT FOR ELECTRIC UTILITIES AND THEIR AFFILIATES	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENT TO §25.272
AS APPROVED AT THE MAY 30, 2014 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, with changes to the proposed text as published in the January 3, 2014 issue of the *Texas Register* (39 TexReg 25). The amendment to the rule will delete an expired section, update a marketing provision, and modify the compliance audit requirement for electric utilities without affiliates. The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.001(e) (West 2007 and Supp. 2013) (PURA). This amendment is adopted under Project Number 41616.

The commission received comments on the proposed amendment from Texas New Mexico Power Company (TNMP), CenterPoint Energy, Inc. (CenterPoint), the Office of Public Utility Counsel (OPUC), the REP Coalition, and jointly by AEP Texas Central Company, AEP Texas North Company, and Electric Transmission Texas, LLC. The REP Coalition consists of: Alliance for Retail Markets (ARM); Reliant Energy Retail Services; the Texas Energy Association of Marketers (TEAM); First Choice Power Special Purpose, LP; CPL Retail Energy, LP; WTU Retail Energy, LP; and TXU Energy Retail Company LLC. Members of ARM participating in this proceeding are: Direct Energy, LP; Green Mountain Energy Company;

MidAmerican Energy Company; and Noble Americas Energy Solutions, LLC. Members of TEAM participating in this proceeding are Accent Energy d/b/a IGS Energy; Cirro Energy; DPI Energy (d/b/a Trusmart); Entrust Energy; Just Energy; Spark Energy; StarTex Power; Stream Energy; and TriEagle Energy. Reply comments were received from CenterPoint and the REP Coalition, as well as AEP Energy, Inc. (AEP Energy), the Steering Committee of Cities Served by Oncor (Oncor Cities), and from AEP Texas Central Company and AEP Texas North Company (together AEP Texas). AEP Energy is a competitive retail electric provider authorized to do business under the names Bluestar Energy Solutions and Bluestar Energy Services, Inc. and is a competitive affiliate of AEP Texas.

General Comments

TNMP supported the proposed revisions and stated that they promoted efficiency and advanced the over-arching goal of prohibiting market abuse between utilities and their competitive affiliates. CenterPoint asserted that the rule is effective as it currently exists and that it effectively tracks the language in PURA, but noted that it had no objections to the published amendments. OPUC summarized the recent commission docket history that led to re-examination of the rule and noted that the rule performs a vital role in customer protection and the maintenance of competition. OPUC agreed with the general approach of the commission's proposal but emphasized the commission's broad authority to address market power and protect customers when specific circumstances arise, including authority to require disclaimers when necessary. As discussed below, the REP Coalition offered comments and specific language that would prohibit all co-branding between a utility and a competitive affiliate. AEP Energy and AEP Texas supported updates to the rule language.

Commission response

The commission appreciates the comments it has received from stakeholders throughout this process and agrees with OPUC that the commission retains broad authority under the rule as revised to address market power and customer protection issues.

Subsection (c)

The REP Coalition advocated for the addition of a new definition in subsection (c) as follows:

> (3) **Competitive electric service** -- The sale, provision, presentation, or comparison of retail electric or electric-related products or offerings to or for the benefit of end-use customers in a competitive market.

As discussed below, the REP Coalition advocated for an express prohibition on the sharing of branding features between electric utilities and their competitive affiliates that are engaged in competitive electric service. The REP coalition argued that joint branding in electric markets must be prohibited in order to comply with the statutory requirements of PURA Chapter 39. The REP Coalition offered a definition of "competitive electric service" in subsection (c) that would support the express prohibition language that it offered in subsection (h)(1).

Commission response

The commission disagrees with the REP Coalition that it is necessary to modify the rule to add a definition for "competitive electric service." The term "competitive affiliate" is already defined within the rule, and the concepts contained within the REP Coalition's proposed definition of "competitive electric service" are largely already encompassed within the

definition of "competitive affiliate." Therefore, the commission declines to modify the rule to add a definition for "competitive electric service."

Subsection (h)(1)

OPUC stated that the deletion of this subsection was appropriate because the disclaimer provision had expired in 2005, and emphasized that the commission is not prohibited from seeking such disclaimers under certain circumstances through its authority under PURA §39.101 or §39.157.

In their initial comments, CenterPoint, TNMP, and AEP Texas had no objections to the proposed revision of subsection (h)(1). In addition, CenterPoint noted that it has had a comprehensive code of conduct compliance program in place for fifteen years, and that the company's compliance has been reviewed multiple times by internal and external auditors with publicly filed audits.

In its initial comments, the REP Coalition agreed that the current subsection language should be deleted but proposed that new language should replace it as follows:

(h) **Safeguards relating to joint marketing and advertising.**

(1) A utility shall not share the same brand, logo, or any identifying brand feature with a competitive affiliate engaged in competitive electric service in Texas, nor shall a utility allow the use of its brand, logo, service mark, or any identifying brand feature by such affiliates. For purposes of this section, use or sharing includes, but is not limited to, shared domain names (including employee e-mail addresses), social media links, digital applications, or any promotional materials or advertising. Utilities may

> allow disclosure of their affiliation with competitive affiliates in other communications to the extent that such communications do not constitute joint marketing and advertising.

