

PROJECT NO. 25503

**RULEMAKING TO REVIEW AND § PUBLIC UTILITY COMMISSION
AMEND SUBSTANTIVE RULES IN §
CHAPTER 25, SUBCHAPTER A § OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §§25.1, 25.3, 25.4, AND 25.5 AS
APPROVED AT THE FEBRUARY 13, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.1 relating to Purpose and Scope of Rules, §25.3 relating to Severability Clause, and §25.4 relating to Statement of Nondiscrimination with no changes to the proposed text as published in the November 8, 2002 *Texas Register* (27 TexReg 10524). The commission adopts amendments to §25.5 relating to Definitions with changes to the proposed text as published in the November 8, 2002 *Texas Register* (27 TexReg 10524). These amendments are adopted under Project Number 25503.

The commission proposed these amendments as a result of comments filed on the review of Chapter 25, Substantive Rules Applicable to Electric Service Providers, under Project Number 22067, *Review of Agency Rules Pursuant to the Administrative Procedure Act §2001.039 for Fiscal Years 2000-2003*. As a result of delayed competition in certain parts of Texas and the current bifurcated market structure, it is necessary to amend these rules to clarify that these sections apply to entities in both the new market structure and among utilities not implementing customer choice in January 2002. To ensure consistent nondiscriminatory standards by all market participants, the adopted amendments conform these sections to the Public Utility Regulatory Act (PURA) §17.004(a)(4) and §39.101(a)(5) and (c) that establish the standards for

nondiscriminatory electric service and §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

In addition, the amendments to §25.5 incorporate all non-section specific definitions scattered throughout Chapter 25 into §25.5. The commission proposed to move all non-section specific definitions to §25.5, even if used only in the section where defined, as long as moving the term to the general definitions section would not adversely affect other sections of Chapter 25. If for some unforeseen reason a new or amended rule requires a different definition of a particular term, a section specific definition can be developed at that time. The definitions incorporated into §25.5 will be deleted from the other sections as those sections of the rules are amended.

The commission received no comments on the proposed amendments to §25.1 and §25.3.

The commission received joint comments on the proposed amendments to §25.4 from Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (collectively, Consumer Groups). Reply comments were received from Alliance for Retail Markets (ARM), Reliant Resources, Inc. (RRI), and TXU Energy Companies and Oncor Electric Delivery Company (collectively TXU-Oncor).

The commission received comments on §25.5 from Mutual Energy CPL, LP, Mutual Energy WTU, LP, AEP Texas Commercial and Industrial Retail Limited Partnership, AEP-Central Power and Light Company, AEP-West Texas Utilities Company, and AEP-Southwestern Electric Power Company (collectively, AEP Companies); CenterPoint Energy Houston Electric,

LLC (CenterPoint); and TXU-Oncor. Reply comments were received from AEP Companies, RRI, and TXU-Oncor.

§25.4, Statement of Nondiscrimination

Consumer Groups stated that PURA §17.004(a)(4) prohibits discrimination against buyers of retail electric services based on level of income, as does §25.4 and §25.471(c) of the commission's substantive rules; however, §25.4 and §25.471(c) make no mention of discrimination on the basis of a buyer's credit score. Consumer Groups alleged that a number of retail electric providers (REPs) in Texas practice credit scoring and use low credit scores to deny service to potential customers of retail electric service. In addition, Consumer Groups asserted that low credit scores are used to penalize customers with regards to deposits and service offerings.

Consumer Groups believe that credit scoring discriminates against consumers based on level of income as prohibited by PURA §17.004(a)(4) and is inherently unfair. Consumer Groups stated that credit scoring considers such factors as the quality of credit a customer has and demographic factors such as level of income, age, and geographic location, which can raise or lower a credit score. Consumer Groups asserted that the working poor, elderly persons on fixed incomes, the very young and low-income persons receiving public benefits all fare poorly when it comes to credit scoring. Consumer Groups submit that even customers with credit problems do not necessarily represent a credit risk to REPs and that residential customers, regardless of their credit score, pose little financial risk, almost all of which can be obviated by use of a fair deposit

scheme such as affiliated REPs must follow and the low-income discount that all REPs must apply. In addition, Consumer Groups stated that credit scoring is a secretive process in which few have confidence making it inherently unfair to allow it to be used in connection with the provision of a life essential such as electric service. Consumer Groups recommended that the commission amend §25.4 to include credit scoring.

RRI stated that: (1) credit scoring provides an objective nondiscriminatory analysis of the credit-worthiness of potential customers; (2) since REPs offer service to customers and do not collect payments for use of that service until more than 30 days after the service is rendered, REPS are essentially extending credit to these customers for each day until payment is made; (3) credit scoring was used in the integrated utility environment and the need for it in the restructured electric service market remains the same; and (4) credit scoring is endorsed by §25.478(a)(3)(B) of the commission's existing customer protection rules. ARM stated that credit evaluation is one of the tools needed by REPs to manage their credit risk and that the commission does not have the authority to make the change requested by Consumer Groups.

