

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter K. RELATIONSHIPS WITH AFFILIATES.

#### §25.275. Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities.

- (a) **Purpose.** To protect against anticompetitive practices, consistent with the provisions of the Public Utility Regulatory Act (PURA) §39.157(e) and Chapters 40 and 41, the provisions of this section establish safeguards to govern the interaction between the transmission and distribution business unit (TDBU), as defined in subsection (c) of this section, of a municipally owned utility (MOU) or electric cooperative (COOP) and its competitive affiliates, and establish specific anticompetitive standards to apply to the activities of Bundled MOU/COOPS, as defined in subsection (c) of this section. It is intended by this section that no MOU/COOP subject to this section shall engage in the following anticompetitive practices:
- (1) Subsidize competitive activities directly or indirectly through rates charged for the provision of electric service;
  - (2) Allow discriminatory access to transmission and distribution products and services;
  - (3) Allow preferential access to transmission and distribution-related information;
  - (4) Allow unauthorized access to confidential customer information; and
  - (5) Allow employees performing transmission and distribution functions to provide leads to or promote the products of competitive affiliates or any persons providing competitive energy-related activities on behalf of a Bundled MOU/COOP.
- (b) **Application.**
- (1) **General application.** This section applies to the TDBU of a municipally owned utility or an electric cooperative (collectively referred to as MOU/COOP) operating in the State of Texas, and the transactions or activities between the TDBU and its competitive affiliates, and to an MOU/COOP that is conducting the activities of a TDBU and of a competitive affiliate on a bundled basis, provided that each of the following conditions is met:
    - (A) The MOU/COOP has chosen to participate in customer choice pursuant to PURA §40.051(b) or PURA §41.051(b).
    - (B) The competitive affiliate of an MOU/COOP or a Bundled MOU/COOP is providing electric energy at retail to consumers in Texas outside its certificated retail service area. For the purposes of this section, an MOU/COOP shall not be considered to be providing electric energy to retail consumers outside its certificated retail service area if:
      - (i) the MOU/COOP was serving the area prior to the date of customer choice;
      - (ii) after receiving notice that the MOU/COOP or its affiliate is selling electric energy at retail outside its retail service area, which identifies the service location, the MOU/COOP or its affiliate promptly investigates and thereafter takes reasonable steps to cease the provision of service outside its service area as soon as reasonably practicable; or
      - (iii) there is a dispute concerning the service area boundary and no commission order resolving the dispute has become final or the commission's order is subject to appeal.
  - (2) **Effect of unbundling on application.** Pursuant to PURA §40.055 and §41.055 it is the discretion of the governing body of the MOU/COOP to determine whether to unbundle any energy-related activities, and whether to do so structurally or functionally. The MOU/COOP shall file with the commission, in conjunction with the filing required by subsections (n)(1)(A) or (o)(3)(A) of this section, a written declaration of whether it chooses to structurally or functionally unbundle or whether it will provide services in a competitive market on a bundled basis. The written declaration may be amended from time to time but no amendment shall be effective before it is filed with the commission. The MOU/COOP shall comply with this section as follows:

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- (A) A structurally or functionally unbundled MOU/COOP shall comply with the provisions of this subsection, as applicable to entities of its size. Subsection (o) of this section is not applicable to a functionally or structurally unbundled MOU/COOP.
- (B) A Bundled MOU/COOP shall comply with the requirements of paragraphs (5) and (7)-(9) of this subsection, subsection (n)(2)-(10), and subsection (o) of this section.
- (3) **Small TDBU.** A small unbundled TDBU is subject to the following provisions of this section only:
  - (A) paragraphs (1) and (5)-(9) of this subsection, application;
  - (B) subsection (i)(4) of this section, separate books and records;
  - (C) subsection (j)(1) of this section, transactions with competitive affiliates; however, transactions provided for under subsection (j)(1) of this section shall be conducted at pricing levels that are fair and reasonable to the customers of the small TDBU and that reflect not less than the book value of the assets and the cost of employee time determined on the basis of aggregate percentage of time devoted by the employee to the competitive function or transmission and distribution function and do not include any discounts, rebates, fee waivers or alternative tariff terms and conditions;
  - (D) subsection (k)(1) of this section, tying arrangements prohibited;
  - (E) subsection (k)(2) of this section, products and services available on a non-discriminatory basis; and
  - (F) subsection (n) of this section, remedies and enforcement.
- (4) **Mid-size TDBU.** A mid-size unbundled TDBU is subject to the following provisions of this section only:
  - (A) paragraphs (1) and (5)-(9) of this subsection, application;
  - (B) subsection (d) of this section, annual report of code-related activities; however, a mid-size TDBU shall report only with respect to the activities for which it is subject to regulation under this section;
  - (C) subsection (e) of this section, copies of contracts or agreements;
  - (D) subsection (f) of this section, tracking migration and sharing of employees;
  - (E) subsection (g) of this section, reporting deviations from the code of conduct; however, a mid-sized TDBU shall only report deviations with respect to the activities for which it is subject to regulation under this section;
  - (F) subsection (h) of this section, ensuring compliance for new competitive affiliates;
  - (G) subsection (i) of this section, separation of a TDBU from its competitive affiliates; however, sharing of employees, facilities, or other resources with competitive affiliates shall be allowed, and the safeguards shall be deemed achieved through compliance with the transactional, information transfer, and marketing and advertising standards applicable to a mid-size TDBU under subsections (j), (k), and (l) of this section;
  - (H) subsection (j)(1) of this section, transactions with competitive affiliates; however, transactions provided for under subsection (j)(1) of this section shall be conducted at pricing levels that are fair and reasonable to the customers of the mid-size TDBU and that reflect not less than the book value of the assets and the cost of employee time determined on the basis of aggregate percentage of time devoted by the employee to the competitive function or transmission and distribution function and do not include any discounts, rebates, fee waivers or alternative tariff terms and conditions;
  - (I) subsection (j)(2) of this section, records of transactions;
  - (J) subsection (j)(3) of this section, provision of corporate support services, except to the extent that sharing of confidential information may not practicably be avoided due to cross-functional responsibilities of employees;

