PROJECT NO. 37981

RULEMAKING RELATING TO THE OBLIGATIONS OF ELECTRIC SERVICE PROVIDERS UNDER THE TEXAS PROMPT PAYMENT ACT	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW §25.33 AND §25.482
AS APPROVED AT THE SEPTEMBER 1, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.33 relating to the Prompt Payment Act and §25.482 relating to the Prompt Payment Act, with changes to the proposed text as published in the March 26, 2010 issue of the *Texas Register* (35 TexReg 2469). The rules ensure that customers that are "governmental entities" under Texas Government Code §2251.001-055 (Prompt Payment Act or PPA) are billed by electric service providers (ESPs) in compliance with the PPA. The new sections are adopted under Project Number 37981.

A public hearing was not requested.

The commission received initial comments on the rules from the State of Texas (State), Southwestern Public Service Company (SPS), Steering Committee of Cities Served by Oncor (Cities), Alliance for Retail Markets (ARM), and Entergy Texas, Inc. (Entergy). The commission received reply comments from Southwestern Tariff Analyst (STA), Entergy, the State, ARM, and Cities.

Comment Summary

General Need for the New Rule

The State supports addition of the new rules to the commission's substantive rules. The State stated that it has a great deal of experience in resolving billing disputes between agencies and electric service providers and that the most difficult aspect, for both counsel and support staff, is convincing providers that the PPA applies to electric utility and REP bills. The State went on to say that when customer service personnel are replaced, it often must go through the same explanation again to educate the new utility and REP employees. The State stated that the new rules will make this process easier and clearer.

Cities stated that it agrees with many of the commenters that the new rules are unnecessary because the PPA itself establishes the procedure for payments by government entities regardless of whether the proposed rule provides for the application of the PPA. ARM stated that the new §25.482 is unnecessary because the majority of its provisions merely restate in general terms the requirements of the PPA, as they apply to a governmental entity customer's payment for retail electric service under the precedent established in Docket Number 34332. ARM stated that §25.482 simply codifies existing law. ARM stated that adoption of §25.482 is antithetical to the commission's undertakings in other projects to assess whether reasons exist for adopting or re-adopting the commission rules under review, as periodically required by Texas Government Code §2001.039. ARM stated that a rule that requires REPs to follow state laws other than PURA that REPs are already obligated to follow does not add value to the market, particularly when the commission has placed the market on notice in a contested case proceeding that it has concluded those other laws apply in the provision of retail electric service under certain

circumstances. ARM stated that §25.482 neither adds to nor detracts from a REP's obligations under the PPA to the extent they accurately and comprehensively reflect the state of the law. ARM went on to state that if §25.482 did not accurately reflect a REP's obligations under the PPA it could potentially mislead and misinform REPs about their legal obligations under the PPA and lead to unintended consequences. ARM stated that, for example, a court of competent jurisdiction interpreting the requirements of the PPA might reach a conclusion different than that reached by the commission in Docket Number 34332. ARM stated that a prudent REP would review the PPA and not §25.482 to determine its obligations. ARM says that subsections (e) and (f) aim to provide the commission the "teeth" to enforce the PPA requirements in the preceding subsections, but that it is axiomatic that an agency must enforce its own rules, and further that the PPA requires the Comptroller to establish procedures and adopt rules to administer the PPA after conducting a public hearing. ARM stated that it is clear the Texas Legislature intended the Comptroller – and not the commission – as the entity responsible for administering and enforcing the PPA.

STA stated that the appropriate and logical section for any language about the PPA is in existing §25.28 (relating to Bill Payment an Adjustments) and §25.480 (relating to Bill Payment and Adjustments). STA stated the §25.28 and §25.480 already reference the PPA, but that they require some corrections. STA concludes therefore that these rules should be amended instead of adopting the new rules. STA stated that the commission had previously determined that the appropriate place to address the PPA was in §25.28 and §25.480, and STA stated that it agrees with that prior determination. STA stated that by amending the problems with §25.28 and §25.480 the conflicts noted by Entergy are avoided.