TXU-Oncor replied that §25.4 should include only those factors specified in PURA. TXU-Oncor stated that: (1) it appears that Consumer Groups do not have a full understanding of credit scoring; (2) the credit score model is past payment behavior and it is a statistically valid fact that past credit behavior is an indication of future credit behavior; and (3) credit scores cannot use demographics prohibited under the Equal Credit Opportunity Act. In addition, credit scores are blind to factors like income and bank balances; therefore, no distinction can be made between high and low income customers and no discrimination can happen based on level of income.

ARM and RRI asserted that the change requested by Consumer Groups is outside the scope of this proceeding. ARM stated that adequate notice has not been provided to make the change requested by Consumer Groups and that Consumer Groups did not sufficiently define the types of activities to be prohibited under credit scoring. RRI stated that Consumer Groups request should be addressed in Project Number 27084, *PUC Rulemaking to Revise Customer Protection Rules*, not this proceeding.

The commission agrees that the activities that would be prohibited under credit scoring have not been properly defined, that sufficient notice has not been provided, and that the change requested by Consumer Groups is outside the scope of this proceeding.

§25.5, Definitions

Comments on specific definitions (all numbers before the definition correlate to the rule as proposed)

(2) Accessible utility information

AEP Companies stated the definition for "accessible utility information" should be deleted because it is used only in §25.223, Unbundling of Energy Services, and, as noted in Staff's February 14, 2002 memo under Project Number 22067, §25.223 is obsolete and may be repealed. If not deleted, then it should be amended to more specifically define the term "electric service."

In addition, the term "proprietary customer information" is not defined consistently and will impact the definition of "accessible utility information."

TXU-Oncor and RRI suggested that the term be eliminated or made consistent with §25.223(c)(1).

The commission agrees with commenters that the term "accessible utility information" should be eliminated and modifies §25.5 accordingly.

(4) Affiliate

In reply comments, AEP Companies stated that the definition of "affiliate" should be modified to conform to the definition of the term as defined in Project Number 25610, *Rulemaking Proceeding to Amend the Rules in Chapter 25, Subchapter H, Division 2, Regarding Energy Efficiency and Customer-Owned Resources* (Final Order September 12, 2002).

The commission disagrees with AEP Companies. The definition for "affiliate" adopted for §25.181 under Project Number 25610 is a section specific definition. For §25.5 the definition of "affiliate" should remain the same as the PURA definition.

(11) Base rate

CenterPoint recommended that the definition for "base rate" be redefined due to the changes in the electric market structure. CenterPoint suggested the following definition: "Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate, or tariff. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as the system benefit fee, transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge."

TXU-Oncor stated that they believe the word "tariff" is not used appropriately in CenterPoint's suggested revision given the definition of "tariff" in the Standard Retail Terms and Conditions that the commission adopted in Project Number 22187, *Rulemaking to Establish Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service*. TXU-Oncor commented that in the Terms and Conditions, the word "tariff" refers to the entire compilation of all rate schedules, riders, and service rules, not to an individual rate schedule. Therefore, TXU-Oncor suggested that if CenterPoint's revisions to the definition of "base rate" are made, the term "schedule" should replace the term "tariff."

The commission agrees that CenterPoint's proposed definition is more appropriate in the current electric market structure, with the exception of the use of the word "tariff" as suggested by TXU-Oncor. For clarity, the commission modifies CenterPoint's proposed definition to eliminate the word "tariff" and replaces it with "...a rider, rate schedule, or other schedule..."

(15) Competition transition charge (CTC)

TXU-Oncor suggested the last sentence, "[c]ompetition transition charges also include the transition charges established pursuant to PURA §39.302(h) unless the context indicates otherwise," be deleted as no other parts of the commission's substantive rules or PURA define CTC as including transition charges. Defining CTC to include transition charges could create conflicts or confusion with other provisions of the commission's rules. TXU-Oncor also stated that the last sentence creates uncertainty as to how one would discern when the "context indicates otherwise."

The commission disagrees with TXU-Oncor and finds the proposed definition is appropriate for the general definitions section. The proposed definition of "competition transition charges" originated from §25.341, relating to Definitions, from Subchapter O, Unbundling and Market Power, and includes a "transition charge" as a "competition transition charge." This definition is applicable to §25.344 and §25.345. Where the term is defined differently, such as in §25.227, the meaning of the term is clear from the context of the rule.

(17) Competitive energy efficiency services

AEP Companies stated, "a competitive energy service" should be changed to "competitive energy services."

The commission agrees and modifies the term accordingly.

(18) Competitive retailer

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term "competitive retailer" differently, the term should not be included in §25.5.

The proposed definition captures those entities which are competitive retailers and is appropriate for the general definitions section. To the extent that the term "competitive retailer" has a different application in any section, that section contains a section-specific definition.

(27) Demand

TXU-Oncor and AEP Companies suggested that the definition should refer to the definition in §25.181 or be revised to match the definition as it appears in §25.181.

The commission agrees and modifies the definition in §25.5 to conform to the term as defined in §25.181.

(28) Demand savings

CenterPoint advised that the word "average" should be changed to "averaged" to correct a typographical error.

The commission agrees and modifies the definition accordingly.

(29) Demand-side management

TXU-Oncor and AEP Companies suggested that the definition should refer to the definition in §25.181 or be revised to match the definition as it appears in §25.181.

The commission agrees and modifies the definition in §25.5 to conform to the term as defined in §25.181.