The REP Coalition stated that since the commission's adoption of the Code of Conduct in 1999, the commission has not undertaken a comprehensive review of the efficacy of §25.272 in its current form. The REP Coalition stated that as the electric market has developed in this fifteen year period, critical issues with respect to the Code of Conduct rule have arisen as some market participants have attempted to use the same brand identity for monopoly utility services and competitive electric services offered by affiliated entities. The REP Coalition argued that these attempts impact retail electric providers in a manner inconsistent with the purpose of the Code of Conduct rule to avoid potential market-power abuses.

The REP Coalition provided its perspective on the rule background: in Docket No. 40636, *Petition for Declaratory Ruling Regarding CenterPoint Energy Houston Electric, LLC Joint Advertising with a Competitive Affiliate*, the commission declined to grant the declaratory order but directed commission Staff to open a broad rulemaking to consider the issues regarding the joint marketing of a regulated utility and its competitive affiliates and to avoid having to address such issues on a case by case basis. The REP Coalition also noted that in Docket No. 39509, *Application of AEP Texas Commercial & Industrial Retail Limited Partnership for Amendment to a Retail Electric Provider Certification*, the commission denied retail electric provider certification for an entity affiliated with AEP Texas Central Company and AEP Texas North Company that proposed to use the name "AEP Retail Energy."

The REP Coalition argued that the proposed rule for publication falls significantly short in addressing the important operational and enforcement issues raised in these cases. The REP Coalition argued that the revisions do not achieve the much-needed clarity and certainty that modifications such as those proposed by the REP Coalition would achieve. The REP Coalition argued that it is critical for the commission in this rulemaking proceeding to clarify that a utility may not leverage its monopoly status and confer an unfair competitive advantage to its affiliates providing competitive electric service. Specifically, the REP Coalition argued that the Code of Conduct rule should ensure that a utility does not promote or provide an advantage to its competitive affiliates operating in the electric industry either by allowing those affiliates to share the utility's name, logo or branding or by giving the appearance, through use of the internet, social media or otherwise, that the utility endorses the service offered by such affiliates. The REP Coalition suggested that amendments to the code of conduct rule that clarify how competitive affiliates must be marketed and operated separately and independently from the utility will provide market participants greater clarity and certainty with respect to conduct in the market and will ensure that the benefits of a fully competitive market.

The REP Coalition stated that PURA Chapter 39 includes a number of provisions to transition the electricity market from one of vertically integrated utilities with monopoly service areas to a competitive market where retail electric providers – some affiliated with a transmission and distribution utility and others independent – compete to serve customers. The REP Coalition stated that to enforce the restructuring of the market, PURA §39.157 gives the commission responsibility and authority to monitor activities that would impair the market.

The REP Coalition argued that any amendments to the rule must further the policies and comport with the statutory requirements of PURA Chapter 39, specifically in prohibiting the use of monopoly brands to promote competitive electric services provided by affiliate companies in a manner that provides an unfair competitive advantage that is incompatible with the normal forces of competition.

The REP Coalition argued that the proposed amendments are only cosmetic and do not address issues that have arisen in the competitive marketplace. The REP Coalition argued that its substantive amendment is needed if critical issues related to the co-branding of and joint marketing by regulated utilities and their competitive affiliates are to be more efficiently resolved through the rule and not left to the commission to determine on a case-by-case basis as they arise through the contested case process.

The REP Coalition laid out several hypotheticals to illustrate the types of names and logos that could be shared between utilities and competitive affiliates under regulatory schemes that permitted: (1) unfettered co-branding; (2) limited name and logo sharing; and (3) no co-branding. The hypotheticals show utility and competitive affiliate names and logos with varying levels of similarity in name and appearance.

The REP Coalition argued that the provisions in PURA §39.157(d)(6) (joint advertising or promotional activities), (d)(7) (sharing of resources), and (d)(11) (subsidization of an affiliate with revenues from a regulated service) are only effectuated by a rule that prohibits all co-branding. The REP Coalition acknowledged, however, that several of its own hypothetical

examples show that even if the rule is revised to clarify that utilities cannot jointly advertise and share marketing resources with their competitive affiliates, some degree of scrutiny of how utilities operate and promote their affiliates will always be necessary to ensure that their monopoly market power is not being abused. The REP Coalition contended that its amendments would effectuate an electric market in which all joint branding is prohibited. According to the REP Coalition, a complete prohibition on branding is the only scenario that fully comports with the statutory requirements precluding utilities and their competitive affiliates from engaging in the joint marketing, cross-promotion, and improper subsidization of competitive services by a regulated utility.

The REP Coalition predicted that stakeholders may raise constitutional objections to their proposal. The REP Coalition argued that the constitutionality of restrictions on commercial speech is subject to an intermediate level of scrutiny, under which courts have held that misleading commercial speech is not protected. The REP Coalition argued that the necessity of regulating commercial speech to prevent unfair competitive advantage that can be realized by co-branding is demonstrated in the record evidence of Docket No. 39509 in the form of a survey showing that customers were confused and misled. The REP Coalition argued that because the evidence in Docket No. 39509 demonstrated that customers were confused and misled by shared branding, regulation of shared branding is constitutionally sound.

