PROJECT NO. 25963

RULEMAKING TO ESTABLISH GUIDELINES AND STANDARDS FOR MUNICIPAL REGISTRATION OF RETAIL ELECTRIC PROVIDERS	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW §25.113
AS APPROVED AT THE DECEMBER 19, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.113 relating to Municipal Registration of Retail Electric Providers (REPs) with changes to the proposed text as published in the September 27, 2002 *Texas Register* (27 TexReg 9065). The commission also adopts a standard registration form for the optional "safe-harbor" municipal registration of REPs under §25.113. Project Number 25963 is assigned to this proceeding.

The new §25.113 is adopted in order to establish an optional "safe-harbor" process for municipal registration of REPs; and incorporates threshold legal/policy decisions relating to the scope of registration, re-registration of a REP, the reasonableness of registration fees, reasonableness of sanctions against a REP, definition of "residents of the municipality," discrimination against REPs or types of REPS, REP reporting requirements, notice requirements, and suspension and revocation procedures. The new section and standard form simplify and provide certainty to the registration process, thereby facilitating the development of a competitive retail electric market in Texas.

The new §25.113 optional "safe-harbor" municipal registration of REPs provides for a one-time registration process, not an annual registration, and standardizes filing procedures, deadlines, registration

information, and fees. A municipality that adopts the "safe-harbor" process is prohibited from excluding any REP or type of REP from its registration requirement; is required to file a copy of its ordinance with the commission; and the new §25.113 establishes standard suspension and revocation procedures for a municipality that adopts the safe-harbor process. A REP that provides service only to the municipality's own electric accounts and not to its residents may be excluded from the municipality's registration requirements.

The commission solicited draft rule language on June 24, 2002 and received comments from interested stakeholders on July 9, 2002. The proposed rule and registration form were published in the Texas Register on September 27, 2002. Comments were received on October 28, 2002 and reply comments were received on November 4, 2002.

A public hearing on the proposed rule and registration form was held at the commission offices on November 12, 2002 at 1:30 p.m. Representatives from Green Mountain Energy, TXU Energy Retail, Constellation NewEnergy, Strategic Energy, Reliant Resources, Inc. (Reliant), American Electric Power Retail Electric Providers (AEP REPs), City of Heath, and TXU Business Services attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed rule and registration form from Constellation New Energy, Inc. and Strategic Energy LLC (Non-Residential REPs), AEP REPs, TXU

Energy Retail Company (TXU), the Alliance for Retail Markets (ARM), Reliant, the City of Austin d/b/a Austin Energy (Austin Energy), and the City of Houston (Houston).

The commission requested comments on the following question:

> Should the commission develop an online registration procedure? Such a procedure would allow REPs to register once on the commission website and allow registration information to be electronically forwarded to those municipalities adopting ordinances that comply with this rule. Please submit implementing rule language.

Houston, Reliant, AEP REPs, and ARM stated that the commission should develop an online registration procedure whereby a REP would register once on the commission's website and then the commission would electronically forward the information to all municipalities that adopt a safe-harbor registration ordinance. The AEP REPs argued that an online registration procedure would fulfill the commission's obligation under the Administrative Procedure Act to quantify the costs and benefits of the proposed rule on state and local governments. The AEP REPs contended that if the commission develops an online registration procedure, it would be a cost-effective method of complying with the Public Utility Regulatory Act (PURA) §39.358. However, Reliant and ARM stated that traditional methods of registration should be allowed in addition to online registration for those municipalities that cannot access the information electronically. ARM also noted that even with an online registration process, REPs would still have to mail their registration fees to each municipality. ARM and the AEP

REPs recognized that the development of an online electronic process would take time to implement. ARM proposed that the online registration begin January 1, 2004 and that REPs manually register with safe-harbor municipalities in the meantime.

TXU opposed the suggestion that the commission develop an online registration process. TXU stated that it would be better to register with municipalities directly. Since REPs would still have to send a paper registration payment to each safe-harbor municipality, TXU indicated that it would be just as easy to attach the registration check to a hard copy of the registration form and mail them together. TXU further commented that if there is a dispute over registration, the commission could have to determine where the problem occurred and might be liable for late registration fees if the problem occurred because of the commission's online process. TXU stated that it was unclear how quickly an electronic process could be implemented and what the registration process would be in the interim. In reply comments TXU said, in the alternative, this rule should adopt permissive language that allows, rather than requires, the commission to develop an online registration procedure. TXU did not want implementation of an online process to slow adoption of the rule, and noted that parties could meet afterward to discuss development of the online system.