(30) Demand-side resource or demand-side management resource

CenterPoint suggested that the term would be better defined as: "Equipment, materials, and practices that when installed and used at a customer site affect the magnitude and/or timing of customer electricity usage."

As suggested by CenterPoint, the commission agrees that demand-side resources or demand-side management is more than just "activities"; therefore, the commission adds the words "equipment, and materials" to its definition. However, the commission finds that the remainder of its definition clearly defines the term and does not incorporate the rest of CenterPoint's proposed language.

(33) Distributed resource

CenterPoint stated that distributed resources are not limited to those resources that defer the need for upgrading local distribution facilities and commented that the language "...that provides advantages to the system, such as deferring the need for upgrading local distribution facilities" should be deleted.

The commission disagrees with CenterPoint. The language "...such as deferring the need for upgrading distribution facilities" is an example, not all-inclusive, and does not limit the definition.

(37) Electric generating facility

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term "electric generation facility" differently, the term should not be included in §25.5.

The term defined in §25.5 is the same as the PURA definition and is appropriate for the general definitions section. The commission finds that the meaning of the term is clear from the context where it is used.

(38) Electricity Facts Label

AEP Companies stated, "disclosure information" should be changed to "disclosure of information."

The commission agrees and modifies the term accordingly.

(41) Electric service identifier (ESI-ID)

TXU-Oncor suggested that the definition be replaced with the definition of "ESI ID" that appears in §25.454(c)(5), as it is a more general definition that would also apply to entities other than transmission and distribution utilities.

The proposed definition was moved to §25.5 from §25.431, Retail Competition Pilot Program. The commission agrees that the definition from §25.454(c)(5), Rate Reduction Program, is a broader definition and more appropriate for §25.5 and modifies the rule accordingly.

(43) Energy efficiency

AEP Companies stated this definition should be changed to " energy efficiency program."

The commission declines to make the change as suggested by AEP Companies. The commission recently completed its review and amendments of the energy efficiency and customer-owned resources in Project Number 25610, *Rulemaking Proceeding to Amend the Rules in Chapter 25*,

Subchapter H, Division 2, Regarding Energy Efficiency and Customer-Owned Resources, and keeps the definition the same as adopted in that project.

(44) Energy efficiency measures

AEP Companies stated, "measured in kW" should be changed to "measured in kW." TXU-Oncor suggested that the definition should refer to the definition in the revised and recently approved energy efficiency rule, §25.181, or be revised to match the definition as it appear in §25.181. In reply comments, AEP Companies agreed with TXU-Oncor.

The commission agrees and modifies the term in §25.5 accordingly.

(45) Energy efficiency project

TXU-Oncor and AEP Companies stated the definition is inconsistent with the commission's most recent revision to the term as defined in §25.181 under Project Number 25610 and should be revised accordingly.

The commission agrees and makes this change.

(46) Energy efficiency service provider (EESP)

TXU-Oncor and AEP Companies suggested that the definition should refer to the definition in §25.181 or be revised to match the definition as it appears in §25.181.

The commission agrees and has modified §25.5 accordingly.

(55) Fully allocated cost

AEP Companies recommended that this definition remain section specific in §25.275, Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities. TXU-Oncor suggested that the definition should be revised or deleted, because the term "fully allocated cost" also appears in §25.272(e)(1)(C), and inserting the term as written could be argued to impose a three-year review cycle of transfer prices between a utility and its affiliates that is not contemplated in the substantive rules or PURA. TXU-Oncor suggested that if the term is retained in §25.5, the language regarding the three-year review should be deleted from the definition.

The commission agrees and deletes the term "fully allocated cost" from §25.5.

(57) Generation service

TXU-Oncor believes it is not necessary for this definition to be included in §25.5 because the definition appears in §25.221 and is used primarily in relation to unbundling.

The commission finds that the term is appropriate for §25.5. The term is used in other rules (*see* §§25.211(f), 25.471(d)(7), and 25.479(c)(1)(Q)) and the proposed definition accurately reflects how the term is used in those sections.

(60) Independent organization

TXU-Oncor suggested that the second sentence of this definition is unnecessary and should be deleted to avoid potential confusion. TXU-Oncor stated that even though the definition is taken from PURA §39.151(b) the second sentence is not critical to an understanding of what an "independent organization" is. The sentence only indicates a governance structure that the Texas Legislature determined would comply with the requirements of the first sentence of the definition, but does indicate a limit on the governance structures that would comply with the first sentence. In reply comments, RRI agreed with TXU-Oncor.

The commission agrees with commenters and deletes the second sentence from the definition.

(62) Installed generation capacity

AEP Companies stated since the term is defined differently throughout the rules, it should not be included in §25.5.

The commission disagrees with AEP Companies. The term in §25.5 is defined the same as in PURA and is appropriate for the general definitions section. The commission finds that the context of how the term is used in the rules eliminates any confusion.