The REP Coalition cited *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), for the proposition that if commercial speech is not unlawful or misleading, it may still be regulated if: (1) the asserted governmental interest is substantial; (2)

the regulation directly advances the governmental interest asserted; and (3) whether the regulation is more extensive than necessary to serve that interest. The REP Coalition argued that joint branding does confuse and mislead consumers and therefore prohibition of joint branding does not impinge any First Amendment commercial speech rights. Alternatively, the REP Coalition argues that its proposed amendment still satisfies the *Central Hudson* test because: (1) there is a substantial government interest expressed in PURA to implement a competitive retail market; (2) the prohibition of joint advertising advances the governmental interest in maintaining separation of the entities business operations; and (3) there is no effective and less restrictive alternative for addressing the problems with co-branding than a prohibition of all co-branding between utilities and competitive affiliates.

In reply comments, AEP Texas stated that the Code of Conduct prohibits control by a utility over the actions of a competitive affiliate. AEP Texas argued that the REP Coalition's proposal prohibits a utility from allowing a competitive affiliate to engage in certain activities, but in fact utilities like AEP Texas are prohibited by the Code of Conduct from controlling the activities of competitive affiliates. AEP Texas also argued that Docket No. 39509 is currently on appeal, and it would therefore be premature to incorporate language in the rule that is even more restrictive than the commission's ruling in Docket No. 39509. Furthermore, AEP Texas noted that in Docket No. 39509 the commission expressly found that nothing in PURA categorically prohibits sharing of the same or similar names.

AEP Energy stated in reply comments that the commission already determined in Docket No. 39509 that PURA does not authorize the REP Coalition's proposed rule. Furthermore, AEP

Energy stated that the commission determined in Docket No. 40636 that the question of whether shared branding by utilities and their competitive affiliates constitutes joint advertising or promotional activities that favor competitive affiliates in violation of PURA is a question of fact. AEP Energy argued that the REP Coalition simply ignores this precedent.

AEP Energy argued that the only subsection of PURA §39.157(d) that applies to sharing of common branding is PURA §39.157(d)(5)(B), and that subsection clearly authorizes the use of shared branding. AEP Energy argued that the termination of the disclaimer requirement in 2005 simply ends the requirement to use a disclaimer and permits shared branding without a disclaimer thereafter. AEP Energy argued that it would make no sense for the Legislature to expressly allow shared branding with a disclaimer when the market was new, and then impliedly prohibit that shared branding once the market became established.

AEP Energy further argued that there exists a less restrictive alternative to a total ban – the use of a disclaimer. AEP Energy argued that a total ban would violate utilities constitutional commercial speech rights when a less restrictive alternative has already been presented by the Legislature. AEP Energy finally noted the pending appeal of Docket No. 39509 and requested that the commission delay consideration of the proposed rule until after a final decision in the appeal is rendered.

In reply comments, CenterPoint argued that the commission had already considered and rejected such a categorical prohibition on joint branding in Docket No. 39509 and found that the sharing of identical branding constituted prohibited joint advertising based on the facts in that case. The

commission reiterated in Docket No. 40636 that the question of whether shared branding is prohibited by PURA is a question of fact. CenterPoint argued that the REP Coalition nevertheless ignores the commission's discussion and precedent from those cases.

CenterPoint stated that shared branding is not new to the Texas market. CenterPoint stated that utilities such as TXU, CenterPoint, and AEP have shared common names with affiliated retail electric providers and competitive affiliates at various times since the market opened. CenterPoint provided examples of the shared branding.

CenterPoint also argued that a blanket prohibition on all joint branding would be an overly restrictive regulation of constitutional commercial speech rights. CenterPoint argued that contrary to the impression left by the REP Coalition, the commission never reached the constitutional questions raised in Docket No. 40636.

CenterPoint cited a number of cases for the propositions that government must seek to limit its restrictions on commercial speech, and that the restrictions must seek to address speech that is actually misleading, rather than seeking to "keep people in the dark for their own good." CenterPoint emphasized that in order for commercial speech to be found actually misleading, there must be a record with evidence that customers were actually misled. CenterPoint argued that it is inappropriate to look at the record of Docket No. 39509, a particular case decided on the basis of particular facts, in order to find support for a blanket ban on co-branding in all cases.

In their reply comments, the REP Coalition presented a number of factual allegations of co-branding activities currently being employed by a utility. The REP Coalition argued that these co-branding activities are unambiguous violations of at least six subsections of PURA §39.157, and that the rule should be amended in accordance with the REP Coalition recommendation to clarify that co-branding activities are prohibited.

The REP Coalition also argued that CenterPoint's initial comments raised an argument that no changes to the rule are needed because CenterPoint's audit results have found that the company is acting in compliance with PURA and commission rules. The REP Coalition argued that the audits performed by third parties hired by utilities only evaluate compliance with each utility's internal interpretation of the existing rule, and to the extent the commission has not provided clear guidance on the rule's meaning with respect to a given issue, the utility's audit invariably concludes that the utility is in compliance as to that issue. The REP Coalition argued that audits are not substitutes for a revision of the rules.

OPUC's comments supported Staff's rule amendments, and emphasized that the commission retains the authority to require disclaimers to be used in specific cases where co-branding may be problematic. The Oncor Cities filed reply comments indicating their support for the reasoning and rule language presented by the REP Coalition. The Oncor Cities also supported OPUC's statement that the commission retains the ability to require disclaimers to prevent customer confusion.