STA stated that the PPA was fully addressed in Docket Number 11735 and later in Project Number 27804. STA stated that the commission has considered adding rule language to address the applicability of the PPA to political subdivisions and decided it was unnecessary. STA stated that PPA billing errors are not due to a lack of regulation or a lack of clarity in the rules, and that such billing errors cannot be fixed by simply amending the rules.

Entergy stated that the new §25.33 is unnecessary. Entergy stated that since the PPA was enacted, all entities billing "governmental entities" as defined by the PPA, including electric utilities, have been subject to its requirements. Entergy stated that even though the commission's rules may not specifically incorporate the PPA, §25.3 (relating to Severability Clause) clearly states that "…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 . . ." Entergy also stated that §25.33 conflicts with §25.28(b) (relating to Bill Payment and Adjustments), which provides that "[a]n electric utility providing any service to the state of Texas shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill." Entergy stated that §25.33 leaves electric utilities questioning whether §25.33 is a new mandate designed to abrogate §25.28(b)'s prohibition against such fees, penalties, and assessments. Entergy concluded that adoption of the §25.33 will require another rulemaking to clarify the commission's intent. Entergy stated that electric utilities are already subject to the requirements of the PPA by virtue of §25.3. Entergy stated that adoption of §25.33 will only cause confusion and could prompt unnecessary adoption of additional Substantive Rules if only to ensure that all applicable laws

that "trump" the commission's Substantive Rules are reflected in the commission's Substantive Rules. The State agreed with Entergy that the new §25.33 will conflict with §25.28(b), and suggested language in the new rule to resolve the conflict.

Commission Response

The commission agrees with the State that adoption of the rules is appropriate because they will help avoid confusion as to the applicability of the PPA to electric utilities, REPs, and aggregators. Because parts of the commission's existing billing rules conflict with parts of the PPA and the PPA controls over these rules and because the PPA applies to a large number of customers served by electric utilities, REPs, and aggregators, it is appropriate to clarify the commission's rule to state that the PPA controls over the commission's generally applicable billing rules. With respect to the interrelationship between §25.33 and the last sentence of §25.28(b), §25.33 applies to "governmental entities" as defined in the PPA, which consist of both state agencies and political subdivisions, whereas the last sentence of §25.28(b) applies only to state agencies and is narrower in scope. The commission has changed §25.33 to make clear that the last sentence of §25.28(b) continues to apply to state agencies and therefore a governmental entity that is also a state agency is not subject to a fee, penalty, interest, or other charge for delinquent payment of a bill. The commission declines to adopt STA's recommendation to amend §25.28 and §25.480 to address the PPA, because doing so would require a new rulemaking and adding the new rules rather than amending those rules accomplishes the same objective.

General Level of Detail

The State applauded the commission for crafting rules that are simple and straightforward. The State stated that new §25.33 and §25.482 will make its task of resolving billing disputes between service providers and PPA entities much easier and the obligations of both parties much clearer. The State stated that if the commission sets forth the entirety of the PPA in new §25.33 and §25.482, the commission would need to re-visit and revise the rules if the Legislature were to alter the PPA's provisions or the courts interpret the PPA in some fashion inconsistent with the detailed statement of the PPA in §25.33 or §25.482. The Cities stated that the limited scope of the proposed rules are appropriate, since the Comptroller is given the rulemaking authority with respect to the application of the PPA, not the commission.

SPS stated that rather than cite the PPA, the relevant portions of the PPA should be set out in their entirety in §25.33. Specifically, SPS stated that the general references in subsections (b), (c), and (d) are so vague and overbroad that they will likely lead to confusion and be difficult to uniformly construe and enforce. Entergy stated if the new rule is adopted, it should include PPA-specific language. Entergy stated that without the inclusion of PPA-specific language, electric utilities would be required to review the terms of the Substantive Rules, only to then realize that review of the PPA is required and that minimizing the efforts of the utilities should be an objective of the commission.

