

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

§25.486 Customer Protections for Brokerage Services.

- (a) **Applicability.** This section applies to all brokers.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise:
- (1) **Broker** -- As defined in §25.112 of this title (relating to Registration of Brokers).
 - (2) **Brokerage services** -- As defined in §25.112 of this title.
 - (3) **Client** -- A person who receives or solicits brokerage services from a broker.
 - (4) **Client agent** -- A broker who has the legal right and authority to act on behalf of a client regarding the selection of, enrollment for, or contract execution of a product or service offered by a retail electric provider (REP), including electric service.
 - (5) **Proprietary client information** -- Any information that is compiled by a broker on a client or retail electric customer that makes possible the identification of any individual client or retail electric customer by matching such information with the client's or customer's name, address, retail electric account number, type or classification of retail electric service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual retail electric or brokerage services contract terms and conditions, price, current charges, billing records, or any information that the client or 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 client or customer to whom the information relates does not constitute proprietary client information.
- (c) **Voluntary Alteration of Customer Protections.** A client other than a residential or small commercial class customer or applicant, or a non-residential customer or applicant whose load is part of an aggregation in excess of 50 kilowatts, may agree to a different level of customer protections related to the provision of brokerage services than is required by this section. Any such agreements do not change the level of customer protections a client is entitled to relating to the provision of retail electric service. Any agreements containing a different level of protections from those required by this section must be in writing and provided to the client. Copies of such agreements must be provided to commission staff upon request.
- (d) **Broker Communications.**
- (1) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, and billing statements produced by a broker must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:
 - (A) Stating, suggesting, implying or otherwise leading a client to believe that receiving brokerage services will provide a customer with more reliable service from a transmission and distribution utility (TDU);
 - (B) Falsely suggesting, implying or otherwise leading a client to believe that a person is a representative of a TDU, REP, aggregator, or another broker;
 - (C) Falsely stating or suggesting that brokerage services are being provided without compensation; and
 - (D) Falsely claiming to be the client agent of a customer or applicant.
 - (2) All printed advertisements, electronic advertising over the Internet, and websites must include the broker's registered name.
- (e) **Language Requirements.** A broker must offer customer service and any information required by this section to a client in the language used to market the broker's products and services to that client.
- (f) **Required Disclosures.** A broker must inform a client of the following prior to the initiation of brokerage services, the renewal of those services, or a material change in the services provided, or the terms and conditions of those services:
- (1) The broker's registered name, business mailing address, and contact information;

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- (2) The broker's commission registration number;
 - (3) The registered name of any REP that is an affiliate of the broker;
 - (4) A clear description of the services the broker will provide for the client.
 - (5) The duration of the agreement to provide brokerage services, if applicable;
 - (6) A description of how the broker will be compensated for providing brokerage services and by whom;
 - (7) How the client can terminate the agreement to provide brokerage services, if applicable;
 - (8) The amount of any fee or other cost the client will incur for terminating the agreement to provide brokerage services, if applicable; and
 - (9) The commission's telephone number and email address for complaints and inquiries.
- (g) **Client Agent Requirements.**
- (1) An agreement between a broker and a client that authorizes the broker to act as a client agent for the client must be in writing.
 - (2) In addition to the requirements of subsection (f) of this section, a broker that acts as a client agent for the client must inform the client of the following:
 - (A) A clear description of the actions the broker is authorized to take on the client's behalf;
 - (B) The duration of the agency relationship;
 - (C) How the client can terminate the agency agreement;
 - (D) The amount of any fee or other cost the client will incur for terminating the agency agreement; and
 - (E) How the client's customer data, including proprietary client information, and account access information will be used, protected, and retained by the broker and disposed of at the conclusion of the agency relationship.
 - (3) A broker that is authorized to act as a client agent for the client must provide evidence of that authority upon request of the client, commission staff, or a REP with which the broker seeks to enroll the client.
 - (4) For purposes of §25.474 of this title (relating to Selection of Retail Electric Provider), a REP may rely upon the representations made by a client agent provided that the client agent is registered with the commission and provides evidence of agency authority.
- (h) **Unauthorized Charges and Unauthorized Changes of Retail Electric Provider.**
- (1) Unauthorized charges. A broker must not bill an unauthorized charge or cause an unauthorized charge to be billed to a customer's retail electric service bill.
 - (2) Unauthorized service changes. A broker must not switch or cause to be switched the REP of a customer without first obtaining the customer's authorization.
- (i) **Discrimination Prohibited.** A broker must not unduly refuse to provide brokerage services or otherwise unduly discriminate in the provision of brokerage services to any client because of race, creed, color, national origin, ancestry, sex, marital status, source or level of income, disability, or familial status; or refuse to provide brokerage services to a client because the client is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services; or otherwise unreasonably discriminate on the basis of the geographic location of a client.
- (j) **Proprietary Client Information.**
- (1) A broker must not release proprietary client information to any person unless the client authorizes the release in writing. This prohibition does not apply to the release of such information to the commission.
 - (2) A broker is not permitted to sell, make available for sale, or authorize the sale of any client-specific information or data obtained unless the client authorizes the sale in writing.
- (k) **Client Access and Complaint Handling.**
- (1) **Client Access.** Each broker must ensure that clients have reasonable access to its service representatives to make inquiries and complaints, discuss charges on bills or any other aspect of

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the brokerage services provided to the client by the broker, terminate an agreement to provide services, and transact any other pertinent business. A broker must promptly investigate client complaints and advise the complainant of the results. A broker must inform the complainant of the commission's informal complaint resolution process and the following contact information for the commission within 21 days of receiving the complaint: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.

- (2) **Complaint Handling.** A client has the right to make a formal or informal complaint to the commission. A broker may not use a written or verbal agreement with a client to impair this right for a client that is a residential or small commercial customer. A broker must not require a client that is a residential or small commercial customer to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.
 - (3) **Informal Complaints.**
 - (A) A person may file an informal complaint with the commission by contacting the commission at: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.
 - (B) A complaint should include the following information, as applicable:
 - (i) The complainant's name, billing and service address, telephone number and email address, if any;
 - (ii) The name of the broker;
 - (iii) The broker's registration number;
 - (iv) The name of any relevant REP;
 - (v) The customer account number or electric service identifier;
 - (vi) An explanation of the facts relevant to the complaint;
 - (vii) The complainant's requested resolution; and
 - (viii) Any documentation that supports the complaint.
 - (C) The commission will forward the informal complaint to the broker.
 - (D) The broker must investigate each informal complaint forwarded to the broker by the commission and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the broker by the commission.
 - (E) The commission will review the complaint information and the broker's response and notify the complainant of the results of the commission's investigation.
 - (F) The broker must keep a record for two years after receiving notification by the commission that the complaint has been closed. This record must show the name and address of the complainant, the date, nature, and outcome of the complaint.
 - (G) While an informal complaint process is pending, the broker must not initiate collection activities, including a report of the customer's delinquency to a credit reporting agency, with respect to the disputed portion of the bill.
 - (4) **Formal Complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. Formal complaints will be docketed as provided in the commission's procedural rules.
- (1) **Record Retention.**
 - (1) A broker must establish and maintain records and data that are sufficient to:
 - (A) Verify its compliance with the requirements of any applicable commission rules; and
 - (B) Support any investigation of customer complaints.
 - (2) All records required by this section must be retained for no less than two years, unless otherwise specified.

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- (3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter must be provided to the commission within 15 calendar days of its request.