Reliant and the AEP REPs supported expanding the concept to include electronic payment of a safe-harbor municipality's registration fee. Reliant stated that electronic payments would allow for prompt payment and would potentially avoid late-payment fees. The AEP REPs' reply comments supported Reliant's proposal to include electronic registration payments while cautioning that it would complicate

implementation of the electronic registration system. The AEP REPs suggested a phased approach to implementation of the online registration and electronic payment system.

The commission declines to adopt an online registration process at this time. The commission agrees with TXU that REPs should register with municipalities directly. Allowing REPs to electronically register once with the commission would put the commission in a position of being responsible for complying with a safe-harbor municipality's registration ordinance on behalf of the registering REP. Further, under such a process, REPs and/or municipalities might contend that the commission was liable for late registration fees if there is a dispute over the timeliness of registration.

With the adoption of this section, the commission seeks to provide a central location in which municipalities may obtain up-to-date information about REPs operating within their boundaries and by which REPs may easily comply with those cities' registration requirements. Municipalities that adopt a safe-harbor REP registration ordinance will benefit because REPs will know that the ordinance has been adopted and will be able to timely register with the municipality. The commission's role is to facilitate registration, not to become responsible for registering REPs with cities. On its website, the commission already maintains an updated list of REPs, including all of the information allowed under subsection (g). The commission encourages REPs to provide a reference to this website to municipalities that require registration. In addition, the commission will maintain information on its website regarding the municipalities that file "safe-harbor" registration ordinances with the commission. The commission will

also maintain on its website information regarding municipality email addresses for those municipalities willing to accept completed registration forms by email.

The commission also declines to require online payment of registration fees. This would require extensive coordination between the commission and the staff of various municipalities. The cost to the commission to implement and maintain such a program could significantly outweigh the benefits. In addition, it would place the burden on the commission to ensure that a REP's payment was sent to the appropriate municipality in a timely manner so that the REP did not incur a late fee. Also, the commission has not been authorized by the legislature to expend state resources to collect fees on behalf of municipalities.

Substantive Rule §25.113 — Municipal Registration of Retail Electric Providers (REPs)

ARM recommended, and TXU and the Non-Residential REPs agreed, that the rule require mandatory, rather than optional, compliance from municipalities that choose to adopt a REP registration ordinance. The parties stated that requiring municipalities to comply with a standardized registration process meets the municipalities' needs of having access to REP contact information while minimizing the reporting burden to REPs. TXU stated that there would be little cost to municipalities to comply with the provisions in this section. According to TXU, the only additional expense to municipalities is to file a copy of their registration ordinance with the commission. TXU argued that this minimal cost is far

outweighed by the litigation expenses saved by both municipalities and REPs by avoiding appeals of ordinances at the commission.

ARM argued that if the rule does not require municipalities to have a standard registration process, the added burden and cost of complying with an individualized, decentralized municipal REP registration process would be very costly to REPs and consequently could impede the development of a competitive retail electric market.

Green Mountain, at the public hearing, estimated that a typical REP's costs would be more than twice as high under a voluntary rule than under a mandatory one — mostly due to significantly increased personnel time required to track down ordinances, compile required data, and complete individual forms for municipalities that do not adopt the optional "safe-harbor" registration process. In addition to these costs, Green Mountain noted that a voluntary rule would leave open the likelihood for further expensive, time-consuming litigation before the commission concerning ordinances of municipalities that have chosen not to use the commission's "safe-harbor" process.

ARM stated that REPs would still have to comply with potentially hundreds of differing municipal registration ordinances. ARM stated that such an outcome is directly contrary to the policy goals stated in PURA §39.001, which limits the ability of a regulatory authority to regulate competitors and the degree of regulatory controls that they can impose. ARM stated that the Legislature's intent to limit

unnecessary regulatory controls on competition would be subverted if each municipality were able to enact its own unique ordinances without parameters imposed by the commission.

The Non-Residential REPs argued that cities may not regulate businesses that extend beyond their municipal boundaries, except as specifically provided for in PURA §39.358. REPs provide service according to a utility's service area, or ERCOT wide, which is beyond any one municipality's boundaries. The Non-Residential REPs therefore argued that this rule should be mandatory because only the commission has statewide jurisdiction over REPs operating within the state.

