PROJECT NO. 26418

PUC RULEMAKING TO ADDRESS COMPETITIVE ENERGY SERVICES	**§**	**PUBLIC UTILITY COMMISSION**
	§	
	§	**OF TEXAS**

ORDER ADOPTING §§25.341 – 25.343 AND 25.346
AS APPROVED AT THE AUGUST 21, 2003 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.341, relating to Definitions; §25.342, relating to Electric Business Separation; §25.343, relating to Competitive Energy Services; and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities, with changes to the proposed text as published in the May 30, 2003 issue of the *Texas Register* (28 TexReg 4213). The amendments address issues that have arisen in the area of competitive energy services (CES) since the initial adoption of these rules in 2000, and provide for a fairer treatment of all parties concerned with competitive energy services. These amendments are adopted under Project Number 26418.

The Public Utility Regulatory Act, Texas Utilities Code Annotated §39.051(a) (Vernon 1998, Supplement 2003) (PURA) requires that on or before September 1, 2000, an electric utility separate from its regulated utility activities any customer energy services business activities that are already widely available in the competitive market. To implement PURA §39.051(a), the commission adopted §25.343, which prescribes the manner in which an electric utility must separate its competitive energy services and prohibits the regulated utility from providing competitive energy services, as defined in §25.341, after September 1, 2000. The amendments adopted here clarify and alter certain definitions of competitive energy services in §25.341, modify the petition process under §25.343 for an electric utility to change the designation of

competitive energy services it is authorized to provide, and allow a utility to provide certain competitive energy services in an emergency situation.

Specifically, §25.341 alters the definition of competitive energy services that an electric utility cannot provide, with regard to non-roadway security lighting, transformation and protection equipment, and power quality diagnostic services. In addition, the amendments delete certain definitions in §25.341 that are duplicative of those contained in §25.5, relating to Definitions. The amendments to §25.342 and §25.346 make non-substantive changes to correct cross-references, modify the timelines for business-separation filings by utilities for which customer choice has been delayed, and make several changes related to metering services in areas without competitive metering. The amendments to §25.343 modify the rule's applicability to exempt an electric utility subject to PURA §39.402, revise the petition process, and extend the time period for which a utility may provide a petitioned service. In addition, §25.343 provides a temporary "grandfather" exception for distribution-voltage-facilities-rental installations with facilities installed under a rental agreement between the utility and the customer prior to September 1, 2000. The amendments to §25.343 also include a new subsection (g) regarding the provision of transformation and protection equipment and transmission and substation repair services by an electric utility in an emergency situation.

The commission received comments on the proposed amendments from AEP Texas Central Company (Texas Central), AEP Texas North Company (Texas North), and Southwestern Electric Power Company (SWEPCO) (collectively, AEP); Celanese Chemicals (Celanese);

CenterPoint Energy Houston Electric, LLC (CenterPoint); Christus Spohn Health System; City of Abilene; Competitive Substation Service Providers (Dashiell Corporation, ECP Tech Services, Inc., Eaton/Cutler-Hammer, Shermco Industries, Inc.) (referred to as CSSP); Corpus Christi Medical Center; Corrections Corporation of America - Eden Detention Center; County of Taylor (Taylor County); Dupont Textiles and Interiors (Dupont); Entergy Gulf States, Inc. (EGSI); Holmes Foods, Inc.; John Knox Village of the Rio Grande Valley; Mr. Jon Jacks; McMurry University; Rio Grande Valley Sugar Growers, Inc.; Starlite Energy Services (Starlite), Sunny Glen Children's Home; Texas A&M University Kingsville (A&M Kingsville); Texas Industrial Energy Consumers (TIEC); TXU Energy Companies and Oncor Electric Delivery Company (TXU/Oncor); University of Texas Pan American (UT Pan American); U.S. Department of the Air Force - Dyess Air Force Base (Dyess AFB); Valley Baptist Medical Center; Value Frozen Foods; Wright Brand Foods, Ltd.; and Xcel Energy, on behalf of Southwestern Public Service Company (SPS).

In addressing the parties' comments, the commission attempts to strike the appropriate balance among the following principles: (1) encouraging the development of a competitive market for energy services; (2) ensuring that customers are not denied services or otherwise harmed due to the lack of availability of competitive service providers; and (3) providing a stable regulatory environment to foster investment in competitive energy services. The commission does not expect the development of robust, competitive markets for all of these services to occur overnight and, therefore, finds that it is prudent to be cautious in discontinuing the utilities' provisioning of certain core services.

Comments on Preamble Questions

The commission requested specific comment on three questions related to the development of the final rule. The parties' responses to those questions and the commission's decisions are summarized below.

Question 1: Should an electric utility that is located in an area where customer choice has been delayed by the commission pursuant to PURA §39.103 be exempt from the commission's competitive energy services rules until customer choice begins in the utility's service area? When responding to this question, parties should explain the legal and policy reasons that support their position, as well as the market conditions for competitive energy services in the particular areas.

AEP advocated that customers and utilities in areas where competition has been delayed maintain the rights that existed prior to September 1, 2000, because utilities will continue to supply and customers will continue to receive full bundled utility service. AEP stated that that the CES rules were initially adopted in 2000 and were implemented to prepare the market for full competition, which was to begin in January 2002. Since full competition has not begun, AEP contended, no signal has been given to the open market to develop services that electric utilities once provided, resulting in electric customers being denied services that electric utilities once provided. AEP argued that the stipulations entered into in Docket Number 21989 (*Competitive*

Energy Services Issues Severed from Application of Central Power and Light Company, Southwestern Electric Power Company and West Texas Utilities for Approval of Proposed Business Separation Plan Pursuant to §25.342, Docket No. 21953) and Docket Numbers 22352, 22353, and 22354 (*Applications of Central Power And Light Company, Southwestern Electric Power Company and West Texas Utilities for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and Public Utility Commission Substantive Rule §25.344,* the "AEP UCOS cases") included timelines for the sale of dedicated facilities, facilities leasing and maintenance, and reporting the sales of stand-alone lighting facilities. AEP reported that the timelines have not expired. Therefore, AEP recommended that for areas in which competition has not yet commenced, the timelines be extended to more closely coincide with the implementation of full competition.