Commission Response

The commission believes that, with certain changes addressed elsewhere, the appropriate level of detail is reflected in the rule as proposed. The commission agrees with the State;

new §25.33 and §25.482 will make the task of resolving billing disputes between service providers and governmental entities easier. The commission also agrees with the State that if it were to set forth PPA-specific language in the rules, it would need to change the rules if the Legislature changes the PPA or if the courts interpret the PPA in some fashion inconsistent with the language of the rule. In addition, as pointed out by the Cities, the Comptroller has rulemaking authority to implement the PPA; therefore, affected entities should look to the Comptroller's rules, rather than the commission, for detailed guidance on the implementation of the PPA.

Section 25.28(b) Penalty on Delinquent Bills for Retail Service

ARM stated that §25.482 should be revised so that it is framed consistent with the PPA, which reflects the payment rights of PPA customers as opposed to the billing requirements of electric service providers. ARM stated that the PPA refers to "payment" and not "billing." The State stated that the proposed rule language should not be changed because it is important that utilities get in the habit of billing PPA entities in accordance with the PPA. The State stated that it has practical experience with customer service representatives who have been instructed that their employer's billing practices have the force of law. Further, the State stated that if bills are not rendered correctly, it is far less likely that the provider will accept payment correctly. The State is aware of numerous instances in which bills have been paid strictly in accordance with the PPA, only to find that late charges are improperly assessed as a result of the provider's billing practices. Cities stated that ARM is correct, that the PPA references "payment" rather than "billing." Cities opined that changing the language might not be significant, but that to the extent it might provide more clarity it supported such a change.

Commission Response

ARM's recommendation to frame the rules in terms of the payment rights of PPA customers as opposed to billing requirements of service providers is consistent with the PPA, and therefore the commission adopts this recommendation. Imposing billing requirements for service to governmental entities that are not required by the PPA could impose significant costs on service providers, and the commission therefore declines to impose such requirements as part of this rulemaking.

Section 25.33(c) and §25.482(c) Disputed Bill

The State asked the commission to clarify that the new rules are not intended to create any statute of limitations on the time for contesting overbilling to governmental entities. The Cities stated that the proposed rules correctly provide that disputes "shall be resolved as provided in the PPA," and the commission properly declines to enact a rule regarding a statute of limitations in disputes which would have exceeded its authority. ARM proposed inclusion of the PPA's requirement to dispute incorrect invoices within 21-days of receipt of the invoice in §25.482(e). Cities stated that the 21-day dispute language proposed by ARM is not germane to the inquiry requirement stated in the rule and further, to the extent such language might be construed as a statute of limitations, it would be unlawful. Entergy stated that §25.33(c) should incorporate the PPA's dispute resolution language instead of referring to the PPA.

Commission Response

The commission declines to change §25.33(c) and §25.482(c). PPA §2251.042 provides that "[a] governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice." However, in Docket Number 34332, the commission interpreted this provision in the PPA to mean that if an invoice is not disputed, it merely means the payment is overdue on the 21st day and interest may accrue. Additionally, the commission concluded that this provision in the PPA is not a statute of limitations. Therefore, the commission declines to specifically include the PPA's 21-day dispute provision in §26.33(c).

Section 25.33(d) and §25.482(d) Penalty on Delinquent Bills for Retail Service

ARM proposed revisions to more closely align §25.482(d) with the language of the PPA. Specifically, ARM proposed that subsection (d) be re-titled "Penalty for delinquent payment for retail service," and state "Any penalty for delinquency of payment by a governmental entity to an aggregator or REP for retail service shall be in accordance with the PPA." Entergy also proposed language in §25.33(d) that clarifies that interest accrues on delinquent bills instead of penalties that might be assessed, and proposed a formula that specified the interest rate that would apply. Cities agreed with ARM that the PPA references "payment" rather than "billing."

Commission Response

The commission changes §25.33(d) and §25.482(d) to more closely align with the language of the PPA and to clarify that service providers may accept interest submitted by a PPA entity on an invoice that is delinquent, as provided in the PPA.