Commission response

The commission disagrees with the REP Coalition that it is necessary to modify subsection (h) to add a provision prohibiting all joint branding between utilities and competitive affiliates. The existing provisions in PURA §39.157 and §25.272 provide important and potent tools that can effectively address the hypotheticals raised by the REP Coalition. In fact, these existing provisions were used to prevent a proposed co-branding activity in Docket No. 39509.

In addition, these statutory and rule provisions are clearly qualified in that the actions described are only prohibited when performed "in a manner that favors the competitive affiliate." The rule language proposed by the REP Coalition would effectively eliminate this qualifier, prohibiting all co-branding regardless of whether it favors a competitive affiliate. For example, the REP Coalition language would prohibit co-branding between a small transmission and distribution utility (TDU) and a competitive affiliate operating far away from the TDU's service territory in an area in which there are few or no consumers that even recognize the TDU brand.

The commission does not concur with the REP Coalition's position that every shared use of branding between a utility and a competitive affiliate is a violation of the joint marketing restrictions in PURA §39.157. In fact, the open meeting discussion attached to the REP Coalition's comments showed that while the commission wanted to look broadly at the rule, a broad and blanket prohibition on any joint use of branding features was not the purpose of the rulemaking. The commission views the statute to allow the commission the discretion to review the specific circumstances of a given case and take appropriate measures to protect

customers and prevent market abuses. The REP Coalition appears to concede that even without the proposed REP Coalition amendments, PURA gives the commission the tools it needs to examine potential abuses as they arise.

The hypothetical and alleged branding uses described by the REP Coalition hint at the tremendous number of subtle variations that could be employed to create just enough difference in branding to circumvent a specific, express prohibition on using the "same" brand, logo, or brand feature. As seen in litigation surrounding trademarks, and as acknowledged in the REP Coalition comments, the enormous creativity and variation that is used in marketing efforts in a competitive marketplace would necessitate a flexible approach to regulation that can accommodate consideration of the particular facts of a given case and the need for prohibition of a particular use, even if there was a rule with a broad prohibition on use of the "same" branding features.

The commission agrees with OPUC that the deletion of this subsection was appropriate because the disclaimer provision had expired in 2005.

The commission reserves its authority to examine such matters as they arise and declines to modify subsection (h) as proposed by the REP Coalition to prohibit all joint branding between utilities and competitive affiliates.

Subsections (h)(1)(B)

The REP Coalition also proposed the following change for the language of subsection (h)(1)(B)(vi)

and a new subsection (h)(1)(B)(vii):

(B) A utility shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:

(vi) providing links from all of the utility's web site and social media platforms to those of its competitive affiliates; and

(vii) allowing competitive affiliate to act or appear to act on behalf of utility in any communications and contacts with existing or potential customers.

The REP Coalition did not provide a discussion of the reasons for its proposals in clauses (vi) and (vii).

AEP Texas proposed revising the language in clause (vi) to read: "providing links from the utility's web site and social media platforms to the web site and social media platforms of its competitive affiliates." AEP Texas explained that it understood the intent of the proposed amendment to be to encompass social media as it has and continues to evolve. However, AEP Texas noted that the commission's proposed language could be construed as prohibiting a utility from providing links between its own web site and social media.

Commission response

The commission declines to adopt the REP Coalition's proposed modification to clause (vii). The REP Coalition's proposed language is effectively the reverse of current subsection (i), which prevents the utility from acting or appearing to act on behalf of a

competitive affiliate. The commission finds that the REP Coalition's proposed clause (vii) is overly restrictive, in that it may prevent a competitive affiliate from engaging in otherwise permissible activities that unaffiliated market participants regularly perform, such as retail electric providers collecting and transmitting charges for transmission and distribution service or coordinating initiation, provision, or termination of service in the normal course or in emergency situations. In addition, the proposed clause (vii) attempts to regulate competitive affiliate actions rather than utility actions, but the purpose of this portion of the rule and statute is to address utility subsidization or support of a competitive affiliate, rather than the reverse.

The commission agrees with the REP Coalition and AEP Texas that the proposed language of clause (vi) can be improved to make clear the type of links that are prohibited. Changing the language proposed by the stakeholders just slightly to use "between" instead of "from" and "to," the commission modifies clause (vi) to read: "providing links between any of a utility's websites and social media platforms, and any of the websites and social media platforms of its competitive affiliates." As noted by AEP Texas, the intent of this language is not to prohibit links between a utility's own websites and social media platforms, but rather to prohibit the links between a utility's properties and the properties of its affiliates. With that modification, the commission modifies clause (vi) as proposed by AEP Texas and the REP Coalition.

Subsection (i)(3)

TNMP noted that the amendments to this subsection promote efficiency by eliminating commission and TDU expenditure of resources upon audits and reviews in circumstances where there are no affiliate relationships. OPUC concurred in the proposed commission language.