CSSP disagreed that there is a link between purchasing electric power and purchasing electric-related energy services. CSSP stated that the market for many competitive energy services existed even before the complete unbundling of such services on September 1, 2000, as required by the statute.

EGSI stated that the response to this question depends on several factors: customer demand, service providers available, and the electric utility's approved retail open access tariffs. EGSI commented that to the extent end-use customers were educated about competitive energy services and new service providers were identified in an area, the electric utility should not re-enter the market because it may send mixed signals. EGSI recommended, however, allowing

the utility to re-enter the market immediately if an electric utility formerly provided competitive energy services to end-use customers, other service providers have not entered the area to market these services, and the electric utility plans to offer the services as an unbundled service under retail competition.

CSSP disagreed with EGSI and stated that under no circumstances should a regulated utility be allowed to enter a CES market that exists and functions. CSSP added that there is a petition process that EGSI could use to prove that the market for a particular service is not widely available.

StarLite, TXU/Oncor, and CSSP opposed an exemption for these areas until customer choice begins. CSSP pointed out that the statute requires that the separation of competitive energy services from regulated utilities be finished at least a year ahead of the date on which customer choice is to be implemented. TXU/Oncor stated that the commission's determination that a power region is unable to offer fair competition and reliable service to all retail customer classes for electric energy should not also hamper customer's options regarding other energy services. StarLite argued that some services, such as non-roadway lighting, are being provided by local electrical contractors in all regions of the state and should be allowed to flourish. EGSI disagreed and stated that non-roadway lighting, particularly lighting provided from the utility's side of the meter, has not "emerged" as a competitive energy service, at least not in EGSI's territory.

TXU/Oncor argued that an exemption would undermine the best interests of customers by limiting available services. CSSP added that because EGSI and SWEPCO have not been able to provide these services since September 2000 and the market has been further developed, it would harm the market for these services to allow these utilities to provide competitive energy services in their respective service areas. In addition, CSSP stated that it would harm customers who have been participating in the competitive market because they very likely have made expenditures to discontinue the receipt of services from a utility and to participate in the market.

In response to CSSP, AEP asserted that SWEPCO has fully complied with the spirit and intent of the CES stipulation and agreement in Docket Number 21989, and is currently providing only those services that were grandfathered or addressed in the stipulation. AEP emphasized that it simply seeks an extension of the grandfathered dates so that they more closely coincide with the implementation of customer choice. Furthermore, AEP argued that regardless of whether the demand for the types of services CSSP provides are independent of customer choice, AEP is not convinced that a vibrant market for competitive energy services exists in SWEPCO's area.

In an individual response, a SWEPCO customer from East Texas expressed frustration at not being able to obtain new non-roadway security lights on his property despite the fact that the service area is not yet deregulated. This individual asserted that common sense dictates that if an area is not deregulated, then the utility should provide the same services it has always provided.

SPS pointed out that PURA §39.402 delays the separation of competitive energy services from SPS's bundled utility services and that the proposed amendments to §25.343 clearly acknowledge this unique circumstance. SPS recommended, however, adding similar language to §25.341 and §25.346 to make sure that this is clearly understood in these sections as well.

Commission response

The commission agrees with CSSP and TXU/Oncor that the competitive markets for energy services and for electricity are independent. As CSSP pointed out, the competitive energy services market was opened prior to the beginning of the retail electric market, including areas where retail electric competition has not yet commenced. In its preliminary orders in Docket Numbers 24468 and 24469 (*Staff Petition to Determine Readiness for Retail Competition in the Portions of Texas within the Southwest Power Pool; Staff Petition to Determine Readiness for Retail Competition in the Portions of Texas within the Southeastern Electric Reliability Council*), the commission determined that no purpose would be served by reversing the existing separation of competitive energy services. Therefore, consistent with its prior decisions, the commission finds at this time that it would be contrary to good policy to allow the utilities serving areas not yet open to retail electric competition to provide services deemed to be competitive energy services. To do otherwise would likely hamper the developing CES markets and cause customer confusion.

The commission also finds that these amended rules provide greater flexibility for utilities in both competitive and non-competitive areas with regard to certain services that were previously deemed to be competitive energy services. Specifically, §25.341(3)(J) allows a utility to continue to own and operate non-roadway security lights installed prior to September 1, 2000 and to install and maintain on utility-owned poles lighting fixtures that are owned by the retail customer or by a REP. Also, §25.343(f)(4) allows a utility to continue to provide facilities-rental service and associated maintenance services to customers with utility-owned transformation and other equipment located on the customer's premise that was installed prior to September 1, 2000. Finally, §25.343(g) allows a utility to provide maintenance and repair services on transformation equipment located on a customer's premise in an emergency situation. Moreover, SWEPCO and EGSI can still petition the commission to provide other services if they are not already widely available in their service areas. The commission finds that these rule provisions will largely avoid the situation in which a customer is denied key competitive energy services due to the lack of competitive service providers in the area. For these reasons, the commission declines to exempt from application of the CES rules utilities located in areas in which customer choice has been delayed by the commission.

In response to AEP, the commission finds that this rulemaking proceeding is not the appropriate procedural mechanism to extend all of the specific deadlines related to SWEPCO's provisioning of certain competitive energy services that were addressed in settlement agreements previously approved by the commission.