(63) Interconnection agreement

AEP Companies and CenterPoint commented that the term "interconnection agreement," as taken from §25.211 relating to Interconnection of On-Site Distributed Generation (DG), should not be defined in §25.5. Commenters stated that the term as defined relates to distributed generation, yet there are other uses of the term in the substantive rules since §25.211 was adopted. CenterPoint stated that the commission has approved a Standard Generator Interconnection Agreement (SGIA) that applies to interconnections between transmission service providers (TSPs) and new electric generating stations. In addition, as the term as used in §25.195 relating to Terms and Conditions for Transmission Service and §25.198 relating to Initiating Transmission Service, the term clearly cannot be the interconnection agreement for distributed generation. CenterPoint also commented that TSPs enter into interconnection agreements between themselves that are not addressed in the commission's rules nor is there a standard interconnection agreement that is used between TSPs; therefore, the defined term should not encompass the agreements between various TSPs. AEP Companies stated that if the definition is moved from §25.211 to §25.5, it should be revised to indicate that it applies only to distribution voltage interconnection and SGIA. CenterPoint suggested that the term be deleted and definitions for "distributed generation interconnection agreement" and "standard generator interconnection agreement" be added to §25.5 as follows:

Distributed generation interconnection agreement - The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a distributed generator agree that one or more facilities may be interconnected with the company's utility system.

Standard generator interconnection agreement - The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a generator agree that one or more facilities may be interconnected with the company's transmission system.

The commission disagrees with commenters. The term as defined includes both distributed generation and standard generation interconnection agreements. In addition, it would be inappropriate to include CenterPoint's suggested new definitions on adoption because the new definitions have not been properly noticed

(66) Load factor

CenterPoint commented that the definition of "load factor" should be redefined due to the change in the electric market structure as follows: "The ratio of average demand to peak demand during a specific period of time, expressed as a percent. The load factor indicates to what degree energy was consumed compared to the maximum possible energy that could have been consumed at the maximum demand."

The commission declines to make the change suggested by CenterPoint. The definition of load factor in §25.5 is the same as the definition for the term recently adopted in Project Number 25610. The commission finds that the change suggested by CenterPoint does not add any clarity to the term as defined.

(67) Low-income customer

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term "low-income customer" differently, the term should not be included in §25.5.

The commission finds that the proposed definition of "low-income customer" is appropriate for the general definitions section and is used consistently in the rules.

(79) New generating capacity

AEP Companies stated the proposed addition of the definition to §25.5 is unnecessary since the term is used only in the single section of the rule. In the alternative, "natural gas" should be inserted between "new" and "generating."

The commission finds that the definition for "new generating capacity" as moved from §25.172 may not be appropriate for the general definitions section and has deleted the definition from §25.5.

(80) New on-site generation

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term differently, the term should not be included in §25.5.

The term as defined in §25.5 is the same as the PURA definition and is appropriate for the general definitions section.

(81) Off-grid generation

AEP Companies stated the definition should remain section specific in §25.173, Goal for Renewable Energy. In the alternative, "renewable" should be inserted after "off grid."

The commission finds that the definition is appropriate for §25.5 with the modification suggested by AEP Companies.

(84) Power cost recovery factor (PCRF)

TXU-Oncor suggested that the sentence "PCRF does not apply to utility territories open to full competition in January 2002" is not entirely accurate and should not be added, or in the alternative, should be revised. TXU-Oncor stated that when the base rate component of a price to beat was calculated pursuant to §25.41(f)(2), those rates were calculated on the base rate component "including any purchased power cost recovery factor, in effect for the affiliated

electric utility on January 1, 1999." Thus, although it is not a PCRf that can vary, each price to beat rate contains an element that is derived from the electric utility's PCRf. In addition, TXU-Oncor stated that it may also be possible that a municipally owned utility or a cooperative not participating in customer choice in a territory already open to competition may have a PCRf.

The commission agrees with TXU-Oncor and deletes the sentence from the definition.

(88) Pre-interconnection study

AEP Companies stated the definition should remain section specific in §25.211, Interconnection of On-Site Distributed Generation (DG) or in the alternative modified to identify that it applies to studies undertaken in response to completed application for interconnection at distribution voltage. In addition, "company" should be changed to "utility."

The commission agrees with AEP Companies' alternative definition and modifies the rule accordingly.

(89) Premises

CenterPoint recommended that the definition for "premises" be amended to conform to the definitions for "premises" in Appendix IV, Tariff for Retail Delivery Service, and Appendix V, Tariff for Competitive Retailer Access.

The commission agrees and modifies the term accordingly.

(90) Price to beat (PTB)

CenterPoint stated that §25.41 relating to Price to Beat (PTB) limits the applicability of the section to residential and small commercial customers; therefore, for clarity the language "residential and small commercial" should be added between "...retail electric provider to..." and "customers in its service area." TXU-Oncor suggested using the word "eligible."

The commission agrees and makes this change.

(92) Projected stranded costs

AEP Companies stated the term "ECOM" contained in the definition is never defined.

The commission deletes this term from §25.5 as the term is used only in §25.263 and is defined specific to that section. If the term should become necessary for other sections in Chapter 25 the commission will evaluate whether the term should be defined for §25.5 at that time.

(93) Proprietary customer information

AEP Companies stated that since the term is defined differently in at least one major code of conduct rule, it should not be included in §25.5.