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- (K) subsection (k)(1) of this section, tying arrangements prohibited;
  - (L) subsection (k)(2) of this section, products and services available on a non-discriminatory basis;
  - (M) subsection (l)(1) of this section, proprietary customer information;
  - (N) subsection (1)(2) of this section, nondiscriminatory availability of aggregate customer information. A mid-size TDBU shall make aggregate customer information available to all non-affiliates under the same terms and conditions and at the same price or fully allocated cost that it is made available to any of its competitive affiliates, but is not otherwise subject to the reporting requirements in subsection (1)(2) of this section.
  - (O) subsection (1)(3) of this section, no preferential access to transmission and distribution information. A mid-size TDBU shall comply with this paragraph except to the extent preferential access may not practicably be avoided due to cross-functional responsibilities of employees or other operating constraints as reasonably determined by the mid-size TDBU;
  - (P) instead of the restrictions in subsection (m)(2) of this section, a mid-sized TDBU may participate in joint marketing, advertising, and promotional activities with a competitive affiliate, provided that the mid-size TDBU informs the customer that the competitive energy services to which the promotional activities are directed are available from other providers as well as the mid-size TDBU and makes available to the customer upon request a copy of the most recent list of competitive energy service providers as developed and maintained by the commission;
  - (Q) instead of the restrictions in subsections (m)(3) and (m)(4) of this section, if a customer or potential customer of a mid-size TDBU makes an unsolicited request for distribution service, competitive service, or information relating to such services, the mid-size TDBU shall inform the customer that competitive energy-related activities are available not only from the mid-size TDBU but also from other providers. The mid-size TDBU shall make available to a customer upon request a copy of the most recent list of competitive energy service providers as developed and maintained by the commission and may make available telephone numbers and other commonly available information; and
  - (R) subsection (n) of this section, remedies and enforcement.
- (5) **Duration of code application.** This section applies to a TDBU and a Bundled MOU/COOP, regardless of whether it is classified as large, mid-size or small, only so long as each of the conditions of paragraph (1) of this subsection continue to be met.
- (6) **Report of energy system sales and declaration of code applicability.** A report of total metered electric energy (MWh) delivered through the TDBU's system for sale at retail and wholesale, for the average of the three most recent calendar years, shall be filed annually with the commission by each MOU/COOP subject to the provisions of this section. The initial report shall be filed in conjunction with subsection (n)(1) of this section. After the initial report filing, the report of energy system sales shall be filed annually by June 1, and shall encompass the period from January 1 through December 31 of the preceding year. The annual report of energy system sales shall be filed under a control number designated by the commission for each calendar year. Both the initial and annual reports of energy sales shall include a statement from the MOU/COOP affirming that it is classified as either a small, mid-size, or large TDBU.
- (A) In the event that the MWhs delivered through the TDBU's system increase so that a TDBU is reclassified to a larger size, the TDBU shall notify the commission through the annual report of energy system sales. The TDBU shall have one year from the date of the reclassification to implement the applicable provisions of this section.

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- (B) Petition for exception to reclassification. Any TDBU may petition the commission for exception to the size determination. Upon request, if a small TDBU is reclassified as a mid-sized TDBU, the commission may consider an adjustment for growth based upon total Texas retail sales.
- (7) **No circumvention of the code of conduct.** An MOU/COOP shall not circumvent the provisions of PURA §39.157(e) or this section by using any affiliate to provide information, services, products, or subsidies that would be prohibited by this section between a competitive affiliate and a TDBU. A Bundled MOU/COOP shall not circumvent the provisions of PURA §39.157(e) or this section by using any persons to provide information, services, products, or subsidies that would be prohibited by this section between persons providing transmission and distribution service on behalf of the Bundled MOU/COOP and persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP.
- (8) **Good cause exception.** An MOU/COOP that is or may become subject to this section may petition the commission at any time for an exception or waiver of any provision of this section on a showing of good cause. Good cause may be demonstrated by showing that the cost or difficulty of achieving compliance outweighs the benefit to be achieved or that there are other alternative actions that are likely to produce reasonable results under the circumstances.
- (9) **Notice of conflict with other regulation and petition for waiver.** Nothing in this section shall affect or modify the obligation or duties relating to any rules or standards of conduct that may apply to an MOU/COOP or its affiliates, whether competitive or noncompetitive, under orders or regulations of the Federal Energy Regulatory Commission (FERC), Securities and Exchange Commission (SEC), or shall violate PURA, Chapters 40 and 41, subchapter C. An MOU/COOP shall file with the commission a notice of any provision in this section that conflicts with FERC or SEC orders or regulations. An MOU/COOP 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 meanings unless the context clearly indicates otherwise:
- (1) **Affiliate** — An entity, including a business unit or division, that controls, is controlled by, or is under common control with, an MOU/COOP. Control means the power and authority to direct the management or policies of an entity through directly or indirectly owning or holding at least a 5.0% voting or ownership interest. Affiliate includes an entity determined to be an affiliate by the commission after notice and hearing based on criteria parallel to those prescribed in PURA §11.006.
- (2) **Bundled MOU/COOP** — An MOU/COOP that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a Bundled MOU/COOP pursuant to subsection (o)(3)(A) of this section.
- (3) **Competitive affiliate** — An affiliate of an MOU/COOP that provides services or sells products at retail in a competitive energy-related market in this state, including telecommunications services to the extent those services are energy-related. An affiliate of an MOU/COOP that is selling energy only in the capacity of a provider of last resort within the scope of PURA §40.053(c) and (d) or PURA §41.053 (c) and (d) is not a competitive affiliate under this definition. The term competitive affiliate shall include both competitive divisions and competitive subsidiaries.