Further, ARM argued that the commission has the duty to adopt a standardized set of rules for municipal REP registration that is mandatory for all municipalities. ARM stated that PURA §17.001(b) gives the commission the "authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices" and that PURA §17.051 requires the commission to "adopt rules relating to certification, registration, and reporting requirements for a…retail electric provider." ARM contends that this extensive grant of authority is evidence that the Legislature intended for a single set of rules regulating REP behavior, including a single set of rules for REP registration.

Reliant stated that the safe-harbor approach strikes the appropriate balance between the need for REP registration for those municipalities that require it and a successful competitive retail electric market.

Reliant believes that a safe-harbor rule will eliminate potential appeals even though there is no guarantee that municipalities will adopt the safe-harbor option.

Houston disagreed that the commission's jurisdiction extends to every exercise of a municipality's authority to require registration of REPs.

The commission is concerned that an individualized, decentralized municipal REP registration process could be burdensome for REPs and may consequently impede the development of a robust competitive retail electric market. The commission agrees with the REPs that requiring municipalities to comply with a standardized registration process meets the municipalities' needs of having access to REP contact information while minimizing REPs' reporting burden. The commission declines, however, to make any portion of the rule mandatory at this time because the commission believes that most municipalities will choose to adopt a safe-harbor ordinance to avoid further litigation before the commission. The commission concludes that it is appropriate to assess the impact of a safe-harbor rule before adopting a mandatory rule, considering such factors as the number of municipalities that adopt registration requirements that are different from the safe-harbor registration and the burden those registration rules will impose on REPs. The commission may, at a later date, consider amending the rule to incorporate mandatory registration requirements for municipalities.

The Non-Residential REPs argued that the word "resident" in PURA §39.358 includes only residential electric customers. They stated that "residents of the community" is a unique usage in §39.358 not

found elsewhere in PURA or the remainder of the Texas Utilities Code. They stated that REPs that sell electricity to only non-residential customers should be exempt from municipal REP registration ordinances. Accordingly, they suggested the commission amend the definition of resident in subsection (c)(1) and the purpose statement in subsection (b). The AEP REPs supported this interpretation in the REP registration appeal cases, Docket Numbers 24906, et al. before the commission. The AEP REPs stated that if the commission does not adopt this interpretation, the registration burden on REPs that serve non-residential customers should be minimal.

The commission disagrees with the Non-Residential REPs that the word "resident" in PURA §39.358 includes only residential electric customers. The commission finds that the definition of "resident" in the context of PURA Chapter 39 includes any entity that is located within the municipality, regardless of customer classification. The purpose of registration is to allow a municipality to contact a REP directly or to assist a resident in contacting the REP. Limiting the definition of resident to residential customers would exclude small businesses, churches, schools, and other non-residential customers. Further, this interpretation is consistent with the provision prohibiting discrimination in PURA §39.001(c), by making all REPs serving within one municipality subject to the same registration requirements.

Reliant and the AEP REPs suggested adding a sentence in subsection (e) stating that notice will be deemed to have been given when the municipality's ordinance has been posted by the commission on its website.

The commission declines to add this provision. Notice is deemed to have been given when a municipality files its ordinance in the commission's Central Records Division. The commission has added clarifying language to that effect. Such filings are time and date stamped and posted on the commission's daily filings list, which is easily accessible from the commission's website or from Central Records.

Reliant suggested modifying subsections (f)(1) and (h)(2) to include situations where the REP may not have prior knowledge of an ordinance. Reliant argued that a REP could unknowingly serve residents of a city more than 30 days after an ordinance becomes effective, but not realize that such an ordinance has passed; as a result, the REP may fail to timely register. Reliant, therefore, recommended changing the proposed rule to allow a REP to register within 30 days of receiving notice of an ordinance.