TXU-Oncor suggested that this definition be revised to include information compiled by a retail electric provider. TXU-Oncor stated that at least two commission rules preclude a REP from disclosing proprietary customer information without customer authorization; therefore, for purposes of §25.5, it makes sense to reflect that REPs also compile information that qualifies as proprietary customer information. In reply comments, RRI agreed with TXU-Oncor.

The commission finds that the term should be defined in §25.5 with the modifications suggested by TXU-Oncor. The major code of conduct rule, §25.275, as referenced by AEP Companies contains a section-specific definition; therefore, no conflict exists.

(94) Provider of last resort

TXU-Oncor suggested that the definition be revised to be consistent with the definition in §25.43(c)(8) and suggested adding the language "...in accordance with §25.43 to customers that are not being served by a REP for reasons other than non-payment" after "...service package" and deleting the language "...to requesting or default customers." In reply comments, RRI agreed with TXU-Oncor.

The commission modifies the term in §25.5 to be consistent with §25.43.

(104) Rate class

CenterPoint recommended the definition be modified due to the changes in the electric market structure as follows: "A group of customers taking service under the same tariffed rate schedule. For fuel surcharges and refunds, a group of seasonal agricultural customers, as identified by the electric utility, shall be considered a rate class."

In reply comments, TXU-Oncor stated that insertion of the word "tariffed" does not serve any apparent purpose and the addition of the last sentence does not seem to accomplish any critical goal or meet a pressing need; therefore, the definition does not need to be revised as recommended by CenterPoint.

The commission agrees with TXU-Oncor and declines to make the change recommended by CenterPoint.

(108) Reasonable performance standards

AEP Companies and TXU-Oncor stated the term should remain section specific and should not be included in §25.5 as the term is used only in §25.172 and is intended to apply only to new natural gas-fired capacity.

The commission agrees and has deleted the definition from §25.5.

(62) Renewable resources (as proposed for deletion)

AEP Companies is unsure why the term is being deleted, and asks whether the commission contemplates revising the sections in which the term appears.

The term is deleted because it has been combined with the definition for "renewable energy resource" as the terms are used interchangeably in the rules.

(111) Renewable demand side management (DSM) technologies

TXU-Oncor and AEP Companies suggested that the definition should refer to the definition in the revised and recently approved energy efficiency rule, §25.181, or be revised to match the definition as it appear in §25.181.

The commission modifies the term in §25.5 to be consistent with the definition of the term as recently approved for §25.181.

(118) Residential customer

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term "residential customer" differently, the term should not be included in §25.5.

The commission finds that the proposed definition of "residential customer" is appropriate for the general definitions section and does not adversely affect any existing rules. If the term needs

to be defined differently for any future sections a section specific definition will be included in that rule.

(119) Residential net price to beat (PTB)

TXU-Oncor and RRI stated that the term "residential net price to beat" is used only in §25.263 and should remain section specific.

The commission deletes this term from §25.5 as the term is used only in §25.263 and is defined specific to that section. If the term should become necessary for other sections in Chapter 25 the commission will evaluate whether the term should be defined for §25.5 at that time.

(128) Small commercial net price to beat (PTB)

TXU-Oncor and RRI stated that the term "small commercial net price to beat" is used only in §25.263 and should remain section specific.

The commission deletes this term from §25.5 as the term is used only in §25.263 and is defined specific to that section. If the term should become necessary for other sections in Chapter 25 the commission will evaluate whether the term should be defined for §25.5 at that time.

(130) Standard meter

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term "standard meter" differently, the term should not be included in §25.5.

The commission finds that the term as defined is appropriate for all sections where the term is used.

(138) Tariff

CenterPoint suggested the term be clarified by adding the following language at the end of the definition: "The term may also be used to refer to an individual schedule of the electric utility. Therefore, the term can refer to either a compilation of all of an electric utility's schedules or only one of an electric utility's schedules."

TXU-Oncor disagreed with CenterPoint. TXU-Oncor stated that the definition of "tariff" in §25.5 is consistent with the definition of "tariff" used in the Standard Retail Terms and Conditions adopted under Project Number 22187 and that CenterPoint's suggested revision would make it inconsistent with the Standard Retail Terms and Conditions. Therefore, TXU-Oncor asserted that CenterPoint's proposed revision should be rejected.

The commission agrees with TXU-Oncor and declines to make the change suggested by CenterPoint.

(142) Texas jurisdictional installed generation capacity

AEP Companies stated the term is used only in §25.381 and should therefore remain section specific.

Even though the term is used only in §25.381 the commission finds that the term is appropriate for §25.5. If for some unforeseen reason the commission develops a rule that would require a different definition for "Texas jurisdictional installed generation capacity" a section specific definition can be developed at that time.