Commission response

The commission agrees that the affidavit requirement in this subsection for utilities without affiliates prevents unnecessary expenditure and promotes administrative efficiency. Because the stakeholder comments are supportive of the proposed amendment, the commission makes no modification to this subsection.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is proposed under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically 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, 17.052, and 17.053, which collectively authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections and

entitle 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 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; and PURA §39.157, which authorizes the commission to adopt and enforce rules to govern transactions or activities between a transmission and distribution utility and its competitive affiliates to avoid potential market power abuses and cross-subsidizations between regulated and competitive activities both during the transition to and after the introduction of competition.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 17.051, 17.052, 17.053, 39.101, and 39.157.

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

(a) **Purpose.** The provisions of this section establish safeguards to govern the interaction between utilities and their affiliates, both during the transition to and after the introduction of competition, to avoid potential market-power abuses and cross-subsidization between regulated and unregulated activities.

(b) **Application.**

(1) **General application.** This section applies to:

(A) electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002(6), and transactions or activities between electric utilities and their affiliates, as defined in PURA §11.003(2); and

(B) transmission and distribution utilities operating in a qualifying power region in the State of Texas as defined in PURA §31.002(19) upon commission certification of a qualifying power region pursuant to PURA §39.152, and transactions or activities between transmission and distribution utilities and their affiliates, as defined in PURA §11.003(2).

(2) **No circumvention of the code of conduct**. An electric utility, transmission and distribution utility, or competitive affiliate shall not circumvent the provisions or the intent of PURA §39.157 or any rules implementing that section by using any affiliate to provide information, services, products, or subsidies between a competitive affiliate and an electric utility or a transmission and

distribution utility.

(3) **Notice of conflict and/or petition for waiver.** Nothing in this section is intended to affect or modify the obligation or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission (FERC) or the Securities and Exchange Commission (SEC). A utility shall file with the commission a notice of any provision in this section that conflict with FERC or SEC orders or regulations. A utility that is subject to statutes or regulations in any state that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause.

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

(1) **Arm's length transaction --** The standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm's length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction.

(2) **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.

(3) **Confidential information --** Any information not intended for public disclosure and considered to be confidential or proprietary by persons privy

to such information. Confidential information includes but is not limited to information relating to the interconnection of customers to a utility's transmission or distribution systems, proprietary customer information, trade secrets, competitive information relating to internal manufacturing processes, and information about a utility's transmission or distribution system, operations, or plans for expansion.

(4) **Corporate support services** -- Services shared by a utility, its parent holding company, or a separate affiliate created to perform corporate support services, with its affiliates of joint corporate oversight, governance, support systems, and personnel. Examples of services that may be shared, to the extent the services comply with the requirements prescribed by PURA §39.157(d) and (g) and rules implementing those requirements, include human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development unrelated to marketing activity and/or business development for the competitive affiliate regarding its services and products, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning. Examples of services that may not be shared include engineering, purchasing of electric transmission facilities and service, transmission and distribution system operations, and marketing, unless such services are provided by a utility, or a separate affiliate created to perform such services, exclusively to affiliated regulated utilities and only for

provision of regulated utility services.

(5) **Proprietary customer information** -- Any information compiled by an electric utility on a customer in the normal course of providing 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 other 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.

(6) **Similarly situated** -- The standard for determining whether a non-affiliate is entitled to the same benefit a utility offers, or grants upon request, to its competitive affiliate for any product or service. For purposes of this section, all non-affiliates serving or proposing to serve the same market as a utility's competitive affiliate are similarly situated to the utility's competitive affiliate.

(7) **Transaction** -- Any interaction between a utility and its affiliate in which a service, good, asset, product, property, right, or other item is transferred or received by either a utility or its affiliate.

(8) **Utility** -- An electric utility as defined in PURA §31.002(6) or a transmission and distribution utility as defined in PURA §31.002(19). For purposes of this section, a utility does not include a river authority operating a

steam generating plant on or before January 1, 1999, or a corporation authorized by Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717 p, Vernon's Texas Civil Statutes). In addition, with respect to a holding company exempt under the Public Utility Holding Company Act (PUHCA) §3(a)(2), the term "utility," as used in this section, means the division or business unit through which the holding company conducts utility operations and not the holding company as a legal entity.

(d) **Separation of a utility from its affiliates**.

(1) **Separate and independent entities.** A utility shall be a separate, independent entity from any competitive affiliate.

(2) **Sharing of employees, facilities, or other resources.** Except as otherwise allowed in paragraphs (3), (4), (5), or (7) of this subsection, a utility shall not share employees, facilities, or other resources with its competitive affiliates unless the utility can prove to the commission prior to such sharing that the sharing will not compromise the public interest. Such sharing may be allowed if the utility implements adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(3) **Sharing officers and directors, property, equipment, computer systems, information systems, and corporate services.** A utility and a competitive affiliate may share common officers and directors, property, equipment, computer systems, information systems and corporate support services, if the utility implements safeguards that the commission determines are adequate to preclude employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates