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- (4) **Competitive division (CD)** — A competitive affiliate that is organized as a division or other part of an MOU/COOP.
- (5) **Competitive energy-related activities** — Services or products that are sold at retail in a competitive energy-related market in this state, including telecommunications services to the extent those services are energy-related.
- (6) **Competitive subsidiary (CS)** — A competitive affiliate that is organized as a corporation or other legally distinct entity.
- (7) **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 an MOU/COOP's transmission or distribution systems, proprietary customer information, trade secrets, competitive information relating to internal manufacturing processes, and information about an MOU/COOP's transmission or distribution system, operations, or plans for expansion.
- (8) **Corporate support services** — Services shared by a TDBU, or an affiliate created to perform corporate support services, with the MOU/COOP's affiliates of joint corporate oversight, governance, support systems, and personnel. For a Bundled MOU/COOP, "corporate support services" includes governance, support systems, and personnel.
  - (A) Examples of services that may be shared, to the extent the services comply with this section, 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, corporate planning, and community economic development if the economic development activities are within the MOU/COOP's certificated retail service area.
  - (B) Examples of services that may not be shared, except as otherwise allowed under the terms of this section, include engineering, purchasing of electric transmission facilities and service, transmission and distribution system operations, and marketing.
- (9) **Fully allocated cost** — The cost of a product, service, or asset based on book values for the component elements established through generally accepted accounting principles (GAAP); or alternatively, an internal transfer price based upon the actual or expected (budgeted) operating and maintenance expenses and a capital component, as appropriate, divided by the expected or actual units for the service or product produced. Such transfer prices may be set as needed but shall not be used beyond a three year period without review. The operating and maintenance expenses shall be fully loaded with applicable overheads. The capital component shall consider the original cost of the associated assets and a reasonable return. Such internal prices may include an allowance for transfers to a municipal general fund at the discretion of the municipality.
- (10) **Large transmission and distribution business unit (TDBU)** — A TDBU that:
  - (A) delivers total metered electric energy through its system for sale at retail for the average of the three most recent calendar years greater than 6,000,000 MWh; and
  - (B) is otherwise subject to the provisions of this section as provided in subsection (b)(1) of this section.
- (11) **Mid-size transmission and distribution business unit (TDBU)** — A TDBU that:
  - (A) delivers total metered electric energy through its system for sale at retail for the average of the three most recent calendar years that is less than or equal to 6,000,000 MWh and is greater than 500,000 MWh; and

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- (B) is otherwise subject to the provisions of this section as provided in subsection (b)(1) and (b)(4) of this section.
- (12) **Municipally owned utility/electric cooperative (MOU/COOP)**— A municipally owned utility (MOU) as defined in PURA §11.003(11) or an electric cooperative (COOP) as defined in PURA §11.003(9). As used in this section, MOU/COOP does not include a competitive affiliate but does include an MOU, a COOP, or a river authority that has an affiliate relationship with a TDBU that is a division or part of the MOU/COOP.
- (13) **Proprietary customer information** — Any information compiled by a TDBU 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.
- (14) **Small transmission and distribution business unit (TDBU)** — A TDBU that:
- (A) delivers total metered electric energy through its system for sale at retail of less than 500,000 MWh for the average of the three most recent calendar years; and
- (B) is otherwise subject to the provisions of this section as provided in subsection (b)(1) and (b)(3) of this section.
- (15) **Transaction** — Any interaction between a TDBU and its competitive affiliates in which a service, asset, product, property, right, or other item is transferred or received by either the TDBU or its competitive affiliates.
- (16) **Transmission and distribution business unit (TDBU)** — The business unit of an MOU/COOP, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under PURA §39.152. TDBU does not include an MOU/COOP that owns, controls, or is an affiliate of the TDBU if the TDBU is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a TDBU shall not provide competitive energy-related activities.
- (d) **Annual report of code-related activities.** A report of activities related to this section shall be filed annually with the commission. Using forms approved by the commission, a TDBU shall report activities among itself and its competitive affiliates in accordance with the requirements of this section. The report shall be filed by June 1, and shall encompass the period from January 1 through December 31 of the preceding year during which the MOU/COOP was subject to this section.
- (e) **Copies of contracts or agreements.** A TDBU shall reduce to writing and file with the commission copies of any contracts or agreements it has with its competitive affiliates. The filing of an earnings report does not satisfy the requirements of this section. All contracts or agreements shall be filed by June 1 of each year as attachments to the annual report of code-related activities required in subsection (d) of this section. In subsequent years, if no significant changes have been made to the contract or agreement, an amendment sheet may be filed in lieu of refiling the entire contract or agreement.

