

**PROJECT NO. 41616**

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

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.272  
AS APPROVED AT THE DECEMBER 19, 2013 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates. The proposed amendment 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 Public Utility Regulatory Act, Texas Utilities Code Annotated §39.001(e) (West 2007 and Supp. 2013) (PURA). Project Number 41616 is assigned to this proceeding.

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

Ms. Ervin has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater clarity of its applications. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Therefore, no regulatory flexibility

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

Ms. Ervin has also determined that for each year of the first five years the proposed amendment is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, February 12, 2014. The request for a public hearing must be received by Monday, February 3, 2014.

Initial comments on the proposed amendment may be submitted by February 3, 2014, and reply comments may be submitted by Monday, February 17, 2014. Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission

will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 41616.

This amendment is proposed under PURA §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This amendment is also proposed specifically under PURA §17.004, which authorizes the commission to adopt and enforce rules concerning retail electric providers (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) - (g) (No change.)

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

~~(1) **Utility name or logo.** Before September 1, 2005, a utility shall not allow the use of its corporate name, trademark, brand, or logo by a competitive affiliate, on employee business cards or in any written or auditory advertisements of specific services to existing or potential residential or small commercial customers located within the utility's certificated service area, whether through radio or television, Internet-based, or other electronic format accessible to the public, unless the competitive affiliate includes a disclaimer with its use of the utility's corporate name, trademark, brand, or logo. Such disclaimer of the corporate name, trademark, brand, or logo in the material distributed must be written in a bold and conspicuous manner or clearly audible, as appropriate for the communications medium, and shall state the following: "{Name of competitive affiliate} is not the same company as {name of utility} and is not registered by the Public Utility Commission of Texas, and you do not have to buy {name of competitive affiliate}'s products to continue to receive quality regulated services from {name of utility}."~~

~~(1)(2)~~ **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 from all of the utility's web site and social media platforms as well as those of its competitive affiliate~~a utility's Internet web site to a competitive affiliate's Internet web site.~~

- (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)~~(3) **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)~~(4) **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)~~(3) of this subsection.

(i) **Remedies and enforcement.**

(1) - (2) (No change.)

(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) - (8) (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 19<sup>th</sup> DAY OF DECEMBER 2013 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**