Section 25.33(e) and §25.382(e) Disclosure

SPS stated that it had no comment on §25.33(e) if the applicable portions of the PPA were reproduced within subsections (a) through (d). ARM stated that §25.482(e) and (f) propose to provide the commission with the "teeth" to enforce the PPA requirements preceding those subsections and that regardless of the proposed subsections, it is axiomatic that an agency must enforce its own rules. ARM then stated that the Legislature requires the Comptroller to establish procedures and adopt rules to administer the PPA. ARM went on to state that §25.482(e)'s disclosure requirement should be reframed to reflect the REP's obligation to accept payment from governmental entities in accordance with the PPA. ARM recommended a clarification that disclosure is a going forward requirement as new governmental entities are acquired as customers. ARM requests that REPs be expressly allowed to fulfill any disclosure obligation by one of the following methods: inclusion of language in the terms of service or your rights as a customer documents or by providing the disclosure orally at the time of enrollment.

STA stated that the commission's existing substantive rules relative to service provider billing should be corrected to disclose to all governmental entities that the PPA applies to electric utility billing. STA stated that to the extent electric utilities misapply or fail to apply the terms of the PPA and/or misinform customers as to the applicability of the PPA, such utilities should be required to make disclosures. STA also stated that to the extent utilities' tariffs fail to disclose the applicability of the PPA, these tariffs must also disclose the applicability of the PPA, but to the extent utilities are already in compliance with the PPA, there is no particular need to "disclose" what has already been disclosed to its customers.

Entergy recommended deletion of §25.33(e). Entergy questioned the necessity for such disclosure to a sophisticated customer, such as a governmental entity. Entergy stated that this requirement merely adds additional administrative burden to the electric utilities that provide little, if any, benefit to customers. The State stated that residential customers need not be notified of their potential status as governmental agencies. However, the State continued by stating that state park rangers, prison wardens, etc, occupy government-owned housing that is billable under the PPA, and it expects service providers to proactively treat these customers in the correct fashion. The Cities stated that if the rule contains a notice requirement, it should place the burden on the providers.

Commission Response

The commission has determined that the PPA applies to electric service. *See Petition of Houston Lighting and Power Co.*, Docket Nos. 6765 and 6766, 13 Tex. P.U.C. Bull. 365, 426 (Nov. 14, 1986). Therefore, the commission believes that to ensure PPA-eligible entities are billed correctly by electric service providers, identification of PPA-eligible entities is necessary. To accomplish this task, the commission requires electric service providers to notify all non-residential customers of the applicability of the PPA to their service. The commission has revised subsection (e) to incorporate and clarify its intentions as originally expressed in proposed subsections (e) and (f), and re-titled the subsection "Notice."

Section 26.33(f) Inquiry

The State stated that the new rules properly place the burden on service providers to make inquiry into each customer's status. The State also stated that it agreed with ARM that residential customers need not be notified of their potential status as governmental entities. SPS stated that it made no comment on subsection §25.33(f) if the language of the applicable portions of the PPA is reproduced within subsections (a) through (d).

Cities stated that it supports placing the burden on providers to ascertain whether a customer is a governmental entity for purposes of PPA compliance. Cities stated that this should not be a significant burden because in most cases, the customer's identity as a governmental entity is obvious to the provider. But, in cases where it is not obvious, it is fairly simple for a customer service representative to ask whether the customer is a governmental entity during enrollment. Cities stated that placing the burden of notification on governmental entities presented significant difficulties because many entities might not be aware of such commission-ordered notification requirement. And, in those cases where an entity did not know and failed to notify their provider that they are PPA eligible, it might be construed as a waiver of the protections of the PPA for that entity, a result which is void under the PPA. Therefore, Cities concluded, the rules properly place the burden on the providers. Cities also stated that the six-month time frame proposed in the rule for a provider to inquire whether its current customers are governmental entities is reasonable for those few customers the provider has doubts as to their status as a governmental entity. However, Cities stated that consequences for failure to inquire is unclear and that failure to do so still has no effect on the entity's rights under the PPA. Cities disagreed with STA that disclosure and inquiry obligations would be "extremely onerous" to the providers. Cities stated

that although ARM may be correct, that most governmental entities self-identify, placing the burden to inquire on the utility is substantially less burdensome than attempting to communicate to every governmental entity that it needs to inform its provider that it should be billed in accordance with the PPA.