(145) Transmission

TXU-Oncor suggested that this definition is not needed and should be deleted. TXU-Oncor stated that the definition substantially mirrors the term as defined in §25.341 but omits the limitation that restricts the definition of transmission to the limited purposes of §25.344(g)(2)(B). TXU-Oncor believes that omission expands the potential application of the term well beyond §25.344(g)(2)(B) which pertains solely to the unbundling of the various services provided by an integrated electric utility. TXU-Oncor stated that because the term "transmission" uses the words "transform" and "transformation," it is possible that a conflict is created with the definition of "transmission facilities" in §25.192(c)(1)(B). Transmission facilities provides that substation facilities on the high side of the transformer, in a substation where power is *transformed* from a voltage higher than 60 kilovolts to a voltage lower than 60 kilovolts are deemed to be transmission facilities that can be included in the transmission cost of service. There are also distribution transformers on the low side of the transformer that are not eligible

for inclusion in transmission cost of service. Thus, TXU-Oncor stated, defining transmission in a manner that includes facilities at or above 60 kilovolts "necessary to transform and move" could be argued to expand those facilities that can be included in transmission cost of service. TXU-Oncor also asserted that since §25.5 already includes a definition for "transmission service," there is no apparent reason to add an additional definition of "transmission."

The commission agrees with TXU-Oncor and deletes the definition.

(148) Transmission and distribution utility region (TDU region)

AEP Companies stated the term is used only in §25.263, True-up Proceeding, and should remain section specific. Further, the word "affiliated" should be deleted from the definition.

The commission deletes the term from §25.5 as the term "region" is used only in §25.263. Other rules that incorporate the concept of a TDU's region use the term "service territory" not "region." The commission finds that the term "service territory" is clear from the context of the rules in which it is used and a definition is not needed for §25.5 at this time.

(150) Transmission service

CenterPoint stated that the definition for "transmission service" should be modified to conform to the definition of the term in PURA §31.002(20).

In reply comments, TXU-Oncor stated that, as revised by CenterPoint, the definition of "transmission service" would only state what transmission service includes and would not provide an indication of who provides transmission service. TXU-Oncor commented that the definition should remain unchanged.

The commission agrees with TXU-Oncor and declines to make the change proposed by CenterPoint.

(154) Utility metering

AEP Companies, CenterPoint, and RRI stated that the definition for "utility metering" should be deleted from §25.5, as although currently defined in §25.142, Submetering for Apartments, Condominiums, and Mobile Home Parks, it is not actually used in this section. In addition, the term is used differently in terms defined in §25.341 relating to Definitions, and in §25.344, Cost Separation Proceedings, and §25.346, Separation of Electric Utility Metering and Billing Service Costs and Activities.

The commission agrees and deletes the term "utility metering" from §25.5.

(155) Working day

AEP Companies stated the term is used in several different substantive rules. If any of the rules define the term "working day" differently, the term should not be included in §25.5.

The commission finds that several of the rules that use the term "working day" refer to a day that the electric service provider is open for business, not the commission. Since these sections do not include section specific definitions the commission deletes the term "working day" from §25.5.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §11.002 which grants the commission authority to make and enforce rules necessary to protect customers of electric service consistent with the public interest; §17.004(a)(4) that states that all buyers of retail electric services are entitled to protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location; §17.004(b) which grants the commission authority to adopt and enforce rules as necessary and appropriate to carry out the customer protection standards set forth in §17.004; §39.101(a)(5) that requires the commission to ensure that retail customer protections are established that entitle a customer to protection from discrimination on the basis of race, color, sex, nationality, religion or marital status; §39.101(c) which provides that any entity that provides retail electric service may not discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status or because the customer is located in an

economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002, 17.004, and 39.101.

§25.1. Purpose and Scope of Rules.

- (a) **Mission of the Public Utility Commission of Texas (commission).** The mission of the commission is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the commission shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.
- (b) This chapter is intended to establish a comprehensive system to accomplish the mission of the commission with respect to electric service and to establish the rights and responsibilities of the electric utilities, including transmission and distribution utilities, non-utility wholesale and retail market participants, and electric customers. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, or familial status.

§25.3. Severability Clause.

- (a) The adoption of this chapter does not preclude the Public Utility Commission of Texas (commission) from altering or amending any sections of this chapter in whole or in part, or from requiring any other or additional services, equipment, facilities, or standards, either upon complaint or upon its own motion or upon application of any person. Furthermore, this chapter will not relieve electric utilities, including transmission and distribution utilities, non-utility wholesale and retail market participants, or electric customers from any duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission.
- (b) The commission may make exceptions to this chapter for good cause.

§25.4. Statement of Nondiscrimination.

- (a) No electric utility or retail electric provider shall discriminate on the basis of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, or familial status.

- (b) No electric utility or retail electric provider shall unreasonably discriminate on the basis of geographic location.

§25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) **Above-market purchased power costs** — Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.
- (2) **Affected person** — means:
 - (A) a public utility or electric cooperative affected by an action of a regulatory authority;
 - (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
 - (C) a person who:
 - (i) is a competitor of a public utility with respect to a service performed by the utility; or
 - (ii) wants to enter into competition with a public utility.
- (3) **Affiliate** — means:
 - (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
 - (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

- (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
 - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
 - (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- (4) **Affiliated electric utility** — The electric utility from which an affiliated retail electric provider was unbundled in accordance with Public Utility Regulatory Act §39.051.
- (5) **Affiliated power generation company (APGC)** — A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.
- (6) **Affiliated retail electric provider (AREP)** — A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.
- (7) **Aggregation** — Includes the following:
- (A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its

own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

- (8) **Aggregator** — A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.
- (9) **Ancillary service** — A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.
- (10) **Base rate** — Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate schedule, or other schedule. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as the system benefit fee, transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge.