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- (f) **Tracking migration and sharing of employees.** An MOU/COOP shall track and document the movement between the TDBU and its competitive affiliates of all employees engaged in transmission or distribution system operations, including persons employed by the MOU/COOP who are engaged in transmission or distribution system operations on a day-to-day basis or who have knowledge of transmission or distribution system operations. An MOU/COOP shall also document the assignment of shared employees engaged in both transmission or distribution system operations and competitive energy-related activities, if any. Employee migration and sharing information shall be included in the MOU/COOP's annual report of code-related activities. For migrating employees, the tracking information shall include an identification code, the respective titles held while employed at the TDBU and the competitive affiliate, and the effective dates of the migration. For shared employees, the tracking information shall include the employees' name, job title, scope of activities, and allocation of time to transmission and distribution functions and competitive energy-related activities.
- (g) **Reporting deviations from the code of conduct.** A TDBU shall report information regarding the instances in which deviations from this section were necessary to ensure public safety or system reliability pursuant to this section. The information reported shall include the nature of the circumstances involved and the date of the deviation. Within 30 days of each deviation relating to a competitive affiliate, the MOU/COOP shall report this information to the commission and shall conspicuously post the information on its Internet site or a public electronic bulletin board for 30 consecutive calendar days. Information regarding a deviation shall be summarized in the MOU/COOP's annual report of code-related activities.
- (h) **Ensuring compliance for new competitive affiliates.** An MOU/COOP and a new competitive affiliate are bound by this code of conduct, to the extent applicable, immediately upon creation of the new competitive affiliate. The MOU/COOP shall post a conspicuous notice of any newly created competitive affiliates on its Internet site or a public electronic bulletin board for 30 consecutive calendar days. Additionally, the MOU/COOP shall ensure that its annual report of code-related activities reflects all changes that result from the creation of new competitive affiliates.
- (i) **Separation of a TDBU from its competitive affiliates.**
  - (1) **Sharing of employees, officers and directors, property, equipment, computer and information systems, other resources, and corporate support services.** An MOU/COOP and its competitive affiliate may share common employees, officers and trustees/directors, property, equipment, computer and information systems, other resources, and corporate support services, if the TDBU implements safeguards that the commission determines are adequate to preclude employees of a competitive affiliate from gaining access to confidential information in a manner that would allow or provide a means to transfer confidential information from the TDBU to the competitive affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of a competitive affiliate.
  - (2) **Employee transfers and temporary assignments.**
    - (A) An MOU/COOP shall not assign to a competitive affiliate for less than one year employees engaged in transmission or distribution system operations unless safeguards are in place to prevent transfer of confidential information. TDBU employees engaged in transmission or distribution system operations, including persons employed by a structurally unbundled service company affiliate of the TDBU who are engaged on a day-to-day basis in 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 information or information gained from the TDBU or affiliated service company, in a discriminatory or exclusive

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fashion to the benefit of the competitive affiliate or to the detriment of non-affiliated electric suppliers.

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- (B) Movement of employees to a competitive affiliate may be accomplished either through the employee's termination of employment with the TDBU and acceptance of employment with the CS or through a transfer to the CD as long as the transfer results in the TDBU bearing no ongoing costs associated with that employee.
  - (C) Transferring employees shall sign a statement indicating that they are aware of and understand the restrictions set forth in this section. The TDBU 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.
  - (D) Employees may be temporarily assigned to an affiliate or non-affiliated TDBU to assist in restoring power in the event of a major service interruption or to assist in resolving emergency situations affecting system reliability. Any such deviation shall be reported and posted on the TDBU's Internet site or other public electronic bulletin board within 24 hours and for at least 30 consecutive calendar days.
- (3) **Sharing of office space.** A TDBU's office space shall be physically separate from the office space of its competitive affiliates. 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.
- (4) **Separate books and records.** A TDBU shall maintain separate books of accounts and records from those of any CS. In a proceeding under subsection (n)(3) of this section, the commission may review records relating to a transaction between a TDBU and a CS. Costs of CDs, other than those costs related to corporate support services, shall be segregated by account.
- (A) In accordance with generally accepted accounting principles, a TDBU shall record all transactions with its CS whether they involve direct or indirect expenses, and all transactions with CDs that relate to the transmission and distribution function.
  - (B) A TDBU shall prepare financial statements that are not consolidated with those of a CS.
- (5) **Limitations on credit support by a TDBU for a competitive affiliate.** A TDBU and its affiliates may share credit, investment, or financing arrangements with a competitive affiliate if the TDBU 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 the TDBU to the competitive affiliate or lead to customer confusion. Nothing in this section shall impair existing contracts, covenants, or obligations between an MOU/COOP and its lenders and holders of bonds issued on behalf of or by an MOU/COOP.
- (A) MOU. In issuing debt related to competitive affiliates, an MOU shall be governed by and maintained, operated, and managed in accordance with the laws of the State of Texas, including the ordinances and resolutions authorizing the issuance of any form of indebtedness and the provisions thereof, which require that funds reasonably necessary for operation and maintenance expenses (including TDBU operation and maintenance expenses) have priority in any pledge of gross revenues of the municipally owned utility system.
  - (B) COOP. A COOP TDBU shall not allow a competitive affiliate to obtain credit under any arrangement that would include a specific pledge of assets reasonably necessary for TDBU operations or a pledge of gross revenues of the TDBU.

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- (j) **Transactions between a TDBU and its competitive affiliates.**
- (1) **Transactions with competitive affiliates.** Except for transfers implementing unbundling, transfers of property pursuant to a rate order having the effect of a financing order, credit support, and corporate support services provided by a TDBU to its competitive affiliate, any transaction between a TDBU and its competitive affiliate shall be accomplished at pricing levels that are fair and reasonable to the customers of the TDBU and that reflect the approximate market value of the assets or the fully allocated cost of the assets, services, or products, and that do not include any preferential discounts, rebates, fee waivers or alternative tariff terms and conditions. Such transfers include, but are not limited to, the following:
    - (A) sale or provision of products or services by a TDBU to its competitive affiliate;
    - (B) purchase or acquisition of products, services, or assets by a TDBU from a competitive affiliate;  
or
    - (C) assets transferred from a TDBU to a competitive affiliate.
  - (2) **Records of transactions.** Each transaction between a TDBU and its competitive affiliates, other than those involving corporate support services or transactions governed by tariffs of general applicability filed at the commission or approved by the TDBU's governing body, shall be reflected in a contemporaneous written record of the transaction including the date of the transaction, name of the competitive affiliate, name of a TDBU employee knowledgeable about the transaction, and description of the transaction. Such records shall be maintained for three years.
  - (3) **Provision of corporate support services.** A TDBU may engage in transactions directly related to the provision of corporate support services with its competitive affiliate. Such transactions shall be carried out in such a way as to not allow or provide the means for the transfer of confidential information from the TDBU to the competitive affiliate, the opportunity for preferential treatment or unfair competitive advantage, customer confusion, or significant opportunities for cross-subsidization of the competitive affiliate.
- (k) **Safeguards relating to provision of products and services.**
- (1) **Tying arrangements prohibited.** A TDBU 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 TDBU or its competitive affiliate.
  - (2) **Products and services available on a non-discriminatory basis.** Any product or service, other than corporate support services or credit arrangements, made available by a TDBU to its competitive affiliate shall be made available to all similarly situated entities at the same price and on the same basis and manner that the product or service was made available to the competitive affiliate, provided however, that such provision does not violate PURA §40.104 or §41.104, or the Texas Constitution, Article III, section 52. Any service required to be provided in compliance with PURA §39.203 shall be provided in a non-discriminatory manner and in accordance with the tariffs developed pursuant to any commission rule implementing that section.
- (l) **Information safeguards.**
- (1) **Proprietary customer information.** Upon request by the customer, a TDBU shall provide a customer with the customer's proprietary customer information. Unless a TDBU 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 to any other entity, other than the customer, an independent organization as defined by PURA §39.151, or a provider of corporate support services