Finally, the commission agrees with SPS that PURA §39.402 delays the separation of competitive energy services from SPS's bundled utility services. The commission amends §25.346 to clarify that this section does not apply to a utility subject to PURA §39.402 until the start of customer choice. The commission does not find it necessary, however, to amend §25.341 to explicitly exempt SPS from its coverage because this section is a definition-only section.

Question 2: Should the commission provide a "grandfather" exception to proposed §25.341(4)(F) (sic) to allow an electric utility to own, operate, or maintain transformation equipment on the customer's side of the delivery point that was installed prior to September 1, 2000 and is still owned by the utility?

> ***2(a): Should this exception extend to situations in which a retail customer has entered into a contract with a utility to purchase such equipment, but has not yet completed the purchase? If so, what options should be available to such a retail customer on a going-forward basis (e.g., purchase existing facilities, continue renting facilities, or terminate the rental agreement)?***
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> ***2(b): On what basis should such an exception be granted? When responding to this question, please provide detailed information on the availability of competitive energy services providers for this type of service in the relevant areas.***

The following parties supported such a grandfather exception to §25.341(3)(F): AEP, Oncor, EGSI, TIEC, Taylor County, Rio Grande Valley Sugar Growers, Sunny Glen Children's Home, Holmes Foods, Inc., Knapp Medical Center, Texas A&M Kingsville, Christus Spohn Health System, City of Abilene, Dyess AFB, Value Frozen Foods, Inc., Corrections Corporation of America - Eden Detention Center, John Knox Village of the Rio Grande Valley, Valley Baptist Medical Center, McMurry University, Celanese Chemicals, UT-Pan American, Corpus Christi Medical Center, Dupont, and Wright Brand Foods, Ltd.

AEP suggested that maintenance service be addressed separately from facilities-rental service. AEP's proposal regarding maintenance service on customer-owned facilities is discussed under comments pertaining to §25.341(3)(F). With regard to facilities-rental service, AEP proposed that a grandfather exception be granted to all distribution-voltage-facilities-rental-service installations with facilities installed under a rental agreement between the utility and the customer prior to September 1, 2000. AEP noted that large industrial customers that receive transmission-level service generally have the resources to take over ownership of transmission-voltage facilities or are large enough to attract vendors that are willing to provide the required services at an acceptable price. But the majority of customers that use distribution-voltage-facilities-rental service do so, according to AEP, because it is the only cost-efficient alternative for them to achieve the benefits of their diverse loads. AEP pointed out that this customer base consists mostly of universities, public schools, and medical facilities, but also includes some large commercial and small industrial complexes. According to AEP, the customers that take distribution-voltage-facilities-rental service and are affected by this rule have informed AEP that

they have attempted to secure a maintenance service provider in the open market (if they have to purchase the equipment) but have been unable to find interested providers. AEP highlighted two major problems: (1) customers are unable to locate anyone with trained crews within a reasonable vicinity that can respond in a timely manner, and (2) customers have been unable to locate anyone that maintains replacement materials and equipment so that required repairs can begin without a purchase lag time.

AEP suggested that a grandfather exception should apply to all affected applications of distribution-voltage-rental facilities that were installed prior to September 1, 2000, including those customers that have not completed the purchase of the facilities and those that have previously completed compliance actions (e.g., re-metered facilities). AEP proposed that these customers be given the option to: (1) purchase the rented CES facilities; (2) convert their service to secondary voltage at each point of transformation; (3) find a third party in the market that is capable of providing the service; or (4) continue to lease the CES facilities. AEP recommended that customers who continue to lease the facilities be allowed to terminate the lease arrangement at a future date, but emphasized that the leasing option should no longer apply once leasing service at a delivery point has ended. In addition, AEP indicated that customers who continue to lease facilities need, for safety and operational reasons, to be able to expand or reduce the facilities behind the point of delivery to accommodate changes in load. Furthermore, AEP requested that a grandfather exception be granted to SWEPCO and Texas North-SPP under the same terms in the event of full retail competition in these areas.

AEP proposed that the grandfather exception for distribution-voltage-facilities-rental service be granted for five-year terms and, as a condition of the exception, that the utility be required to file with the commission an update on the market conditions related to these services during the fifth year. At that time, AEP suggested, the commission could require the utility to file an exit plan for terminating the provision of the service. AEP stated that any interested party's right to file a petition under §25.343 to discontinue the utility's provision of this service should not be limited under this exception.

TIEC recommended that the grandfather exception be extended to customers who were leasing such equipment prior to electric deregulation (January 1, 2002) or who currently own substation facilities that are "integral" to the utility system. TIEC also supported AEP's proposal to limit this exception to facilities installed prior to September 1, 2000, noting that it should have the same effect. TIEC indicated that either proposal (its own or AEP's) would resolve numerous billing disputes regarding these "dedicated facilities." According to TIEC, there is a great deal of confusion regarding which equipment a customer can continue to lease on its side of the delivery point and beyond the delivery point. Moreover, TIEC stated that it is often unclear where the delivery point is. TIEC explained that under regulation, utilities and customers sought to interconnect in a manner most consistent with engineering principles and that there was often significant equipment on the customer's side of the meters. TIEC advocated that the rule accord customers that leased facilities prior to deregulation maximum flexibility by allowing them to purchase the facilities or revert back to the commission-approved tariff and execute a new lease. TIEC also proposed that utilities be granted the right to maintain the facilities and that the

grandfather exception be granted to the customer or site in question, not merely to the existing facilities. According to TIEC, if the exception is limited to the existing equipment, disputes will likely arise about whether the utility can install replacement or additional equipment. In addition, TIEC recommended that the customer be provided the option to have the utility install and maintain new facilities (to the extent the substation is maintained by the utility). If the commission does not grant the exception, TIEC recommended that the deadline be extended for utilities to cease providing these services by at least six months and that customers be allowed to purchase these facilities at book value plus 10%. TIEC's proposal to allow customers to purchase these facilities, as well as responses to it, are discussed below in the context of §25.341(3)(F). In reply comments, CSSP asserted that solving individual billing disputes is not a legitimate reason to allow this grandfather provision.