The commission declines to make these changes. Contrary to Reliant's intended purpose, this proposed change would actually have the effect of shortening the time a REP has to register. The rule, as written, requires a safe-harbor municipality to file a copy of its registration ordinance with the commission at least 30 days before the effective date of the ordinance (subsection (e)). This filing serves as notice to REPs and provides a central location for REPs to easily find safe-harbor registration ordinances. The ordinance would then be effective no earlier than the 30 days after it is filed with the commission. A REP is then required to comply with that municipality's ordinance within 30 days after it becomes effective — no earlier than 60 days after the ordinance is filed at the commission. Reliant's proposed change would require a REP to register with a municipality within 30 days after the safe-harbor

ordinance is filed with the commission. The commission understands that there will likely be municipalities that adopt registration ordinances outside of the safe-harbor process and that REPs may unknowingly violate an ordinance they do not know about. However, Reliant's suggested change would not alleviate this problem because such an ordinance would fall outside the parameters of this rule.

ARM and Reliant recommended amending subsection (f)(2) to delete the verification of the registration form because it is unnecessary and may complicate the implementation of a web-based registration process. Reliant stated that REPs have already verified to the commission in their certification applications the same information that is contained on the proposed registration form. Also, Reliant stated that subsection (f)(3) should be amended to allow REPs 20 days to cure any deficiencies in its registration, rather than ten days.

The commission agrees that verification is unnecessary. Staff currently maintains up-to-date contact information for all REPs on its website, including the docket number under which a REP's certification was granted. Any municipality may access this information online, or request a copy from Central Records. Again, the commission encourages REPs to provide a reference to the REP's certification information listed on the commission's website. The commission adopts Reliant's suggestion to allow REPs 20 days to cure any deficiencies in their registration.

TXU, Reliant, and the AEP REPs recommended that the requirement in subsection (g)(7) for REPs to list a contact person located within the municipality be deleted. They explained that as part of the

commission's certification process, a REP is required to have an office located in Texas and this information is already required by subsection (g)(3).

The requirement in subsection (g)(7) applies only if a REP has an office located within the boundaries of the municipality. If no office is located within the municipality, the REP will leave this section of the registration form blank. Therefore, the commission finds that the requested change is unnecessary.

TXU and Reliant recommended that the first sentence of subsection (h)(1) be changed so that the fee would be based upon the cost of the registration process, rather than the cost to administer the statute. TXU stated that the proposed language is overly broad, because it suggests that the registration fee can take into account the cost a city might incur with respect to suspension or revocation of a registration under PURA §39.358(b).

The commission agrees and makes the suggested change. The only costs that will be considered with respect to §25.113(h)(1) are those involved with the actual registration process.

Houston proposed that the following sentence be added to subsection (h)(1): "This statement shall be admissible in any proceeding which results in a commission finding that the REP has committed a significant violation of PURA Chapter 39 or rules adopted under that chapter." Reliant, ARM, and TXU stated that Houston's proposed addition to this section should be rejected. They argued that any costs incurred by a municipality in a "significant violation" proceeding have nothing to do with costs

incurred in processing REP registrations addressed in §25.113(h)(1). TXU argued that admissibility of evidence is already addressed in PUC Proc. R. 22.221 and the Texas Rules of Evidence; thus, there is no need for any type of special treatment for this statement of costs.

The commission agrees with the REPs and declines to add the sentence suggested by Houston.

Reliant, ARM, and TXU proposed removing the last sentence of subsection (h)(1), which allows a safe-harbor municipality to file a statement of costs if they exceed $25. Reliant and ARM argued that this provision seems to create the opportunity for disagreement within what is supposed to be a clear-cut "safe-harbor." ARM further contended that, to the extent that a "safe-harbor" approach is adopted by the commission, it should eliminate opportunities for disagreement about what is required of a municipality seeking to avail itself of the "safe-harbor." Reliant stated that a municipal ordinance that provided for fees greater than $25 would be outside the parameters of the safe-harbor; thus, such fees should be subject to separate action by the commission. ARM asserted that the proposed rule failed to explain whether any such municipality's ordinance would fall outside the parameters of the "safe-harbor," or the mechanism for addressing the reasonableness of the municipality's fee. TXU asserted that it was unclear whether a statement of costs was to be filed even if the city decides to charge a registration fee of $25 or less, or only if the registration fee exceeds $25. Furthermore, TXU stated that if the commission retains this provision, it should clarify that this statement of costs is public information so that the REPs can examine the claimed cost before deciding whether to pay the fee or appeal the registration ordinance.