ARM stated that subsections §25.482(e) and (f) aim to provide the commission with the "teeth" to enforce the PPA requirements preceding those subsections. However, regardless of those proposed subsections' existence, it is axiomatic that an agency must enforce its own rules and further that the Legislature requires the Comptroller to establish procedures and adopt rules to administer the PPA. ARM went on to state that if §25.482 is adopted, subsection (f) should be removed because the PPA does not require inquiry and the costs of imposing the inquiry requirement would outweigh its benefits. ARM said the inquiry requirement imposes a burden on the retail electric market that is not imposed on other vendors that contract with governmental entities. ARM said there is no reason to single out the retail electric market for these additional requirements. ARM stated that in its experience, governmental entities are generally familiar with the PPA and typically identify themselves for eligibility. ARM stated that its view is that the benefits of subsection (f) are small since it believes that the overwhelming majority of governmental entity customers self-identify. Further, ARM stated that the costs of complying with the inquiry requirement outweigh any perceived benefit. ARM stated that even if residential customers are excluded from the inquiry requirement, as it recommends, the average handle time for non-residential customers will increase. ARM stated that its view is that the inquiry will often lead to follow-up questions by the applicant regarding what the PPA is, what protections are afforded to customers under it, and whether there is any opportunity for the

applicant to meet the definition. ARM stated that this single question has the potential to add 30 seconds or more to hundreds of thousands of non-residential enrollments in the market. ARM stated that since most PPA entities are familiar with the PPA, all of the additional call-handling time will be expended on customers who do not qualify, resulting in reduced service levels and increased frustration and costs for all customers. Moreover, ARM stated, the additional requirement on REPs to make this PPA inquiry with all existing customers for whom a REP does not know whether they are a governmental entity as defined in the PPA, imposes additional and substantial costs. If REPs are required to send a separate letter to nonresidential customers, one REP in the market estimates it would result in approximately $100,000.00 of additional costs to that REP alone.

ARM stated that the inquiry requirement should not apply to residential customers. ARM stated that the proposed language of subsection (f) is overly broad and would impose unnecessary costs on the market. Since by definition a residential customer cannot be a state agency or a political subdivision of the state, ARM recommended an express limitation of the inquiry requirement to nonresidential customer/applicants. If the inquiry requirement is included in this adopted version of §25.482, ARM proposed that a REP be required to inquire about the applicability of the PPA if the name of the applicant contains one of the specified governmental entities named in the PPA. Then, if the name of the applicant does not contain one of the specified governmental entities named in the PPA, the governmental entity should be expected to self-identify to take advantage of the remedies under the PPA. ARM admitted that the broad inquiry currently in the rule addresses the commission’s concern that customer accounts are processed correctly.

STA stated that the requirement that all electric providers inquire of all applicants whether they are governmental entities and to contact all existing customers to inquire whether they are governmental entities is extremely onerous. STA stated that it is unlikely that any utility has a mechanism in place to distinguish governmental entities from non-governmental entities, thus the utility might have to contact each and every customer, for each and every account. STA stated that the proposed rules do not specify how customers should be contacted, presuming it would be by phone or letter. But STA asked who would receive the letter or phone call? STA asked what made the commission think that an inquiry is practicable or would produce any appreciable benefit to governmental entities. STA stated that the proposed inquiry requirement will impose an onerous burden upon utilities, when there is not even a scintilla of evidence suggesting non-compliance with the PPA. STA stated that electric utilities should be required to inquire and disclose the applicability of the PPA only in the event that such utilities have misapplied or failed to apply the terms of the PPA and/or misinformed customers as to the applicability of the PPA.