TXU/Oncor argued that the exception makes economic sense for customers. They noted that if utilities were forced to cease owning existing transformation equipment on the customer's side of the delivery point, then customers could be put in a position of having to buy and maintain that equipment, whether they wanted to or not. Further, TXU/Oncor indicated that there are very few situations in which Oncor owns transformation equipment located on the customer's side of the delivery point and that there is no danger of that configuration growing, given the proposed September 1, 2000 cutoff for the exception.

EGSI indicated that to the extent the end-use customer and utility have a contract and were performing under that contract prior to September 1, 2000, the agreement between the parties

should be grandfathered to allow the utility to continue to own, operate, and maintain transformation equipment on the customer's side of the delivery point. According to EGSI, new or modified contracts for renting facilities should be allowed under conditions, including, but not limited to: (1) the change out of failed equipment covered under a rental agreement with new equipment, and (2) when the facilities to be covered by the new rental agreement were previously covered under a rental agreement. EGSI stated, however, that a customer should complete the purchase of the facilities if the customer has entered into a contract with a utility to purchase such equipment. If the rental agreement is terminated, EGSI also suggested that the utility be granted the right to remove the facilities and that the customer should pay the total estimated removal cost, as well as any remaining payments under the original term of the rental agreement.

Nineteen retail customers individually filed comments in support of the grandfather exception for reasons including, but not limited to, difficulties in finding competitive providers in the area to own and/or to maintain the transformation equipment and other electrical facilities on the customer's premise; inadequate response times of service providers and lack of timely access to replacement equipment; acquisition costs of the equipment; lack of in-house expertise to maintain the equipment; and satisfaction with the existing facilities-rental and maintenance service.

CSSP rebutted specific comments made by these individual customers. In general, CSSP argued that the issues underscoring the customers' concerns are mostly related to the customers'

expectation of the level of services they would receive from new service providers. CSSP noted that some customers expect to receive the same service in the same manner that they received from the regulated utility in the pre-deregulated world. According to CSSP, this does not mean, however, that competitive service providers cannot respond to the services as well as the utility. CSSP stated their belief that on the occasions that customers claim that they cannot find a competitive provider, it is because customers are not aware of the existence of these providers and do not know where to find them, not because there are no providers. CSSP also asserted that customers do not need to be concerned that the response times may not be as fast as those customers have experienced with the utility merely because competitive service providers do not have as many field offices as a utility. In addition, CSSP pointed out that the benefits of a healthy, competitive market for these services outweighs the shortcomings that individual customers may experience with the transition from a regulated to a deregulated world. CSSP further stated its belief that many of these customers have truly enjoyed the benefits of deregulation, including substantial savings in power costs, and that many of the concerns are transitional problems that occur with a maturing competitive market. According to CSSP, these concerns occur either because lack of knowledge or due to a slow break-up of the customer-utility relationship. CSSP recommended that these problems can and should be corrected in a manner that does not hinder the further development of this market.

CSSP contended that the grandfather exception is simply not the solution for these transitional problems. CSSP indicated that there is no basis for granting such an exception because there is a vital competitive market for substation services and the exception is contrary to the intent of

Senate Bill 7 (Act of May 21, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543) (SB 7) to deregulate competitive energy services. CSSP noted that the four companies sponsoring its comments in this rulemaking are just a few among many companies that can provide both quantity and quality transformation and substation services for customers at reasonable, competitive prices and in a timely manner. CSSP asserted that if, as some commenters suggested, these services are not widely available for the customers at issue, utilities should petition the commission to allow them to continue to provide these services.

Furthermore, CSSP indicated that there should be no need for the grandfather provision because arrangements should have been made so that these services are not provided by utilities based on the commission's orders in the dockets to separate competitive energy services. CSSP pointed out that in those cases, utilities were generally required to renegotiate or rearrange any contracts they had with customers and to stop providing these services after September 1, 2000, or as soon as possible thereafter. In addition, CSSP stated that in the AEP companies' unbundled cost-of-service (UCOS) cases, the commission required the companies to give customers options to purchase the leased facilities, but allowed the companies until January 1, 2004 to continue to provide these services (i.e., maintenance of customer-owned facilities installed as of September 1, 2000, and leasing and maintenance of utility-owned facilities installed as of September 1, 2000). CSSP noted that the AEP companies are required to file a report with the commission on the status of the affected customers by November 15, 2003, which is to include either an exit plan or a petition to continue providing these services. Therefore, CSSP contended that if AEP wants to continue providing these services, it must file a petition to do so based solely on the

proof that the services are not widely available. CSSP argued that the grandfather exception would bypass this requirement and allow AEP to continue to provide these services indefinitely.

In response to CSSP, AEP indicated that it intends to comply fully with the stipulations and orders in Docket Number 21989 and the UCOS cases. AEP noted that it will file the required report on November 15, 2003, and will address the elements described in the stipulation and any revisions to the CES rules that may be adopted by the commission in this rulemaking. AEP emphasized that SWEPCO, Texas-North, and Texas-Central have not observed any increase in the availability of these services in their service areas, a fact supported by all the customer comments. AEP opposed CSSP's apparent attempt to create a pool of stranded customers by forcing customers to complete the purchase of equipment as expeditiously as possible. AEP urged the commission to consider the economic and financial impact of such decisions on customers.