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for the sole purpose of providing corporate support services in accordance with subsection (j)(3) of this section. The TDBU 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 TDBU shall maintain records of such information for a minimum of three years and shall make the records available for third party review within three business days of a written request or at a time mutually agreeable to the TDBU 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 TDBU may release proprietary customer information to another entity without customer authorization where authorized or requested to do so by the commission or by law, regulation, or legal process. Nothing in this rule requires disclosure of information that may be withheld from disclosure under Texas Government Code, Chapter 552.
  - (B) Exception for release to governmental entity. Without customer authorization, a TDBU may release proprietary customer information to a federal, state, or local governmental entity or in connection with a court or administrative proceeding involving the customer or the TDBU, provided however, that the TDBU 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, an MOU/COOP may release proprietary customer information to its competitive affiliate without authorization of those customers, where either entity will be exercising the function of retail electric provider or provider of last resort, provided however, that such information may be released only during the six-month period prior to implementation of customer choice, during the six-month period prior to implementation or expansion of a pilot project, or such additional periods as may be prescribed by the commission.
  - (D) Exception for release to providers of last resort. On or after January 1, 2002, a TDBU 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 customer's selected competitive retailer. Subject to demonstration by the competitive retailer that the customer has selected that competitive retailer, a TDBU shall release proprietary customer information for a particular customer to the competitive retailer chosen by that customer in connection with provision of metering data or otherwise in compliance with the Access Tariff applicable to the TDBU under PURA §39.203.
- (2) **Nondiscriminatory availability of aggregate customer information.** A TDBU may aggregate non-proprietary customer information, including, but not limited to, information about a TDBU's energy-related goods or services. However, except in circumstances solely involving the provision of corporate support services in accordance with subsection (j)(3) of this section, a TDBU shall aggregate non-proprietary customer information for a competitive affiliate only if the TDBU makes such aggregation service available to all non-affiliates under the same terms and conditions and at the same price or fully allocated cost as it is made available to any of its competitive affiliates. In addition, no later than 24 hours prior to a TDBU's provision to its competitive affiliate of aggregate

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customer information, the TDBU shall post a conspicuous notice on its Internet site or other public

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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 or cost allocated for the information, a meaningful description of the information provided, and the procedures by which non-affiliates may obtain the same information under the terms and conditions. The TDBU shall maintain records of such disclosure information for a minimum of three years and shall make such records available for third party review within three business days of a written request or at a time mutually agreeable to the TDBU and the third party.

- (3) **No preferential access to transmission and distribution information.** A TDBU 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 TDBU shall not share information with competitive affiliates, except for information required to perform allowed corporate support services unless the TDBU 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.
- (m) **Safeguards relating to joint marketing and advertising.**
- (1) **Name and logo.** A TDBU may not, prior to September 1, 2005, allow the use of its corporate trademark, name, brand, or logo by a CS 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 TDBU's certificated service area, whether through radio or television, Internet-based, or other electronic format accessible to the public unless the CS includes a disclaimer with its use of the TDBU's corporate trademark, name, brand, or logo. Such disclaimer of the corporate trademark, name, brand, or logo in the material distributed must be written in a bold and conspicuous manner or clearly audible, as appropriate for the communication medium, and shall state the following: "{Name of CS} is not the same entity as {name of TDBU} and you do not have to buy {name of CS}'s products to continue to receive quality services from {name of TDBU}." A TDBU may allow the use of its corporate name, brand, or logo by a CD in any context.
  - (2) **Joint marketing, advertising, and promotional activities.**
    - (A) A TDBU shall not:
      - (i) provide or acquire leads on behalf of its competitive affiliates;
      - (ii) solicit business or acquire information on behalf of its competitive affiliates;
      - (iii) give the appearance of speaking or acting on behalf of any of its competitive affiliates in connection with any marketing, advertising or promotional activities, other than community economic development activities;
      - (iv) share market analysis reports or other types of proprietary or non-publicly available reports relating to retail energy sales, including, but not limited to, market forecast, planning, or strategic reports with its competitive affiliates; or
      - (v) request authorization from its customers to pass on information exclusively to its competitive affiliate.
    - (B) A TDBU 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 competitive affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:

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- (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 TDBU may allow a competitive affiliate access to customer bill advertising inserts 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 presentations at trade shows, conferences, or other marketing events within the state of Texas; and
  - (vi) providing links from a TDBU's Internet web site to a competitive affiliate's Internet web site.
- (C) At a customer's unsolicited request, a TDBU may participate in meetings with a competitive affiliate to discuss technical or operational subjects regarding the TDBU's provision of transmission or distribution services to the customer but only in the same manner and to the same extent the TDBU participates in such meetings with unaffiliated electric or energy services suppliers and their customers. Representatives of a TDBU may be present during a sales discussion between a customer and the TDBU's competitive affiliate but shall not participate in the discussion or purport to act on behalf of the competitive affiliate.
- (3) **Requests for specific competitive affiliate information.** If a customer or potential customer makes an unsolicited request to a TDBU for information specifically about any of its competitive affiliates, the TDBU may refer the customer or potential customer to the competitive affiliate for more information. Under this paragraph, the only information that a TDBU may provide to the customer or potential customer is the competitive affiliate's address and telephone number. The TDBU 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 TDBU. When providing the customer or potential customer information about the competitive affiliate, the TDBU shall not promote its competitive affiliate or 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.
- (4) **Requests for general information about products or services offered by competitive affiliates and their competitors.** If a customer or potential customer requests general information from a TDBU about products or services provided by its competitive affiliate or the competitors of its CS or CD, the TDBU shall not promote its competitive affiliate or its competitive affiliate's products or services, nor shall the TDBU offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider. The TDBU 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 TDBU may not refer the customer or potential customer to the competitive affiliate except as provided for in paragraph (3) of this subsection.
- (n) **Remedies and enforcement.**
- (1) **Code implementation filing.**
- (A) Not later than 120 days prior to the implementation of customer choice by an MOU/COOP, a TDBU shall file with the commission its plan for implementing the provisions of this section, addressing all applicable requirements of this section in the context of its operations as they will be conducted in the competitive retail market. The TDBU shall post notice of its filing on its