- (11) **Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP)** — A municipally owned utility/electric cooperative 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 municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).
- (12) **Calendar year** — January 1 through December 31.
- (13) **Commission** — The Public Utility Commission of Texas.
- (14) **Competition transition charge (CTC)** — Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the

transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

- (15) **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.
- (16) **Competitive energy efficiency services** — Energy efficiency services that are defined as competitive energy services pursuant to §25.341 of this title (relating to Definitions).
- (17) **Competitive retailer** — A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.
- (18) **Congestion zone** — An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.
- (19) **Control area** — An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:
 - (A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside

- the electric power system(s), with the load within the electric power system(s);
- (B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;
 - (C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and
 - (D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.
- (20) **Corporation** — A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.
- (21) **Critical loads** — Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.
- (22) **Customer choice** — The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

- (23) **Customer class** — A group of customers with similar electric service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.
- (24) **Day-ahead** — The day preceding the operating day.
- (25) **Deemed savings** — A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.
- (26) **Demand** — The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (27) **Demand savings** — A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (28) **Demand-side management (DSM)** — Activities that affect the magnitude or timing of customer electrical usage, or both.
- (29) **Demand-side resource or demand-side management** — Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

- (30) **Disconnection of service** — Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.
- (31) **Distribution line** — A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.
- (32) **Distributed resource** — A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.
- (33) **Distribution service provider (DSP)** — An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers, as defined in this section, including retail customers served at transmission voltage levels.
- (34) **Economically distressed geographic area** — Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.
- (35) **Electric cooperative** —
- (A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

- (B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or
- (C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.
- (36) **Electric generating facility** — A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.
- (37) **Electricity Facts label** — A standardized format, as described in §25.475(e) of this title (relating to Information Disclosures to Residential and Small Commercial Customers), for disclosure of information and contract terms made available to customers to help them choose a provider and an electricity product.
- (38) **Electricity product** — A product offered by a competitive retailer to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.
- (39) **Electric Reliability Council of Texas (ERCOT)** — Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

- (40) **Electric service identifier (ESI ID)** — The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by the Electric Reliability Council of Texas (ERCOT) or another independent organization.
- (41) **Electric utility** — Except as otherwise provided in this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
- (A) a municipal corporation;
 - (B) a qualifying facility;
 - (C) a power generation company;
 - (D) an exempt wholesale generator;
 - (E) a power marketer;
 - (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
 - (G) an electric cooperative;
 - (H) a retail electric provider;
 - (I) the state of Texas or an agency of the state; or
 - (J) a person not otherwise an electric utility who:

- (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
 - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
 - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.
- (42) **Energy efficiency** — Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.
- (43) **Energy efficiency measures** — Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable

reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

- (44) **Energy efficiency project** — An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.
- (45) **Energy efficiency service provider (EESP)** — A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.
- (46) **Energy savings** — A quantifiable reduction in a customer's consumption of energy.
- (47) **ERCOT protocols** — Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants. The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission.
- (48) **ERCOT region** — The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.
- (49) **Exempt wholesale generator** — A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating

all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

- (50) **Existing purchased power contract** — A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.
- (51) **Facilities** — All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.
- (52) **Financing order** — An order of the commission adopted under the Public Utility Regulatory Act §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.
- (53) **Freeze period** — The period beginning on January 1, 1999, and ending on December 31, 2001.
- (54) **Generation assets** — All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

- (55) **Generation service** — The production and purchase of electricity for retail customers and the production, purchase and sale of electricity in the wholesale power market.
- (56) **Good utility practice** — Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.
- (57) **Hearing** — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (58) **Independent organization** — An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.
- (59) **Independent system operator** — An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.
- (60) **Installed generation capacity** — All potentially marketable electric generation capacity, including the capacity of:

- (A) generating facilities that are connected with a transmission or distribution system;
 - (B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and
 - (C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.
- (61) **Interconnection agreement** — The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.
- (62) **License** — The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.
- (63) **Licensing** — The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (64) **Load factor** — The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.
- (65) **Low-income customer** — An electric customer, whose household income is not more than 125% of the federal poverty guidelines, or who receives food stamps from the Texas Department of Human Services (TDHS) or medical assistance from a state agency administering a part of the medical assistance program.

- (66) **Low-Income Discount Administrator (LIDA)** — A third-party administrator contracted by the commission to administer aspects of the rate reduction program established under Public Utility Regulatory Act §39.903.
- (67) **Market power mitigation plan** — A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.
- (68) **Market value** — For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.
- (69) **Master meter** — A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.
- (70) **Municipality** — A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.
- (71) **Municipally-owned utility (MOU)** — Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.
- (72) **Nameplate rating** — The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

- (73) **Native load customer** — A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.
- (74) **Natural gas energy credit (NGEC)** — A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by the Public Utility Regulatory Act §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).
- (75) **Net book value** — The original cost of an asset less accumulated depreciation.
- (76) **Net dependable capability** — The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.
- (77) **New on-site generation** — Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:
- (A) A fully operational facility, or
 - (B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

- (78) **Off-grid renewable generation** — The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.
- (79) **Other generation sources** — A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.
- (80) **Person** — Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.
- (81) **Power cost recovery factor(PCRF)** — A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.
- (82) **Power generation company (PGC)** — A person that:
- (A) generates electricity that is intended to be sold at wholesale;
 - (B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and
 - (C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.
- (83) **Power marketer** — A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a

certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

- (84) **Power region** — A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.
- (85) **Pre-interconnection study** — A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.
- (86) **Premises** — A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.
- (87) **Price to beat (PTB)** — A price for electricity, as determined pursuant to the Public Utility Regulatory Act §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.
- (88) **Proceeding** — A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.
- (89) **Proprietary customer information** — Any information compiled by a retail electric provider, an electric utility, a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for

Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating 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 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.