TIEC and AEP both challenged CSSP's claims that competitive energy services are widely available in all parts of Texas, including rural areas. TIEC pointed to the reports by numerous commenters on the difficulties in finding entities other than utilities to perform maintenance on substation equipment. TIEC also asserted that many of its members have experienced difficulties obtaining CES providers outside of major metropolitan areas. TIEC noted that even where these services can be found, they are not effectively available because there are often substantial and costly delays in obtaining service. In addition, TIEC opined that while the petition process provides some protection for customers, it is inadequate and will cause undue

burden and hardship in areas of the state where services are not widely available. In response, CSSP argued that TIEC's statements are not supported by facts and that the petition process is adequate if services are truly not available.

AEP indicated that it has been informed by customers that transformation and substation services are neither widely available in their area nor available at a competitive price. AEP emphasized that the CSSP companies have not successfully marketed their services to customers. AEP stated that it is remarkable that CSSP advocates for the commission and utilities to assume the burden of marketing CES providers' services. Moreover, AEP argued that it is not the commission's responsibility to develop the market for alternative providers or to create conditions that ensure customers have no other choice than to select service from anyone other than the utility regardless of price, terms, or conditions.

CSSP rebutted AEP's statements, noting that there is no indication that the availability of service providers is a major concern. CSSP stated that AEP's assertion that customers have complained that they have been unable to find any interested providers is simply unfounded. CSSP urged the commission to allow competition for substation services to continue to develop without interference from regulated utilities. According to CSSP, utilities continue to hold market power on electric customers that will take a long time for other competitors to overcome. CSSP suggested that customers, competitive service providers, and even utilities need to make adjustments to allow customers to engage in the new market.

CSSP also opposed AEP's proposed options for customers with leased facilities that are grandfathered, including the option to expand or reduce facilities to accommodate load changes. According to CSSP, there is absolutely no reason for AEP to provide substation services behind the point of delivery to accommodate load growth or reductions. In addition, CSSP opposed AEP's proposed five-year term for the grandfathering provision, arguing that there is no reason to believe that AEP will help these customers make the transition to a competitive market in the next five years, given that it could not accomplish this during the past two years in which a competitive market has existed. Finally, CSSP indicated that it is not appropriate for a utility to provide an update on the condition of a competitive market upon which the commission will base its determination on whether the utility should exit that market.

Commission response

The commission is dedicated to fostering markets for competitive energy services, including the ownership and maintenance of transformation equipment on customer premises. But despite CSSP's claims that transformation and substation services are widely available throughout Texas, the commission has concerns that this may not be the case for all customers and for all areas. As evidenced by the comments in this project, at a minimum it appears that customers located outside major metropolitan areas are experiencing difficulties finding providers within their areas or that can serve their areas, that can respond in a timely manner, or that have replacement materials to begin repairs without a significant lag time. The commission finds that timeliness of service is an important factor in evaluating the availability of this service.

The commission is also mindful of the financial impact that the rule may have on some customers. The cost of this type of equipment is not insignificant, especially for smaller customers. The main option for customers that cannot or do not want to purchase this equipment is to re-meter to a lower voltage at each point of transformation so that the equipment remains under the utility's ownership and, therefore, falls outside the definition of a competitive energy service. The commission notes that re-metering not only increases costs for the customer in terms of purchasing the necessary equipment, losing the benefits of load diversity, and paying higher non-bypassable charges, but it also fails to encourage a competitive market to develop because the equipment at issue is no longer classified as a competitive energy service. Therefore, without additional evidence that this service is already widely available, the commission sees little benefit to effectively forcing customers to re-meter their service or take other compliance actions.

CSSP admits that there is an urgent need for customer education regarding the competitive provisioning of energy services and seeks an active role for the commission and utilities in such education. The commission finds that the lack of customer awareness about competitive alternatives related to transformation equipment is likely an indication that the market for this service is not functioning properly at this time. While it is appropriate for the commission to provide general educational information about competitive energy services on the commission's website, it is not the commission's role to promote, or even identify, individual competitive service providers through the creation of a commission list of such providers. Consumer

services are generally marketed by the provider or by trade associations of which the service provider is a member. Therefore, the commission finds that information about particular providers, including their contact information and the services they provide, should be disseminated through means such as direct marketing, trade associations, and business organizations.

The intent of the CES rules is not to deny service to customers or to create a situation that is unduly burdensome or costly for customers, but rather to provide customers with a broad array of competitive choices and services and to prohibit practices by regulated utilities that may unreasonably inhibit the level of competition for those services. Given the concerns about the limited availability and awareness of competitive services for transformation equipment and the potential impact this issue has on customers, the commission determines that it is not in the public interest to force customers at this time to complete the purchase of equipment or to take other actions that are hasty and potentially costly. The commission concludes that a more prudent approach is to temporarily grandfather all distribution-voltage-facilities-rental installations with facilities installed under a rental agreement between the utility and the customer prior to September 1, 2000, and then to continue monitoring the development of this market. The commission agrees with AEP, however, that transmission-voltage level customers should be large enough to attract vendors for these services and, therefore, declines to extend this grandfather exception to those customers. In response to TIEC, the commission notes that such customers should have already been given an opportunity to purchase this equipment based on a pricing methodology approved by the commission in the UCOS cases. The commission does not

find it is necessary or appropriate to modify the specific terms for purchasing this equipment in this rulemaking. If necessary, the commission can address as part of its review of AEP's compliance filing on November 15, 2003, the future treatment of individual transmission-voltage customers with facilities under §25.341(3)(F) that are still owned by the utility.