(4) **Employee transfers and temporary assignments.** A utility shall not assign, for less than one year, utility employees engaged in transmission or distribution system operations to a competitive affiliate unless the employee does not have knowledge of confidential information. Utility employees engaged in transmission or distribution system operations, including persons employed by a service company affiliated with the utility who are engaged in transmission system operations on a day-to-day basis or have knowledge of transmission or distribution system operations and are transferred to a competitive affiliate, shall not remove or otherwise provide or use confidential property or information gained from the utility or affiliated service company in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of non-affiliated electric suppliers. Movement of an employee engaged in transmission or distribution system operations, including a person

employed by a service company affiliated with the utility who is engaged in transmission or distribution system operations on a day-to-day basis or has knowledge of transmission or distribution system operations from a utility to a competitive affiliate or vice versa, may be accomplished through either the employee's termination of employment with one company and acceptance of employment with the other, or a transfer to another company, as long as the transfer of an employee from the utility to an affiliate results in the utility bearing no ongoing costs associated with that employee. Transferring employees shall sign a statement indicating that they are aware of and understand the restrictions and penalties set forth in this section. The utility also shall post a conspicuous notice of such a transfer on its Internet site or other public electronic bulletin board within 24 hours and for at least 30 consecutive calendar days. The exception to this provision is that employees may be temporarily assigned to an affiliate or non-affiliated utility to assist in restoring power in the event of a major service interruption or assist in resolving emergency situations affecting system reliability. Consistent with §25.84(h) of this title, however, within 30 days of such a deviation from the code of conduct, the utility shall report this information to the commission and shall conspicuously post the information on its Internet site or other public electronic bulletin board for 30 consecutive calendar days.

(5) **Sharing of office space.** A utility's office space shall be physically separate from that of its competitive affiliates, where physical separation is accomplished by having office space in separate buildings or, if within the same building, by a method such as having offices on separate floors or with separate access, unless

otherwise approved by the commission.

(6) **Separate books and records.** A utility and its affiliates shall keep separate books of accounts and records, and the commission may review records relating to a transaction between a utility and an affiliate.

(A) In accordance with generally accepted accounting principles or state and federal guidelines, as appropriate, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(B) A utility shall prepare financial statements that are not consolidated with those of its affiliates.

(C) A utility and its affiliates shall maintain sufficient records to allow for an audit of the transactions between the utility and its affiliates. At any time, the commission may, at its discretion, require a utility to initiate, at the utility's expense, an audit of transactions between the utility and its affiliates performed by an independent third party.

(7) **Limited credit support by a utility.** A utility may share credit, investment, or financing arrangements with its competitive affiliates if it complies with subparagraphs (A) and (B) of this paragraph.

(A) The utility shall implement adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-

subsidization of affiliates.

(B) The utility shall not allow an affiliate to obtain credit under any arrangement that would include a specific pledge of any assets in the rate base of the utility or a pledge of cash reasonably necessary for utility operations. This subsection does not affect a utility's obligations under other law or regulations, such as the obligations of a public utility holding company under §25.271(c)(2) of this title (relating to Foreign Utility Company Ownership by Exempt Holding Companies).

(e) **Transactions between a utility and its affiliates.**

(1) **Transactions with all affiliates.** A utility shall not subsidize the business activities of any affiliate with revenues from a regulated service. In accordance with PURA and the commission's rules, a utility and its affiliates shall fully allocate costs for any shared services, including corporate support services, offices, employees, property, equipment, computer systems, information systems, and any other shared assets, services, or products.

(A) **Sale of products or services by a utility.** Unless otherwise approved by the commission and except for corporate support services, any sale of a product or service by a utility shall be governed by a tariff approved by the commission**.** Products and services shall be made available to any third party entity on the same terms and conditions as the utility makes those products and services available to its affiliates.

(B) **Purchase of products, services, or assets by a utility from its affiliate.** Products, services, and assets shall be priced at levels that are fair and reasonable to the customers of the utility and that reflect the market value of the product, service, or asset.

(C) **Transfers of assets.** Except for asset transfers implementing unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G, assets transferred from a utility to its affiliates shall be priced at levels that are fair and reasonable to the customers of the utility and that reflect the market value of the assets or the utility's fully allocated cost to provide those assets.

(D) **Transfer of assets implementing restructuring legislation.** The transfer from a utility to an affiliate of assets implementing unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G will be reviewed by the commission pursuant to the applicable provisions of PURA, and any rules implementing those provisions.

(2) **Transactions with competitive affiliates.** Unless otherwise allowed in this subsection, transactions between a utility and its competitive affiliates shall be at arm's length. A utility shall maintain a contemporaneous written record of all transactions with its competitive affiliates, except those involving corporate

support services and those transactions governed by tariffs. Such records, which shall include the date of the transaction, name of affiliate involved, name of a utility employee knowledgeable about the transaction, and a description of the transaction, shall be maintained by the utility for three years. In addition to the requirements specified in paragraph (1) of this subsection, the following provisions apply to transactions between utilities and their competitive affiliates.

(A) **Provision of corporate support services**. A utility may engage in transactions directly related to the provision of corporate support services with its competitive affiliates. Such provision of corporate support services shall not allow or provide a means for the transfer of confidential information from the utility to the competitive affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the competitive affiliate.

(B) **Purchase of products or services by a utility from its competitive affiliate.** Except for corporate support services, a utility may not enter into a transaction to purchase a product or service from a competitive affiliate that has a per unit value of $75,000 or more, or a total value of $1 million or more, unless the transaction is the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title (relating to Contracts Between Electric Utilities and Their Competitive Affiliates).