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Internet site or a public electronic bulletin board for 30 consecutive days and shall provide

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copies of the filing to requesting parties. Interested parties may file comments on the filing with the commission within 30 days following the filing and shall provide copies of such comments to the TDBU. Commission staff shall review the code implementation filing and provide to the TDBU its comments and recommendations as to any suggested changes in the filing within 60 days following the date of the filing. The TDBU may amend its initial filing based on the comments and recommendations and shall file any such amendments not later than 75 days following the date of the initial filing. The filing provided for in this paragraph is not subject to the contested hearings process, except upon complaint by an interested party or the commission staff.

- (B) In lieu of the implementation filing provided for in subparagraph (A) of this paragraph, an MOU/COOP may file with the commission a statement that it does not at this time intend to provide electric energy at retail to consumers in Texas outside its certificated retail service area as provided for in subsection (b)(1)(B) of this section. Subsequently, if an MOU/COOP intends to provide electric energy at retail to consumers in Texas outside its certificated retail service area as provided for in subsection (b)(1)(B) of this section, it shall file with the commission the implementation filing provided for in subparagraph (A) of this paragraph not later than 120 days prior to the time it provides retail electric energy in Texas outside its certificated retail service area.
- (2) **Informal complaint procedure.** A TDBU or a Bundled MOU/COOP 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 or other person employed by the TDBU or the Bundled MOU/COOP.
  - (A) All complaints shall contain:
    - (i) the name of the complainant;
    - (ii) a detailed factual report of the complaint, including all relevant dates, entities or divisions involved, employees involved, and the specific claim.
  - (B) A complaint must be filed with the TDBU or the Bundled MOU/COOP within 90 days of the date the complaining party knew, or with diligent investigation should have known, that the violation occurred, but in no event may a complaint be filed more than three years after the violation occurred.
  - (C) 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 30 days after receipt of the complaint, including a description of any course of action that will be taken.
  - (D) In the event the TDBU or the Bundled MOU/COOP and the complainant are unable to resolve the complaint, the complainant may file a formal complaint with the commission. In the event the complainant advises the TDBU or the Bundled MOU/COOP that the complainant does not consider the complaint fully resolved by the course of action proposed by the TDBU or the Bundled MOU/COOP then the TDBU or the Bundled MOU/COOP 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 informal complaint process shall be a prerequisite for filing a formal complaint with the commission.
  - (E) A large TDBU or Bundled MOU/COOP shall report to the commission regarding the nature and status of informal complaints handled in accordance with this paragraph in its annual report of code-related activities filed pursuant to subsection (d) of this section. The information reported to the commission shall include the name of the complainant and a summary report of the complaint, including all relevant dates, companies involved, employees involved, the

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specific claim, and any actions taken to address the complaint. Such information on all informal complaints that were initiated or remained unresolved during the reporting period shall be included in the annual report of code-related activities of the large TDBU or Bundled MOU/COOP.

- (3) **Filing a complaint.** Following the informal process, a formal complaint may be filed with the commission alleging a violation of this section. No complaint shall be valid unless filed with the commission within 30 days after the designated officer or employee of the TDBU or the Bundled MOU/COOP mails its written report communicating the results of the preliminary investigation to the complainant. Each complaint shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, entities or divisions involved, employees involved, and the specific claim. Additionally, each complaint shall identify the specific provisions of this section that are alleged to have been violated, contain a sworn affidavit that the facts alleged are true and correct to the best of the affiant's knowledge and belief, and if the complainant is a corporation, a statement from a corporate officer that he or she is authorized to file the complaint.
- (4) **Notification of complaint and opportunity to respond.** The commission shall provide a copy of the complaint to the TDBU or the Bundled MOU/COOP. The TDBU or the Bundled MOU/COOP shall respond to the complaint in writing within 15 days. The TDBU or the Bundled MOU/COOP and the complainant shall make a good faith effort to resolve the complaint on an informal basis as promptly as practicable.
- (5) **Settlement conference.** Upon request by the MOU/COOP subject to the complaint, commission staff shall conduct a settlement conference. At such settlement conference, each party, including the commission staff, shall recommend what steps are necessary to cure any violation that it believes has occurred. Discussions at the settlement conference, including the recommendations to cure the violation, shall not be admissible at a hearing on the complaint.
- (6) **Opportunity to cure.** The MOU/COOP shall have three months to cure the violation in accordance with an agreement arising from the settlement conference or following a hearing. An MOU/COOP may cure the violation in any reasonable manner as set forth in the settlement agreement or hearing, including taking action designed to prevent recurrence of the violation or amending the rule or order.
- (7) **Enforcement by the commission.** In the event the commission finds there has been a violation which has not been reasonably cured, the commission may enforce the provisions of this section.
  - (A) The commission may recommend actions to be taken by the MOU/COOP within a prescribed time, and if such actions are not taken, the commission may:
    - (i) seek an injunction to eliminate or remedy the violation or series or set of violations; or
    - (ii) limit or prohibit retail service outside the certificated retail service area of the TDBU or the Bundled MOU/COOP until the violation or violations are adequately remedied. This remedy shall not be applied in a manner that would interfere with or abrogate the rights or obligations of parties to a lawful contract.
  - (B) In assessing enforcement remedies, the commission shall consider the following factors:
    - (i) the prior history of violations by the TDBU or the Bundled MOU/COOP, if any, found by the commission after hearing;
    - (ii) the efforts made by the TDBU or the Bundled MOU/COOP to comply with the commission's rules;
    - (iii) the nature and extent of economic benefit gained by the TDBU's competitive affiliate or the Bundled MOU/COOP;
    - (iv) the damages or potential damages resulting from the violation or series or set of violations;