The commission agrees with AEP and TIEC that to avoid confusion and potential safety concerns the grandfather exception should apply to the site in question, not merely to individual facilities. In addition, the commission agrees with AEP that customers should retain the options of purchasing the rented equipment, renting additional facilities at the same delivery point, or terminating the rental arrangement. The commission also finds that it is appropriate to extend this grandfathering exception through the last day of 2007, and to require utilities affected by this provision to file a status report by March 1, 2007. The report shall include details regarding affected customers and market conditions. At that time, the utility shall also file either a plan to cease providing facilities-rental service on and after January 1, 2008, or a petition to request permission to continue providing such service. In response to CSSP, the commission notes that this filing requirement does not preclude other entities, such as the CSSP companies or individual customers, from filing information about market conditions or from participating in a proceeding related to a petition, if one if filed by the utility. In addition, if market conditions change before that filing, an affected person or commission staff could still file a petition to have facilities-rental service classified as a competitive energy service by showing that the service is widely available.

The commission determines that it is appropriate to address this issue in this rulemaking rather than waiting until a future proceeding. Affected utilities and customers need certainty at this time regarding the regulatory treatment of these facilities. Extending the grandfathering up to January 1, 2008 will provide this certainty and will afford customers additional time to make decisions about whether to purchase this equipment or take other actions based on their economic circumstances and operational needs. In addition, this grandfathering provision will provide time to assess the availability of service providers in the area. During this period, customers who do not meet the criteria for service from the utility under the grandfather provision will have to obtain these services from non-utility suppliers. The needs of these customers should help stimulate a competitive market for the services, so that all customers can transition to competitive supply of the services in 2008, or possibly sooner.

Accordingly, the commission amends §25.341(3)(F) and adds new §25.343(f)(4) to outline the parameters of this grandfather exception.

Question 3: Proposed §25.343(d)(1) allows an electric utility that files a petition to provide a competitive energy service that is not widely available in an area to file jointly with an affected person or with commission staff. Should commission staff, end-use customers, or other affected persons be able to petition, independently from the utility, for the commission to allow a utility to provide a competitive energy service that the utility is otherwise prohibited from providing? If so, should the petition process, including the notice requirements, burden of proof, and standard of review, be modified in any manner? Would the utility have to agree to

provide the petitioned service if the petitioner demonstrated that the service was not widely available in an area?

TXU/Oncor, CSSP, and EGSI each stated that it prefers the rule as drafted for comment, in which the utility's petition could be filed jointly with an affected person or commission staff. TXU/Oncor and CSSP further argued that commission staff, end-use customers, and other affected persons should not be able to independently petition the commission to allow the utility to provide a competitive energy service. CSSP voiced concern that such an open petition standard would lead to abuse of the petition mechanism and ultimately harm competition for competitive energy services because instead of shopping for the best choices in the existing market, customers may simply attempt to use the petition process to allow them to receive services from a utility at a price that is subsidized by other customers. EGSI also contended that the utility should be allowed to recover all of its costs associated with any filings required to review/approve a competitive energy service should the commission permit commission staff, end-use customers, and other affected persons to independently petition the commission to allow the utility to provide a competitive energy service. In reply comments, TIEC stated that CSSP's suggestion that customers might use the petition process to obtain subsidized services from utilities ignores the obvious fact that competitive alternatives simply are not available in the customer's area.

CenterPoint stated that no party other than the utility should have the right to petition to allow the utility to provide a competitive energy service, and that it is inappropriate to require a utility

to provide services for equipment that it does not own--it is the responsibility of the owner to acquire services for its equipment. In reply comments, TXU/Oncor pointed out that pursuant to PURA and the commission's substantive rule adopted in early 2000, Oncor has ceased providing these competitive energy services and has structured its business, personnel, equipment, and budgets accordingly. TXU/Oncor stated that Oncor is not interested in re-entering the business of providing competitive energy services, except in emergency situations as outlined in this proposed rule. Further, TXU/Oncor argued that a utility should not be forced to provide a competitive energy service simply because end-use customers think the price for that service in the competitive market is too high. Also in reply comments, CenterPoint indicated that it is not opposed to providing assistance to a customer when (1) there is an emergency, (2) there are no competitive resources available to the customer, and (3) the utility has resources available without otherwise impairing service to all of its customers.

AEP stated that it is not opposed to permitting the others to petition independently of the utility to allow the utility to provide a competitive energy service. It argued, however, that the petitioning party should be required to show that it reviewed the proposed petition with the utility prior to the filing and that the utility agreed to the petition in that it is both willing and able to provide the service. AEP also opposed a rule that would require the utility to provide a competitive energy service over its objection because in many cases the utilities no longer have the equipment, employees, or both necessary to perform all of the services designated as competitive energy service, and because it requires the utility to divert necessary resources away from its basic energy delivery function, thus potentially affecting reliability and the basic energy

delivery needs of consumers. TXU/Oncor also stated that others should not be able to petition to force a utility to provide a service that it does not want to provide.

Starlite did not object to allowing the others to petition the commission independently of the utility for energy services that are not widely available within a specific region and that can be provided by the utility, and asserted that the utility would have to provide the service even if it did not agree to do so. It further stated that the petition process would not have to be altered so long as the burden of proof, notice requirements, and standard of review are as proposed for comment.

TIEC asserted that the others should be able to petition to allow a utility to provide a competitive energy service and that in areas of inadequate competition for such services, the commission should require the utility to provide such services. TIEC indicated that it appreciates the commission's efforts to protect customers in non-competitive areas through the joint-petition process, but that it believes the petition process will result in substantial delays for customers in obtaining competitive energy services in non-competitive areas, thus greatly increasing the risk of unplanned outages and raising significant safety concerns. It stated, however, that the commission should maintain the petition process but amend the definition of competitive energy services under §25.341(3) to apply only to areas where such services are widely available. (TIEC's proposed revision to the general CES definition is discussed below under comments regarding that provision.) In reply comments, EGSI stated that any customer who petitions to

require a utility to provide a competitive energy service should be required to present a persuasive petition to obtain such extraordinary relief.