(C) **Transfers of assets.** Except for asset transfers facilitating unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G, any transfer from a utility to its competitive affiliates of assets with a per unit value of $75,000 or more, or a total value of $1 million or more, must be the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title.

(f) **Safeguards relating to provision of products and services**.

(1) **Products and services available on a non-discriminatory basis**. If a utility makes a product or service, other than corporate support services, available to a competitive affiliate, it shall make the same product or service available, contemporaneously and in the same manner, to all similarly situated entities, and it shall apply its tariffs, prices, terms, conditions, and discounts for those products and services in the same manner to all similarly situated entities. A utility shall process all requests for a product or service from competitive affiliates or similarly situated non-affiliated entities on a non-discriminatory basis. If a utility's tariff allows for discretion in its application, the utility shall apply that provision in the same manner to its competitive affiliates and similarly situated non-affiliates, as well as to their respective customers. If a utility's tariff allows no discretion in its application, the utility shall strictly apply the tariff. A utility shall not use customer-specific contracts to circumvent these requirements, nor

create a product or service arrangement with its competitive affiliate that is so unique that no competitor could be similarly situated to utilize the product or service.

(2) **Discounts, rebates, fee waivers, or alternative tariff terms and conditions**. If a utility offers its competitive affiliate or grants a request from its competitive affiliate for a discount, rebate, fee waiver, or alternative tariff terms and conditions for any product or service, it must make the same benefit contemporaneously available, on a non-discriminatory basis, to all similarly situated non-affiliates. The utility shall post a conspicuous notice on its Internet site or public electronic bulletin board for at least 30 consecutive calendar days providing the following information: the name of the competitive affiliate involved in the transaction; the rate charged; the normal rate or tariff condition; the period for which the benefit applies; the quantities and the delivery points involved in the transaction (if any); any conditions or requirements applicable to the benefit; documentation of any cost differential underlying the benefit; and the procedures by which non-affiliates may obtain the same benefit. 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. A utility shall not create any arrangement with its competitive affiliate that is so unique that no competitor could be similarly situated to benefit from the discount, rebate, fee waiver, or alternative tariff terms and conditions.

(3) **Tying arrangements prohibited.** Unless otherwise allowed by the

commission through a rule or tariff prior to a utility's unbundling pursuant to PURA §39.051, a utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate.

(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 a 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 State of Texas' Division of Emergency Management.** Beginning January 1, 2011, a utility may provide proprietary customer information to the State of Texas' Division of Emergency Management, upon that agency's request for purposes of identifying the customer as a critical care residential customer pursuant to §25.497 of this title (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) **Safeguards relating to joint marketing and advertising.**

(1) **Joint marketing, advertising, and promotional activities.**

(A) A utility shall not:

(i) provide or acquire leads on behalf of its competitive affiliates;

(ii) solicit business or acquire information on behalf of any of its competitive affiliates;

(iii) give the appearance of speaking or acting on behalf of any of its competitive affiliates;

(iv) share market analysis reports or other proprietary or non-publicly available reports, with its competitive affiliates;

(v) represent to customers or potential customers that it can offer competitive retail services bundled with its tariffed services; or

(vi) request authorization from its customers to pass on information exclusively to its competitive affiliate.

(B) A utility shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:

(i) acting or appearing to act on behalf of a competitive affiliate in any communications and contacts with any existing or potential customers;

(ii) joint sales calls;

(iii) joint proposals, either as requests for proposals or responses to requests for proposals:

(iv) joint promotional communications or correspondence, except that a utility may allow a competitive affiliate access to customer bill advertising inserts according to the terms of a commission-approved tariff so long as access to such inserts is made available on the same terms and conditions to non-affiliates offering similar services as the competitive affiliate that uses bill inserts;

(v) joint presentation at trade shows, conferences, or other marketing events within the State of Texas; and

(vi) providing links between any of a utility's websites and social media platforms, and any of the websites and social media platforms of its competitive affiliates.

(C) At a customer's unsolicited request, a utility may participate in meetings with a competitive affiliate to discuss technical or operational subjects regarding the utility's provision of transmission or distribution services to the customer, but only in the same manner and to the same extent the utility participates in such meetings with unaffiliated electric or energy services suppliers and their customers. The utility shall not listen to, view, or otherwise participate in any way in a sales discussion between a customer and a competitive affiliate or an unaffiliated electric or energy services supplier.

(2) **Requests for specific competitive affiliate information.** If a customer or potential customer makes an unsolicited request to a utility for information specifically about any of its competitive affiliates, the utility may refer the customer or potential customer to the competitive affiliate for more information. Under this paragraph, the only information that a utility may provide to the customer or potential customer is the competitive affiliate's address and telephone number. The utility shall not transfer the customer directly to the competitive affiliate's customer service office via telephone or provide any other electronic link whereby the customer could contact the competitive affiliate through the utility. When providing the customer or potential customer information about the competitive affiliate, the utility shall not promote its competitive affiliate's products or services, nor shall it offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider.