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- (v) the size of the business of the competitive affiliate involved; and
    - (vi) such other factors deemed appropriate and material to the particular circumstances of the violation or series or set of violations.
  - (C) The commission may conduct a compliance audit of affiliate activities to ensure compliance with the code of conduct.
  - (8) **No immunity from antitrust enforcement.** Nothing in these affiliate rules shall confer immunity from state or federal antitrust laws. Enforcement actions by the commission for violations of this section 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 may also be sought in federal or state court to cure anti-competitive activities.
  - (9) **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.
  - (10) **Preemption.** This section 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 section.
- (o) **Provisions for Bundled MOU/COOPs.**
- (1) **Transactional safeguards relating to provision of products and services.** To protect against anticompetitive activities, the provisions of this subsection apply to all Bundled MOU/COOPs meeting the qualifications set forth in subsection (b)(1)(A) and (B) of this section, regardless of whether the MOU/COOP has any affiliates or competitive affiliates.
    - (A) **Tying arrangements prohibited.** A Bundled MOU/COOP shall not condition the provision of any transmission or distribution product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the Bundled MOU/COOP.
    - (B) **Products and services available on a non-discriminatory basis.** Any product or service, other than corporate support services or credit arrangements, made available by a Bundled MOU/COOP to any third party or any persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP, shall be made available to all similarly situated entities at the same price and on the same basis and manner that the product or service was made available to any persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP, provided however, that such provision does not violate PURA §40.104 or §41.104, or the Texas Constitution, Article III, section 52. Any service required to be provided in compliance with PURA §39.203 shall be provided in a non-discriminatory manner and in accordance with the tariffs developed pursuant to any commission rule implementing that section.
    - (C) **Cross-subsidization prohibited.** A Bundled MOU/COOP shall not create significant opportunities for cross subsidization of competitive energy-related activities with revenues from distribution and transmission rates.
    - (D) **Records of transactions involving competitive energy-related activities.** A Bundled MOU/COOP shall maintain segregated accounts and records of all transactions regarding the provision of competitive energy-related activities consistent with the FERC chart of accounts or a comparable tracking method. In accordance with generally accepted accounting principles, a Bundled MOU/COOP shall separately record all transactions regarding the provision of competitive energy-related activities and all transactions relating to the transmission and distribution function. Such records shall include all expenses, whether direct or indirect, and at

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the fully allocated cost to provide such competitive energy service. Such expenses shall not be included in the Bundled MOU/COOP's transmission and distribution rates.

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- (E) Transfer or use of assets or products to provide competitive energy-related activities. A Bundled MOU/COOP shall implement procedures and safeguards to ensure that the transfer or use of assets or products by a person providing competitive energy-related activities on behalf of the Bundled MOU/COOP shall be accomplished at pricing levels that are fair and reasonable to the customers of the transmission and distribution system of the Bundled MOU/COOP and at pricing levels that do not include any preferential discounts, rebates, fee waivers or alternative tariff terms and conditions.
  - (F) Provision of corporate support services. The provision of corporate support services by a Bundled MOU/COOP to provide competitive energy-related activities shall be carried out in such a way as to comply with the provisions of paragraph (2)(A)-(D) of this subsection, thereby preventing the opportunity for preferential treatment or unfair competitive advantage, customer confusion, or significant opportunities for cross-subsidization.
  - (G) No preferential access to transmission and distribution information. A Bundled MOU/COOP shall not allow preferential access by any person providing competitive energy-related activities on behalf of the Bundled MOU/COOP to information about its transmission and distribution systems. Such information shall be provided as required in paragraph (2)(D) of this subsection.
  - (H) Sharing of personnel, facilities, and resources. A Bundled MOU/COOP shall implement procedures and safeguards governing the sharing of personnel, facilities, officers and directors, equipment, and corporate support services with persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP to ensure that confidential information is protected, that there are no opportunities for preferential treatment or unfair competitive advantage, that undue customer confusion will be prevented, and that no significant opportunities for cross-subsidization are created. A Bundled MOU/COOP shall document the assignment of shared employees engaged in both transmission or distribution system operations and the provision of competitive energy-related activities. For shared employees, the tracking documentation shall include the employees' name, job title, scope of activities, and allocation of time to the transmission and distributions functions and competitive energy-related activities. The tracking documentation for shared employees shall be filed annually with the annual report of code-related activities required by paragraph (3)(B) of this subsection.
  - (I) Marketing and advertising. A Bundled MOU/COOP shall implement procedures and safeguards relating to the marketing and advertising of the Bundled MOU/COOP's competitive energy-related activities to prevent favoritism being shown to the competitive energy-related activities provided by the Bundled MOU/COOP, to prevent customer confusion, to prevent the inappropriate sharing of customer information, and to prevent significant opportunities for cross-subsidization.
- (2) **Informational safeguards.** The following provisions apply to Bundled MOU/COOPs.
- (A) Sharing of customer information. A Bundled MOU/COOP shall implement adequate safeguards to preclude any persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP, or any other entities, from gaining access to information in a manner that would allow or provide a means to transfer confidential information, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization. Non-proprietary information possessed by the Bundled MOU/COOP that is made available to any persons providing competitive energy-related activities provided by the Bundled MOU/COOP shall likewise be made available to third parties providing competitive energy-related activities at the Bundled MOU/COOP's cost to produce such information for the third party.