The commission agrees with TXU, Reliant, and ARM that the provisions under a "safe-harbor" rule should be clear. In order for this section to truly provide a "safe-harbor," it must be specific as to the requirements of the parties involved. The $25 fee was deemed to be reasonable for the sole purpose of administering registration of REPs by the cities that choose to adopt ordinances for such registration. The addition of the language to provide for fees in excess of $25 serves only to muddy the waters as to whether a "safe-harbor" exists at all, and opens the door to confusion, conflict, and further litigation between the parties as to what amount is reasonable — the very things that this rule was designed to avoid. Therefore, this provision is deleted so that safe-harbor municipalities may require a registration fee of no more than $25.

Houston also suggested deleting the prohibition on taking any action other than suspension or revocation of a REP's registration or imposition of a late fee in accordance with subsection (h)(2) because it unnecessarily prohibits action by the municipality even though it might be found to be appropriate by the commission.

The commission declines to delete this provision. PURA §39.358(b) expressly authorizes a municipality to suspend or revoke a REP's registration and authority to operate within the municipality's boundaries for a violation of PURA Chapter 39 or related rules. Unlike PURA §39.357, which authorizes the commission to impose financial penalties on REPs, there is no mention of fines that could be imposed by municipalities in PURA §39.358 or any other section of PURA. In the limited regulatory scheme

created as part of the new competitive market, suspension or revocation provide sufficient remedy for municipalities to ensure REP compliance with PURA Chapter 39 and related rules.

Reliant, AEP REPs, and ARM stated that the rule should clarify that a safe-harbor municipality may charge a REP only one late fee for failure to timely register.

The commission agrees and makes the suggested change.

Houston stated that the prohibition on suspending or revoking the registration of an affiliated REP or provider of last resort (POLR) serving residents of the municipality in subsection (j) should be deleted. Houston argued that this provision could be read to unnecessarily limit the ability of the commission to take appropriate enforcement action against an affiliated REP or POLR because a municipality adopting the safe-harbor registration process may only suspend or revoke a REP's registration upon a commission finding that the REP has committed significant violations. The AEP REPs disagreed with this suggestion. They argued that residential and small commercial customers are guaranteed access to the price-to-beat rate through 2007 and to a POLR offering electricity at a standard, non-discountable rate. The AEP REPs further argued that the commission has the authority to impose penalties other than suspension or revocation. The AEP REPs indicated that the commission may order an affiliated REP or POLR to pay administrative fees as appropriate discipline, which would not interfere with customers' rights to access to their services.

The commission agrees with the AEP REPs and declines to delete this provision. Both the price-to-beat and POLR services are essential to the proper development of the electric market in this state. The affiliated REP serves most of the residential and small commercial customers in areas open to competition. In addition, the price-to-beat, which must be offered by the affiliated REP, is a necessary pricing signal for other market participants that seek to enter the market. POLR service is a fail-safe for those customers whose REP leaves the market and who cannot find another REP to provide service. Customers cannot be denied this protection for essential service. Because the statute gives the affiliated REP and POLR vital roles in the competitive market, a safe-harbor municipality may not suspend or revoke the registration of the affiliated REP or the POLR.

Reliant stated that it is more reasonable to amend subsection (j)(2) to require a municipality to give a REP 30 calendar days, rather than 20 days, written notice of its intent to suspend or revoke the REP's registration.

The commission agrees that this suggestion is reasonable and has amended the rule to incorporate this change.

Reliant suggested amending subsection (j)(6), which allows a REP to appeal a municipality's suspension or revocation order to the commission, so that in the event a REP appeals a municipality's order of suspension or revocation, the order would be stayed pending the appeal at the commission. Houston and Austin Energy suggested deleting this subsection. They argued that because a municipality may

suspend or revoke a REP's registration only after the commission has already determined the REP has committed significant violations, this provision would allow the REP a "second pass" at the commission. Further, they argued, allowing an appeal of a "safe-harbor" municipality's suspension or revocation order would delay implementation of the commission's findings in exchange for providing an opportunity for the commission to second-guess itself.

The commission declines to delete subsection (j)(6) because a REP should have the right to appeal the terms of a municipality's order to suspend or revoke its registration and authority to operate. For example, a REP might argue that the length of a municipality's suspension is too long for its violations or it might argue that suspension is a more appropriate punishment when a municipality orders revocation. REPs should have the right to bring such issues before the commission.