(3) **Requests for general information about products or services offered by competitive affiliates and their competitors.** If a customer or potential customer request general information from a utility about products or services provided by its competitive affiliate or its affiliate's competitors, the utility shall not promote its competitive affiliate or its affiliate's products or services, nor shall the utility offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider. The utility may direct the customer or potential customer to a telephone directory or to the commission, or provide the customer with a recent list of suppliers developed and

maintained by the commission, but the utility may not refer the customer or potential customer to the competitive affiliate except as provided for in paragraph (2) of this subsection.

(i) **Remedies and enforcement.**

(1) **Internal codes of conduct for the transition period.** During the transition to competition, including the period prior to and during utility unbundling pursuant to PURA §39.051, each utility shall implement an internal code of conduct consistent with the spirit and intent of PURA §39.157(d) and with the provisions of this section. Such internal codes of conduct are subject to commission review and approval in the context of a utility's unbundling plan submitted pursuant to PURA §39.051(e); however, such internal codes of conduct shall take effect, on an interim basis, on January 10, 2000. The internal codes of conduct shall be developed in good faith by the utility based on the extent to which its affiliate relationships are known by January 10, 2000, and then updated as necessary to ensure compliance with PURA and commission rules. A utility exempt from PURA Chapter 39 pursuant to PURA §39.102(c) shall adopt an internal code of conduct that is consistent with its continued provision of bundled utility service during the period of its exemption.

(2) **Ensuring compliance for new affiliates.** A utility and a new affiliate are bound by the code of conduct immediately upon creation of the new affiliate. Upon the creation of a new affiliate, the utility shall immediately post a conspicuous notice of the new affiliate on its Internet site or other public

electronic bulletin board for at least 30 consecutive calendar days. Within 30 days of creation of the new affiliate, the utility shall file an update to its internal code of conduct and compliance plan, including all changes due to the addition of the new affiliate. The utility shall ensure that any interaction with the new affiliate is in compliance with this section.

(3) **Compliance Audits.** No later than one year after the utility has unbundled pursuant to PURA §39.051, or acquires a competitive affiliate, and, at a minimum, every third year thereafter, the utility shall have an audit prepared by independent auditors that verifies that the utility is in compliance with this section. For a utility that has no competitive affiliates, the audit may consist solely of an affidavit stating that the utility has no competitive affiliates. The utility shall file the results of each said audit with the commission within one month of the audit's completion. The cost of the audits shall not be charged to utility ratepayers.

(4) **Informal complaint procedure.** A utility shall establish and file with the commission a complaint procedure for addressing alleged violations of this section. This procedure shall contain a mechanism whereby all complaints shall be placed in writing and shall be referred to a designated officer of the utility. All complaints shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The designated officer shall acknowledge receipt of the complaint in writing within five working days of receipt. The designated officer shall provide a written report communicating the

results of the preliminary investigation to the complainant within thirty days after receipt of the complaint, including a description of any course of action that will be taken. In the event the utility and the complainant are unable to resolve the complaint, the complainant may file a formal complaint with the commission. The utility shall notify the complainant of his or her right to file a formal complaint with the commission, and shall provide the complainant with the commission's address and telephone number. The utility and the complainant shall make a good faith effort to resolve the complaint on an informal basis as promptly as practicable. The informal complaint process shall not be a prerequisite for filing a formal complaint with the commission, and the commission may, at any time, institute a complaint against a utility on its own motion.

(5) **Enforcement by the commission.** A violation or series or set of violations of this section that materially impairs, or is reasonably likely to materially impair, the ability of a person to compete in a competitive market shall be deemed an abuse of market power.

(A) In addition to other methods that may be available, the commission may enforce the provisions of this rule by:

(i) seeking an injunction or civil penalties to eliminate or remedy the violation or series or set of violations;

(ii) suspending, revoking, or amending a certificate or registration as authorized by PURA §39.356; or

(iii) pursuing administrative penalties under PURA, Chapter 15,

Subchapter B.

(B) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the violation or series or set of violations.

(C) In assessing penalties, the commission shall consider the following factors:

(i) the utility's prior history of violations;

(ii) the utility's efforts to comply with the commission's rules, including the extent to which the utility has adequately and physically separated its office, communications, accounting systems, information systems, lines of authority, and operations from its affiliates, and efforts to enforce these rules;

(iii) the nature and degree of economic benefit gained by the utility's competitive affiliate;

(iv) the damages or potential damages resulting from the violation or series or set of violations;

(v) the size of the business of the competitive affiliate involved;

(vi) the penalty's likely deterrence of future violations; and

(vii) such other factors deemed appropriate and material to the particular circumstances of the violation or series or set of violations.

(6) **No immunity from antitrust enforcement.** Nothing in these affiliate rules shall confer immunity from state or federal antitrust laws. Sanctions imposed by the commission for violations of this rule do not affect or preempt antitrust

liability, but rather are in addition to any antitrust liability that may apply to the anti-competitive activity. Therefore, antitrust remedies also may be sought in federal or state court to cure anti-competitive activities.

(7) **No immunity from civil relief.** Nothing in these affiliate rules shall preclude any form of civil relief that may be available under federal or state law, including, but not limited to, filing a complaint with the commission consistent with this subsection.

(8) **Preemption.** This rule supersedes any procedures or protocols adopted by an independent organization as defined by PURA §39.151, or similar entity, that conflict with the provisions of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.272 relating to Code of Conduct for Electric Utilities and Their Affiliates is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER

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