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- (B) Proprietary customer information. Upon request by the customer, a Bundled MOU/COOP shall provide a customer with the customer's proprietary customer information. Unless a Bundled MOU/COOP obtains prior affirmative written consent or other verifiable authorization from the customer as determined by the commission, or unless otherwise permitted under this subparagraph, it shall not release any proprietary customer information to a person providing competitive energy-related activities on behalf of the Bundled MOU/COOP or to 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. The Bundled MOU/COOP shall be permitted to release proprietary customer information under the same terms and conditions as a TDBU as set forth in subsections (1)(1)(A)-(E) of this section.
- (C) Nondiscriminatory availability of aggregate customer information. A Bundled MOU/COOP may aggregate non-proprietary customer information, including, but not limited to, information about a Bundled MOU/COOP's energy-related goods or services. However, except in circumstances solely involving the provision of corporate support services, a Bundled MOU/COOP shall aggregate non-proprietary customer information for a third party or any person providing competitive energy-related activities only if the Bundled MOU/COOP makes such aggregation service available to all non-affiliates and third parties under the same terms and conditions and at the same price or fully allocated cost as it is made available to any person providing competitive energy-related activities on behalf of the Bundled MOU/COOP.
- (D) Requests for information. If a customer or potential customer of a Bundled MOU/COOP makes an unsolicited request for distribution service, competitive energy-related activities, products or services provided by an Bundled MOU/COOP, or for information relating to such products or services, the Bundled MOU/COOP shall inform the customer that competitive energy-related activities are available not only from the Bundled MOU/COOP, but also from other providers. If the Bundled MOU/COOP provides the customer or potential customer with information about competitive energy-related activities offered by the Bundled MOU/COOP, the Bundled MOU/COOP must record and allocate the costs associated with the provision of such information in the same manner as transactions involving the provision of competitive energy related activities, in accordance with paragraph (1)(C) of this subsection. The Bundled MOU/COOP shall not offer the customer or potential customer any opinion regarding the service of any other competitive energy service provider. Upon request, the Bundled MOU/COOP shall make available to a customer a copy of the most recent list of competitive energy service providers as developed and maintained by the commission and may make available telephone numbers and other commonly available information. Such information shall also be made available by the Bundled MOU/COOP to its transmission and distribution customers at the time the Bundled MOU/COOP undertakes marketing to those customers of its competitive energy-related activities.
- (3) **Reporting and auditing requirements.** A Bundled MOU/COOP shall maintain and file the following information so the commission can ensure that the Bundled MOU/COOP is not engaging in any anticompetitive activities as a result of its competitive energy-related activities being bundled with the transmission and distribution operation.
  - (A) Code implementation filing.
    - (i) Not later than 120 days prior to the implementation of customer choice by a Bundled MOU/COOP, the Bundled MOU/COOP shall file with the commission a written declaration that it will operate as a Bundled MOU/COOP and its plan for implementing

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the provisions of this section. The plan shall address all applicable requirements of this

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section in the context of operations as they will be conducted in the competitive retail market. The Bundled MOU/COOP shall post notice of its filing on its Internet site or a public electronic bulletin board for 30 consecutive days and shall provide copies of the plan to requesting parties. The code implementation plan proposed by the Bundled MOU/COOP shall be subject to a contested hearing process. Interested parties may file comments on the filing with the commission. The commission shall issue an order either approving the code implementation plan, approving the plan with modifications, or rejecting the plan within 120 days.

- (ii) In lieu of the implementation filing provided for in clause (i) of this subparagraph, a Bundled MOU/COOP may file with the commission a statement that it does not at this time intend to provide electric energy at retail to customers in Texas outside its certificated retail service area as provided for in subsection (b)(1)(B) of this section. Subsequently, if a Bundled MOU/COOP intends to provide electric energy at retail to consumers in Texas outside its certificated retail service area as provided for in subsection (b)(1)(B) of this section, it shall file the implementation filing provided for in clause (i) of this subparagraph with the commission not later than 120 days prior to the time it intends to provide retail electric energy in Texas outside its certificated retail service area.
  - (B) Annual report of code-related activities. A report of activities related to this subsection shall be filed annually with the commission under a control number designated by the commission. The report shall be filed by June 1 and shall encompass the period from January 1 through December 31 of the preceding year. The report shall contain detailed information on how the Bundled MOU/COOP met each of the provisions of paragraphs (1) and (2) of this subsection and any deviations from the actions set forth in the initial code compliance filing. Commission staff shall review the annual report of code-related activities. The filing provided for in this paragraph is not subject to the contested hearings process, except upon complaint by an interested party or the commission staff.
  - (C) Copies of contracts or agreements. A Bundled MOU/COOP shall reduce to writing and file with the commission copies of any contracts or agreements it has with any persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP. The Bundled MOU/COOP does not have to produce any contracts it has with third parties if such contracts were negotiated on an arm's length basis. The requirements of this section are not satisfied by the filing of an earnings report. All contracts or agreements shall be filed by June 1 of each year as attachments to the annual report of code-related activities required in subparagraph (B) of this paragraph. In subsequent years, if no significant changes have been made to the contract or agreement, an amendment sheet may be filed in lieu of refiling the entire contract or agreement.
  - (D) Compliance audits. No later than one year after the Bundled MOU/COOP becomes subject to this section as set forth in subsection (b)(1) and (2) of this section, and, at a minimum, every third year thereafter, the Bundled MOU/COOP shall have an audit prepared by independent auditors that verifies that the Bundled MOU/COOP is in compliance with this section. The Bundled MOU/COOP shall file the results of each audit with the commission within one month of the audit's completion.
- (4) **Remedies and enforcement.** Bundled MOU/COOPs shall be subject to the provisions of subsection (n)(2)-(10) of this section on the same terms and conditions as the TDBU.