TXU, Reliant, and the AEP REPs recommended deleting subsection (j)(7), which entitles a municipality to recover from the REP costs reasonably expended in revoking or suspending a REP's registration. TXU stated that attorney's fees and expenses may not be recovered from an opposing party unless such recovery is expressly provided for by statute or contract between the parties. For example, PURA §§16.001 - 16.004 authorizes the commission assessment, PURA §33.023 allows for the reimbursement by utilities of municipal ratemaking proceeding expenses, and PURA §39.358(a) allows municipalities to collect an administrative fee for registration of REPs. TXU argues that the only expenses that a municipality may recover from a REP are the costs associated with the registration

process, as explicitly authorized by PURA §39.358(a) because there is no similar provision in PURA §39.358(b) authorizing recovery of expenses for any other reason.

Finally, AEP REPs stated the commission has already ruled on this issue in the Supplemental Preliminary Order issued on June 21, 2002 in the Appeal Dockets. The commission determined that municipalities have no authority to impose other penalties, including fines, late-filing fees, or any other charges that are imposed as a penalty.

The commission agrees with the REPs that there is no legal basis to allow a municipality to recover from a REP its costs of revoking or suspending that REP's registration. Accordingly, the commission deletes subsection (j)(7).

Houston suggested that the words "significant violations" be changed to "a significant violation."

The commission declines to make this change because the language in this section is consistent with PURA §39.358(b), which grants municipalities the authority to suspend or revoke a REP's registration for "significant violations."

All comments were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent, i.e., "registering party" is changed to

"registering REP" and the last two sentences in the introductory paragraph to subsection (f) are now new paragraphs (f)(4) and (5).

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which authorizes the Public Utility Commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §17.051(a) which directs the commission to implement rules relating to the registration for a retail electric provider; and PURA §39.358, Local Registration of Retail Electric Providers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.051, 39.001, 39.002, 39.352, 39.356, and 39.358.

§25.113. Municipal Registration of Retail Electric Providers (REPs).

(a) **Applicability.** This section applies to municipalities that require retail electric providers (REPs) to register in accordance with the Public Utility Regulatory Act (PURA) §39.358 and to all REPs with a certificate granted by the commission pursuant to PURA §39.352(a) and §25.107 of this title (relating to Certification of Retail Electric Providers).

(b) **Purpose.** A municipality may require a REP to register as a condition of serving residents of the municipality, in accordance with PURA §39.358. This section establishes an optional "safe-harbor" process for municipal registration of REPs to standardize notice and filing procedures, deadlines, and registration information and fees. The "safe-harbor" registration process simplifies and provides certainty to both municipalities and REPs, thereby facilitating the development of a competitive retail electric market in Texas. If a municipality enacts a registration ordinance that is consistent with this section, the ordinance shall be deemed to comply with PURA §39.358. A municipality may exercise its authority under PURA §39.358 and adopt an ordinance that is not consistent with this section; however, such ordinance could be subject to an appeal to the commission under PURA §32.001(b).

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Resident —** Any electric customer located within the municipality, except the municipality itself, regardless of customer class.

(2) **Revocation —** The cessation of all REP business operations within a municipality, pursuant to municipal order.

(3) **Suspension —** The cessation of all REP business operations within a municipality associated with obtaining new customers, pursuant to municipal order.

(d) **Non-discrimination in REP registration requirements.** A municipality shall not establish registration requirements that are different for any REP or type of REP or that impose any disadvantage or confer any preference on any REP or type of REP. However, a municipality may exclude from its registration requirement a REP that provides service only to the municipality's own electric accounts and not to any residents of the municipality.

(e) **Notice.** A municipality that enacts an ordinance adopting the standard registration process under this section shall file only the ordinance or section of ordinance, including the effective date, with the commission at least 30 days before the effective date of the ordinance. The filing shall not exceed ten pages. The filing of such a municipality's ordinance in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) shall serve as notice to all REPs of the requirement to submit a registration to the municipality.

(f) **Standards for registration of REPs.** A municipality that adopts a "safe-harbor" ordinance in accordance with this section shall process a REP's registration request as follows:

(1) A REP shall register with a municipality that adopts an ordinance in accordance with this section within 30 days after the ordinance requiring registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.

(2) A REP shall register with a municipality that adopts an ordinance in accordance with this section by completing a form approved by the commission, and signed by an owner, partner, officer, or other authorized representative of the registering REP. Forms may be submitted to a municipality by mail, facsimile, or online where online registration is available. Registration forms may be obtained from the commission's Central Records division during normal business hours, or from the commission's website.