Commission response

The commission agrees with TXU/Oncor, CenterPoint, and CSSP that the rule should not include a separate process for a customer or staff to independently petition the commission to allow or require a utility to provide a competitive energy service. The commission finds that the language as proposed for comment regarding the petition process—taking into consideration the grandfathering exception for facilities-rental service discussed under Question 2, the rule amendments related to non-roadway security lighting, and the emergency provision in §25.343(g)—presents the best approach to balancing the desire to allow CES markets to develop more fully with the desire that customers be able to receive energy services without undue hardship. The commission notes that this petition process, along with the abilities pursuant to §25.343(d)(2) to end a utility's petitioned offering of a competitive energy service (i.e., a "petitioned service") and to designate other services as competitive energy services, serve together as checks and balances towards the above stated goal.

Nonetheless, in response to TIEC, the commission finds that it is appropriate to include a mechanism in the rule to periodically evaluate the degree of competition for competitive energy services to ensure that these services are widely available in areas throughout Texas. As part of such evaluation, the commission may assess whether particular services should be excluded from

the list of competitive energy services and whether the nature of those services warrants reclassification such that the utility would be required to provide them in the relevant area. Accordingly, the commission adds new subsection (h) to §25.343 to provide for such evaluation every two years beginning in October 2005 or as otherwise determined by the commission.

§25.341 (Definitions)

Section 25.341 defines "competitive energy services" as "customer energy services business activities that are capable of being provided on a competitive basis in the retail market." TIEC commented that although the rule as proposed for comment presumes that all services designated as CES are "widely available," as stated in PURA §39.051, this is not the case. Therefore, TIEC proposed amending the definition of competitive energy services so that the rules apply only to areas where such services are widely available. Further, TIEC recommended that the commission require the utility to provide such services in areas where there is not adequate competition for such services.

EGSI disagreed with TIEC and argued that a customer's mere belief that competition is inadequate should not require a utility to provide such service. Rather, EGSI suggested that a customer who raises such claims should be required to persuasively petition the commission to obtain such extraordinary relief.

AEP also opposed TIEC's proposal to require an electric utility to offer services if the utility is not willing to do so because AEP has adjusted its resources (both employees and equipment) and procedures consistent with required utility functions under the new market structure. AEP noted that the support infrastructure in many cases has been dismantled, and it would be inefficient and expensive to reinstitute the provision of discontinued services.

CenterPoint disagreed with TIEC's proposal to require utilities to provide services on customer-owned equipment and stated that it is the responsibility of the customer to operate and maintain its equipment. However, CenterPoint stated that is not opposed to providing assistance to a customer when there is an emergency, there are no competitive resources available to the customer, and the utility has resources available without otherwise impairing service to all of its customers.

TXU/Oncor disagreed with TIEC's proposal to require utilities to provide competitive energy services to customers when there is not "adequate competition" in the "relevant retail market." According to TXU/Oncor, TIEC's proposal would be a very significant shift in how competitive energy services are provided and would appear to require new determinations that, in a given "relevant" retail market, a particular competitive energy service is not available. TXU/Oncor further submitted that such a broad restructuring of the competitive energy services market is not warranted and urged that the commission not undertake that task at this time.

CSSP strongly opposed TIEC's proposed revision because it is unwarranted and would completely distort the structure of the existing CES rules. According to CSSP, TIEC's proposal is completely against the intent of these rules and the statute, and changes the assumption behind having a list of competitive energy services, i.e., that all services on the list are both competitive and widely available unless proven otherwise by a utility through the petition process. Furthermore, CSSP argued that TIEC's proposal is very confusing and does not include any mechanism as to how and when an energy service is determined to be "not widely available" so as to be excluded from the list.

TIEC challenged CSSP's claims that competitive energy services are available in all parts of Texas, including rural areas. TIEC indicated that the initial comments in this rulemaking underscore the need to address the problems that many customers outside of the Dallas/Forth Worth and Houston areas have had in obtaining competitive energy services. TIEC pointed out that many of its members have also experienced difficulties in locating CES providers outside of major metropolitan areas and that, even when these services can be found, they are not effectively available because there are often substantial and costly delays in obtaining them. TIEC argued that the commission should not presume that competitive energy services are widely available outside of these two areas. Moreover, TIEC advocated that utilities must continue to provide necessary maintenance and service to customers in areas where these items are not widely available until such time as they can be categorized as "competitive energy services."

Commission response

The commission declines to amend the definition of "competitive energy services" as proposed by TIEC. The commission agrees with TXU/Oncor that TIEC's proposal would appear to require new determinations on whether particular competitive energy services are "widely available" in the "relevant retail market." The commission believes that this approach would be a fundamental change to the existing framework of the CES rules, and that such a change is unwarranted at this time. Nonetheless, through various amendments, the commission has attempted to address specific concerns regarding certain competitive energy services in a manner that provides for fairer treatment of all parties concerned. Furthermore, as discussed under Question 3, the commission has included in the final rule a mechanism to evaluate every two years whether competitive energy services are widely available in areas throughout Texas.

§25.341(3)(D)(i) - Diagnostic activities

TXU/Oncor maintained that it is neither necessary nor advisable to define the term "reasonable diagnostic actions" in §25.341(3)(D)(i) and (ii). TXU/Oncor indicated that it is in the best interest of customers to allow electric utilities flexibility in responding to customer service concerns. Should §25.341(3)(D)(i) and (ii) be adopted, however, TXU/Oncor proposed clarifying the customer notice provision in §25.341(3)(D)(i) by replacing the phrase "utility or the customer" with the phrase "utility's equipment or the customer's equipment."

