

PROJECT NO. 37214

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| RULEMAKING TO IMPLEMENT | § | PUBLIC UTILITY COMMISSION |
| CHANGES TO CUSTOMER | § | |
| DISCLOSURES AS REQUIRED BY | § | OF TEXAS |
| HB 1822 | § | |

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.475
AS APPROVED AT THE JULY 30, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.475, relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers. The amendment will implement certain provisions of Texas House Bill 1822, 81st Leg. (2009) (HB 1822) and will address customer notice of contract expiration. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 37214 is assigned to this proceeding.

Shawnee Claiborn-Pinto, Retail Markets Director, Competitive Markets Division has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Claiborn-Pinto has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the implementation of certain provisions of HB 1822 and that retail electric providers (REPs) will be required to provide to follow a consistent definition of a fixed rate product and that customers will benefit from being notified in advance of the

expiration of the fixed rate product contract so that they can make informed decisions in a timely manner regarding selection of a REP for their electric service. It has been determined that implementation of this rule may have an adverse economic effect on approximately thirty small businesses or micro-businesses who are Retail Electric Providers. There may be economic costs to persons who are required to comply with the proposed section. The REPs will be required to make changes to their billing systems to include the end date of the fixed rate product on each billing statement and provide additional notice in a timely manner to residential customers prior to actual contract expiration. Currently residential customers of REPs may elect to receive REP notifications by e-mail only but this rule will require REPs to change its practices to additionally send a direct mail to these residential customers. Additionally, the REPs will incur costs to print special envelopes, separate pages, and possibly separate mailings to notify the residential customer of contract expiration. The majority of these costs are associated with the modifications to company billing systems and, are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs. The commission did not consider alternatives to the rule as the rule is implementing the statute that was recently enacted.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, October 7, 2009. The request for a public hearing must be received within 30 days after publication.

Comments on the 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 31 days after publication and reply comments within 45 days after publication. Sixteen copies of comments on the amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the rule as amended. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 37214.

This amendment is proposed under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §14.002 (Vernon 2007 & Supp. 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.112, effective September 1, 2009, which requires a REP to provide a residential customer who has a fixed rate product with at least one written notice of the date the fixed rate product will expire; and HB 1822 §6, which requires the commission to adopt rules consistent with HB 1822.

Cross Reference to Statutes: Public Utility Regulatory Act §17.003 and §39.112.

§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

(a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, in connection with the provision of service and marketing to residential and small commercial customers. ~~Not later than five months after the effective date of this section,~~

~~REPs shall conform all electricity products and contract documents to the requirements of this section. If a term contract is in effect on the date that this section becomes effective, the REP is required only to provide the notice of expiration required by subsection (e) of this section beginning no later than five months from the effective date of this section if the contract is still in effect at that time and is not otherwise required to conform such contracts.~~

(b) (No change)

(c) **General Retail Electric Provider requirements.**

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

(3) **Specific contract requirements.**

(A) (No change.)

(B) The start and end dates of the contract shall be available to the customer upon request. The end date for a fixed rate product for a residential customer shall be included on each billing statement. If

the REP cannot determine the start and end date of the contract, the REP may estimate these dates by reference to the billing cycle and month or approximate date. After the start date is known, the REP's estimate of the end date shall be~~The start and end dates may be estimated if the REP cannot determine these dates. After the start date is known, the end date may be estimated~~ consistent with the TDU meter reading schedule for the customer during the month of expiration.

(4) (No change.)

(d) (No change.)

(e) **Contract expiration and renewal offers.** The REP shall send a written notice of contract expiration at least 30 days or one billing cycle~~14 days~~ prior to the date of contract expiration, but no more than 60 days or two billing cycles~~45 days~~ in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP shall send the notice by mail to a residential customer~~s~~ and shall also send the required notice to a customer's e-mail address if available to the REP and if the customer has agreed to send notices electronically. The REP shall send the notice to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has agreed to receive notices electronically. Nothing in

this section shall preclude a REP from offering a new contract to the customer at any other time during the contract term.

(1) **Contract Expiration.**

(A) (No change.)

(B) Written notice of contract expiration shall be provided in or with the customer's bill, or in a separate document.

(i) If notice is provided with a residential customer's bill, the notice shall be printed on a separate page. A statement shall be included on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."

(ii) If the notice is provided in or with a small commercial~~the~~ customer's bill, the REP must either:

(I) include a statement on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice;" or "Contract Expiration Notice. See Enclosed."; or

(II) provide on each bill~~the last three bills~~ the approximate~~the~~ date or the billing cycle and month that the existing contract will expire. This notice shall be conspicuous (either by font or color) and in a

location close to the “amount due.” In this case the bill rendered 30-60 days (or one to two billing cycles)~~14-45 days~~ before the contract expires shall contain the notice of contract expiration requirements in subparagraph (C) of this paragraph;

or:

~~(iii)~~(ii) If notice is provided in a separate document, a statement shall be included on the outside of the envelope ~~and/or~~ in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, “Contract Expiration Notice. See Enclosed” for residential customers or for small commercial customers, “Contract Expiration Notice” or “Contract Expiration Notice. See Enclosed.””

- (C) A written notice of contract expiration (whether with the bill or in a separate envelope) shall set out:
- (i) The approximate date or the billing cycle and month the existing contract will expire.
 - (ii) A statement in bold lettering no smaller than 12 point font that no termination penalty shall apply 14 days prior to the date stated as the expiration date in the notice. A description and amount of any fees or charges associated with the early termination of a residential customer’s fixed rate product that would apply before 14 days prior to the

date stated as the expiration date in the notice. No such statements are required if there is no termination fee.
~~such statement is required if the customer would not be subject to a termination penalty under any circumstances.~~

(iii) (No change.)

(iv) A copy of the EFL for the default renewal product if the customer takes no action, or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.

(v) - (vi) (No change).

(2) (No change.)

(f) **Terms of service document.** The following information shall be conspicuously contained in the TOS:

(1) - (6) (No change.)

(7) **Contract expiration notice.** For a term contract, the TOS shall contain a statement informing the customer that a contract expiration notice will be sent ~~at least 14 days~~ prior to the end of the initial contract term. The TOS shall also state that if the customer fails to take action to ensure the

continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which shall be a month-to-month product.

(8)-(9) (No change.)

(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 30th DAY OF JULY 2009 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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