

PROJECT NO. 30719

PROPOSED AMENDMENT TO §25.343	§	PUBLIC UTILITY COMMISSION
ALLOWING FOR AN ELECTRIC	§	
UTILITY TO PROVIDE SERVICE TO	§	OF TEXAS
MILITARY BASES	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.343
AS APPROVED AT THE FEBRUARY 24, 2005, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.343, relating to Competitive Energy Services. The proposed amendment will allow an electric utility to provide services to the electric distribution systems of military bases as a discretionary service, rather than as a competitive energy service. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 30719 is assigned to this proceeding.

United States military bases have traditionally owned and operated their own electric distribution systems. However, the Utility System Privatization Act, effective November 24, 2003, gave individual bases the option to convey or lease their distribution systems to outside entities to lower costs for operation and maintenance. *See* 10 U.S.C. §2688 (2003).

Under the commission's rule on competitive energy services, providing operations and maintenance services for customer-owned electric facilities is classified as a competitive service. Military bases in Texas that are not situated within or very near major metropolitan areas have sought to acquire such services on a competitive basis but have had difficulty attracting offers for service from private providers. The transmission and distribution utilities (TDU), however, can credibly offer operation and maintenance service for a military base distribution system. Current commission rules, however, bar TDUs from providing competitive energy services. The

proposed amendment would permit TDUs to bid on contracts to operate and maintain military base distribution systems by providing that services to those bases shall be considered discretionary services rather than competitive energy services.

Jeff Luna, Analyst, Electric Division has determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section; there is no foreseeable direct or indirect implication for costs or revenues for local governments. Mr. Luna has determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing this section is the potential for reduced military expenditures and higher quality of service in the provision of electric delivery service to customers on military bases in Texas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section; it is expected that small and micro-businesses would have difficulty in qualifying to bid to perform operation and maintenance for military base distribution systems. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

If requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, the commission staff will conduct a public hearing on this rulemaking on Friday, April 8, 2005, at the commission's offices located in the William B. Travis Building, 1701 North Congress

Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 30719. When commenting on specific subsections of the proposed rule, parties are encouraged to describe “best practice” examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving “leading edge” examples which are specifically related and directly applicable to the Texas statute rather than broad citations to other state restructuring efforts.

This amendment is proposed under PURA §14.002, which authorizes the Public Utility Commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §14.001, which authorizes the commission to regulate the business of public utilities within its jurisdiction; §39.001, which authorizes the commission to adopt rules for transition to a fully competitive electric power industry; §39.051, which requires each

electric utility to separate its regulated utility activities from its customer energy services activities by unbundling its business activities to create, *inter alia*, a separate transmission and distribution utility; and §39.203, which requires TDUs to provide transmission and distribution services.

Cross Reference to Statutes: Public Utility Regulatory Act: §§14.001, 14.002, 39.001, 39.051, and 39.203.

§25.343. Competitive Energy Services.

(a)-(e) (No change.)

(f) **Exceptions related to certain competitive energy services.** An electric utility may not own, operate, maintain or provide other services related to equipment of the type described in §25.341(3)(F) of this title, except in any of the following instances or as otherwise provided in this subchapter or by commission order.

(1)-(4) (No change.)

(5) An electric utility may provide services associated with the privatization of electric distribution systems of military bases undertaken pursuant to the Utility System Privatization Act, codified at 10 U.S.C. §2688. The provision of such services by an electric utility shall be considered discretionary services and shall not be considered competitive energy services.

(g)-(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 24TH DAY OF FEBRUARY 2005 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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