Entergy requested that §25.33(f) be removed from the new rule. Entergy stated that the requirement to make a "blanket" inquiry as it addresses service requests from new customers adds an administrative burden that is unnecessary. Entergy stated that when gathering information to provide electric service, electric utility representatives are fully capable of determining, in large part by requesting the customer's name and type of service requested, whether the applicant qualifies as a governmental entity. To require that this additional inquiry be asked of those customers who clearly are not governmental entities places an unnecessary and time-consuming burden on Entergy representatives. Entergy stated that by making this inquiry

of customers who are clearly not governmental entities, the door is opened for numerous additional questions from the applicant. Entergy stated that its response times will likely be lengthened because of the initial inquiry and the potential follow-up conversation. Entergy stated that governmental entities are sophisticated entities that are aware fully of their rights as a governmental entity, and if not specifically asked, likely will advise the electric utility of their status as a governmental entity as defined in the PPA. Entergy asked whether the commission is asking it to review all of its customer lists to determine whether it is confident that its coding is correct? If so, Entergy stated that the commission is imposing an additional, unnecessary administrative requirement to the electric utility's already burdensome list of administrative responsibilities.

In a letter filed after the proposal for adoption was filed with the commission, Cities stated that the rules are internally inconsistent. Cities stated that although they support the applicability of the PPA to PUC proceedings and do not object to the overall direction of the proposed rules, the appearance of subsections (e)(1) and (2) for the first time in the proposal for adoption is problematic. Cities stated that subsections (e)(1) and (2) are internally inconsistent with subsection (c) relating to disputed bills, because they suggest that in a PPA billing complaint proceeding, the commission could consider facts other than those stated in the PPA, and may limit a party's relief under the PPA after such consideration. Cities stated that PPA rights cannot be waived and that the PPA includes no notice requirement or condition on a party's rights or remedies. Cities stated that if the commission believes it has the legal authority to undertake the consideration of notice as set forth in subsections (e)(1) and (2), that authority must derive from

the statute and does not require a rule to embody it, rendering the provisions unnecessary. Cities ask that paragraphs (1) and (2) be removed from any rules ultimately adopted.

Commission Response

The commission deletes subsection (f). The commission incorporates and clarifies its intent as originally proposed in subsections (e) and (f), identification of PPA–eligible entities, in revised subsection (e). The commission concludes that the appropriate balance between maximizing compliance with the PPA and minimizing costs to service providers is to require service providers to provide written notice to all of their non-residential customers of the applicability of the PPA to their service to governmental entities and has changed the rules accordingly. This requirement is not burdensome but will increase the likelihood that governmental entities will inform their service providers of their status as governmental entities subject to the PPA. The commission requires utilities, REPs, and aggregators to provide this notice to their existing non-residential customers within six months of the effective date of this section and, within three months of the effective date of this section, to new non-residential customers at the same time as or before the terms of service are provided to the customer. The commission clarifies that failure to provide this notice does not create an independent claim under the PPA and that the notice does not initiate or terminate either party's rights or obligations under the PPA.

In addition and consistent with its decision in Docket Number 34332, the commission has revised the rules to state that the failure of a service provider to provide written notice in accordance with this subsection may be considered in a PPA billing complaint and the

failure of a governmental entity to inform the service provider of its status as a governmental entity may be considered in a PPA billing complaint. These provisions provide incentives for a service provider to provide the required notice and for a governmental entity to inform its service provider of its status as a governmental entity. The commission does not agree with Cities that these provisions make the rules internally inconsistent. First, subsection (c) operates from the presumption that both parties know their billing is according to the PPA; therefore identification of PPA status has already been accomplished. Second, while Cities is correct that the commission's consideration of the factors listed in subsection (e)(1) and (2) could limit a party's relief in a complaint proceeding before the commission, this result is consistent with commission precedent. *See Complaint of Harris County Hospital District Against Southwestern Bell Telephone, LP d/b/a AT&T Texas*, Docket No. 34332, Order at 2 (April 15, 2009). In that case, the commission decided that because Harris County Hospital District (HCHD) was a large, sophisticated public entity with sufficient resources to have discovered and addressed the billing problem long before it brought the complaint to the commission, it was appropriate to hold HCHD partially responsible for the prolonged accrual of overcharges. *Id.* Subsections (e)(1) and (e)(2) are intended to memorialize the commission's decision in the HCHD case. However, these provisions do not initiate or terminate a party's rights or obligations under the PPA. Instead, the primary intent of these provisions is to increase the likelihood that PPA-entities will be identified and billed correctly. Finally, these provisions are directly responsive to concerns raised by commenters regarding a lack of consequences for failure to provide notice, and claiming that notice is onerous and meaningless unless the PPA entities are required to respond. The commission cannot require PPA entities to self-