- (90) **Provider of last resort (POLR)** — A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)) to customers that are not being served by a REP for reasons other than non-payment.
- (91) **Public retail customer** — A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.
- (92) **Public utility or utility** — An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

- (93) **Public Utility Regulatory Act (PURA)** — The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 *et. seq.*
- (94) **Purchased power market value** — The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.
- (95) **Qualified scheduling entity** — A market participant that is qualified by the Electric Reliability Council of Texas (ERCOT) in accordance with Section 16, Registration and Qualification of Market Participants of ERCOT's Protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.
- (96) **Qualifying cogenerator** — The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.
- (97) **Qualifying facility** — A qualifying cogenerator or qualifying small power producer.
- (98) **Qualifying small power producer** — The meaning as assigned this term by 16 U.S.C. §796(17)(D).

- (99) **Rate** — A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.
- (100) **Rate class** — A group of customers taking electric service under the same rate schedule.
- (101) **Rate reduction program** — A program to provide reduced electric rates for eligible low-income customers, in accordance with the Public Utility Regulatory Act §39.903(h).
- (102) **Rate year** — The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.
- (103) **Ratemaking proceeding** — A proceeding in which a rate may be changed.
- (104) **Registration agent** — Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.
- (105) **Regulatory authority** — In accordance with the context where it is found, either the commission or the governing body of a municipality.

- (106) **Renewable demand side management (DSM) technologies** — Equipment that uses a renewable energy resource (renewable resource) as defined in this section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.
- (107) **Renewable energy** — Energy derived from renewable energy technologies.
- (108) **Renewable energy credit (REC)** — A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the Public Utility Regulatory Act §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).
- (109) **Renewable energy credit account (REC account)** — An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.
- (110) **Renewable energy resource (renewable resource)** — A resource that produces energy derived from renewable energy technologies.
- (111) **Renewable energy technology** — Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not

rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

- (112) **Repowering** — Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.
- (113) **Residential customer** — Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.
- (114) **Retail customer** — The separately metered end-use customer who purchases and ultimately consumes electricity.
- (115) **Retail electric provider (REP)** — A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.
- (116) **Retail stranded costs** — That part of net stranded cost associated with the provision of retail service.
- (117) **Retrofit** — The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.
- (118) **River authority** — A conservation and reclamation district created pursuant to the Texas Constitution, Article 16, Section 59, including any nonprofit

corporation created by such a district pursuant to the Texas Water Code, Chapter 152, that is an electric utility.

- (119) **Rule** — A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.
- (120) **Separately metered** — Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.
- (121) **Service** — Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.
- (122) **Spanish-speaking person** — A person who speaks any dialect of the Spanish language exclusively or as their primary language.
- (123) **Standard meter** — The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

- (124) **Stranded cost** — The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.
- (125) **Submetering** — Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.
- (126) **Summer net dependable capability** — The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.
- (127) **Supply-side resource** — A resource, including a storage device, that provides electricity from fuels or renewable resources.
- (128) **System benefit account** — An account with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission.

- (129) **System benefit fee** — A nonbypassable fee set by the commission to finance the system benefit account or fund. The fee shall be charged to electric retail customers based on the amount of kilowatt hours (kWh) of electric energy used, as measured at the meter and adjusted for voltage level losses.
- (130) **System emergency** — A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
- (131) **Tariff** — The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.
- (132) **Termination of service** — The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.
- (133) **Tenant** — A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.
- (134) **Test year** — The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.
- (135) **Texas jurisdictional installed generation capacity** — The amount of an affiliated power generation company's installed generation capacity properly

allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

- (136) **Transition bonds** — Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.
- (137) **Transition charges** — Nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.
- (138) **Transmission and distribution business unit (TDBU)** — The business unit of a municipally owned utility/electric cooperative, 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 the Public Utility Regulatory Act §39.152. Transmission and distribution business unit does not

include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.

- (139) **Transmission and distribution utility (TDU)** — A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, 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 the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.
- (140) **Transmission line** — A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.
- (141) **Transmission service** — Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services,

scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the Electric Reliability Council of Texas (ERCOT) region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

- (142) **Transmission service customer** — A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.
- (143) **Transmission service provider (TSP)** — An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.
- (144) **Transmission system** — The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

This agency hereby certifies that the rules, as adopted, have 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 §§25.1, Purpose and Scope of Rules, 25.3, Severability Clause, and 25.4, Statement of Nondiscrimination, are hereby adopted with no changes to the text as proposed; and §25.5, relating to Definitions, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF FEBRUARY 2003.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Brett A. Perlman, Commissioner

Julie Caruthers Parsley, Commissioner