(3) The municipality shall review the REP's submitted form for completeness, including the remittance of the registration fee. Within 15 business days of receipt of an incomplete registration, the municipality shall notify the registering REP in writing of the deficiencies in the registration. The registering REP shall have 20 business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within 20 business days, the municipality shall immediately send a rejection notice to the registering REP that the registration is rejected without prejudice. Absent such notification of rejection, the registration shall be deemed to have been accepted.

(4) A municipality shall not deny a REP's request for registration based upon investigations into the fitness or capability of a REP that has a current certificate from the commission.

(5) A municipality shall not require a REP to undergo a hearing before the municipality for the purposes of registration, nor require the REP to send a representative to the municipality for purposes of processing the registration form.

(g) **Information.** A municipality may require a REP to provide only the information set forth below. A REP shall provide all of the following information on the commission's prescribed form to a municipality that has adopted a "safe-harbor" ordinance under this section:

(1) The legal name(s) of the retail electric provider and all trade or commercial names;

(2) The registering REP's certificate number, as approved under §25.107 of this title and the docket number under which the certification was granted by the commission;

(3) The Texas business address, mailing address, and principal place of business of the registering REP. The business address provided shall be a physical address that is not a post office box;

(4) The name, physical business address, telephone number, fax number, and e-mail address for a Texas regulatory contact person and for an agent for service of process, if a different person;

(5) Toll-free telephone number for the customer service department or the name, title and telephone number of the customer service contact person;

(6) The types of electric customer classes that the REP intends to serve within the municipality; and

(7) The location of each office maintained by the registering REP within the municipal boundaries, including postal address, physical address, telephone number, hours of operation, and listing of the services available through each office.

(h) **Registration fees.** A municipality adopting the "safe-harbor" registration process may require REPs to pay a reasonable administrative fee for the purpose of registration only.

(1) A one-time registration fee of not more than $25 shall be deemed reasonable.

(2) A municipality may require a REP to pay a one-time late fee, which shall not exceed $15, only if the REP fails to register within 30 days after the ordinance requiring registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.

(i) **Post-registration requirements and re-registration.**

(1) A REP shall notify municipalities adopting the "safe-harbor" registration within 30 days of any change in information provided in its registration. In addition, a REP shall notify a municipality within ten days if it discontinues offering service to residents of the municipality.

(2) A municipality shall not require REPs to file periodic reports regarding complaints, or any other matter, as part of the registration process.

(3) A municipality shall not require a periodic re-registration process or fee.

(4) A municipality shall not require a REP to re-register unless a REP's registration is revoked and the REP subsequently cures its defects and resumes operations. In that circumstance, the REP may register in the same manner as a new REP.

(j) **Suspension and revocation.** A municipality may suspend or revoke a REP's registration and authority to operate within the municipality only upon a commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. A municipality shall not suspend or revoke the registration of the affiliated REP or provider of last resort (POLR) serving residents in the municipality. A municipality shall not take any action against a REP other than suspension or revocation of a REP's registration and authority to operate in the municipality, or imposition of a late fee in accordance with subsection (h)(2) of this section.

(1) A municipality may provide a REP with a warning prior to seeking to suspend or revoke a REP's registration.

(2) A municipality seeking to suspend or revoke a REP's registration shall provide the REP with at least 30 calendar days written notice, informing the REP that its registration and authority to operate shall be suspended or revoked. The notice shall specify the reason(s) for such suspension or revocation.

(3) A municipality may order that the REP's registration be suspended or revoked only after the notice period has expired.

(4) In its suspension order, a municipality shall specify the reasons for the suspension and provide a date certain or provide conditions that a REP must satisfy to cure the suspension. Once the suspension period has expired or the reasons for the suspension have been rectified, the suspension shall be lifted.

(5) In its revocation order, a municipality shall specify the reasons for the revocation.

(6) A REP may appeal a municipality's suspension or revocation order to the commission.

This agency hereby certifies that the rule, as adopted, has 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 §25.113 relating to Municipal Registration of Retail Electric Providers is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF DECEMBER 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

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Rebecca Klein, Chairman

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Brett A. Perlman, Commissioner

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Julie Caruthers Parsley, Commissioner