identify. However, an entity's identifying itself as eligible for PPA billing, especially after receiving the required notice from its electric service provider, is reasonable and reduces the chance of incorrect billing.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these rules, the commission makes changes for the purpose of clarifying its intent.

The new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (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 §17.004, which authorize the commission to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices by CTUs.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §17.004.

§25.33. Prompt Payment Act.

(a) **Application.** This section applies to billing by an electric utility (utility) to a "governmental entity" as defined in Texas Government Code Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.

(b) **Time for payment by a governmental entity.** A payment by a governmental entity subject to the PPA shall become overdue as provided in the PPA.

(c) **Disputed bills.** If there is a billing dispute between a governmental entity and a utility about any bill for utility service, the dispute shall be resolved as provided in the PPA.

(d) **Interest on overdue payment.** Interest on an overdue governmental entity payment shall be calculated by the governmental entity pursuant to the terms of the PPA and remitted to the utility with the overdue payment. However, pursuant to §25.28(b) of this title (relating to Bill Payment and Adjustments), a governmental entity that is also a state agency is not subject to a fee, penalty, interest, or other charge for delinquent payment of a bill.

(e) **Notice.** A utility shall provide written notice to all of its non-residential customers of the applicability of the PPA to the utility's service to governmental entities. This notice shall be completed within six months of the effective date of this section for

existing non-residential customers and, within three months of the effective date of this section, shall be provided to a new customer at or before the time that the terms of service are provided to the customer. A utility's failure to provide this notice does not give rise to any independent claim under the PPA, nor does this notice initiate or terminate any party's rights or obligations under the PPA.

(1) The failure of a utility to provide written notice in accordance with this subsection may be considered in a PPA billing complaint.

(2) The failure of a governmental entity to inform the utility of its status as a governmental entity may be considered in a PPA billing complaint.

§25.482. Prompt Payment Act.

(a) **Application.** This section applies to billing by an aggregator or a retail electric provider (REP) to a "governmental entity" as defined in Tex. Gov't Code, Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.

(b) **Time for payment by a governmental entity.** A payment by a governmental entity subject to the PPA shall become overdue as provided in the PPA.

(c) **Disputed bills.** If there is a billing dispute between a governmental entity and an aggregator or a REP about any bill for aggregator or REP service, the dispute shall be resolved as provided in the PPA.

(d) **Interest on overdue payment.** Interest on an overdue governmental entity payment shall be calculated by the governmental entity pursuant to the terms of the PPA and remitted to the ESP with the overdue payment.

(e) **Notice.** An aggregator or REP shall provide written notice to all of its non-residential customers of the applicability of the PPA to the aggregator's or REP's service to governmental entities. This notice shall be completed within six months of the effective date of this section for existing non-residential customers and, within three months of the effective date of this section, shall be provided to a new customer at or before the time that the terms of service are provided to the customer. An aggregator's or REP's failure

to provide this notice does not give rise to any independent claim under the PPA, nor does this notice initiate or terminate any party's rights or obligations under the PPA.

(1) The failure of an aggregator or REP to provide written notice in accordance with this subsection may be considered in a PPA billing complaint.

(2) The failure of a governmental entity to inform the aggregator or REP of its status as a governmental entity may be considered in a PPA billing complaint.

This agency hereby certifies that the adoption 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 new §26.33, relating to the Prompt Payment Act, and §25.482, relating to the Prompt Payment Act, are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF SEPTEMBER 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

_____
BARRY T. SMITHERMAN, CHAIRMAN

_____
DONNA L. NELSON, COMMISSIONER

_____
KENNETH W. ANDERSON, JR., COMMISSIONER

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