CSSP suggested that the utility should perform only the diagnostic activities necessary to determine if a power quality problem lies with the utility or with the customer and that any other diagnostic activities should be a competitive energy service.

Commission response

The commission disagrees with TXU/Oncor's suggestion to delete §25.341(3)(D)(i) and (ii). These provisions provide general guidelines regarding the scope of diagnostic activities that electric utilities are permitted to provide. The commission maintains that the utility should perform only the diagnostic activities necessary to determine whether a given power quality problem lies with the utility's equipment or with the customer's equipment. The commission agrees, however, with TXU/Oncor's clarifying change to §25.341(3)(D)(i) and revises the rule accordingly.

§25.341(3)(F) - Transformation equipment

AEP asserted that the language in proposed §25.341(3)(F), relating to transformation and other equipment, has the potential to greatly expand the services prohibited beyond the services considered to be "customer premise transformation" under the current rule. AEP indicated that the language could be construed to conflict with the positions taken by commission staff and upheld in settlement agreements approved in Docket Numbers 22352, 22354, and 21989. AEP emphasized that the proposed language sets the stage for future controversy. AEP explained that

the lack of definition of "delivery point" provides too much latitude for potential abuse related to requests for services that were not considered appropriate under the original rule. In addition, AEP opined that the wording could be used to include facilities (e.g., system protection equipment) that should not, and cannot, be privately maintained and operated. AEP emphasized that the language has the potential of placing grid reliability at risk by potentially allowing private ownership, maintenance, and operation of critical facilities that are an integral part of the utility's systems. Accordingly, AEP recommended adding an exclusion to §25.341(3)(F) so that maintenance service to high-voltage protection equipment that is an integral part of a utility's delivery system at the point of interconnection with the customer is not classified as a competitive energy service.

Like AEP, TIEC also indicated that it is often unclear where the delivery point is and that there is often significant equipment on the customer's side of the meters.

In addition, TXU/Oncor remarked that proposed §25.341(3)(F) is confusing and should be revised to ensure that utilities are not precluded from owning equipment on the customer's side of delivery point that is used to support the operation of the utility's system. TXU/Oncor cited numerous examples of utility-owned equipment on the customer's side of the delivery point in support of this contention, and noted that Oncor would incur tremendous costs if it were required to move this equipment to its side of the delivery point. Accordingly, TXU/Oncor proposed omitting §25.341(3)(F)(ii) or, alternatively, revising this provision to allow utility ownership of equipment supporting the utility's system.

In reply, AEP generally agreed with TXU/Oncor's proposal, but recommended that the commission consider language proposed in its initial comments that differentiates between distribution and transmission voltage facilities.

CSSP disagreed with TXU/Oncor that proposed §25.341(3)(F)(ii), related to ownership, should be deleted. But CSSP agreed with both TXU/Oncor and AEP that the rule should not preclude the utility from owning or maintaining equipment located on the customer's side of the delivery point that is integral to the utility's system. CSSP recommended, however, that the exception be limited to equipment that is used solely to support the utility's system. To avoid the confusion, CSSP also suggested that the rules clearly identify the types of equipment that would qualify (i.e., current transformers, potential transformers, battery chargers, batteries, system protection relays, and supervisory control and data acquisition equipment).

Commission response

In the proposed rule, the commission attempted to clarify the definition of transformation and other equipment under §25.341(3)(F) because the existing rule was difficult to follow. But in doing so, the commission recognizes that it has unintentionally raised additional issues that warrant clarification in the final rule, particularly with regard to equipment that is used to support or is integral to the utility's systems. The commission agrees with AEP that maintenance service to high-voltage protection equipment that is an integral part of a utility's delivery system

should not be classified as a competitive energy service. In addition, the commission agrees with TXU/Oncor that the rule should not classify as a competitive energy service utility ownership of equipment that is used to support the operation of the utility's system. The commission declines to adopt CSSP's proposed limitation that such equipment be used *solely* to support the utility's system because it may unnecessarily restrict the utility and have unintended consequences that could affect system reliability. Nonetheless, the commission has included examples of such equipment in the rule. Accordingly, the commission modifies the rule by deleting §25.341(3)(F)(i) and (ii) and adding §25.343(f)(2) and (3) to address the utility's ability to own or maintain equipment under §25.341(3)(F) that is used to support or is integral to the utility's systems.

The commission also recognizes that that the term "delivery point" is undefined and should be clarified. A similar term, "point of delivery," is used and defined in the standard Tariff for Retail Delivery Service as the "point at which Electric Power and Energy leaves the Company's (utility's) Delivery System." To ensure consistency when referring to the same physical point, the commission finds that it is appropriate to also use this term and its definition in §25.341(3)(F) and the related exceptions under §25.343(f). The commission amends these provisions accordingly.

§25.341(3)(F) - Maintenance on customer-owned facilities

AEP proposed an exception to allow the utility to continue operating and maintaining customer-owned facilities if the customer elects to continue facilities-maintenance service and if the utility operated and maintained the facilities prior to September 1, 2000. TIEC also proposed that utilities be permitted to provide maintenance to customer-owned equipment that falls under §25.341(3)(F) to ease resolution of on-going billing disputes regarding the leasing of dedicated facilities. As an example, TIEC cited the pending disputes regarding the stipulation and agreement approved by the commission in *Central Power & Light Unbundled Cost of Service Case,* Docket Number 22352. TIEC claimed that dispute resolution would be enhanced if the utility is allowed to provide maintenance on customer-owned facilities that are deemed "integral to the utility's system." Specifically, TIEC advocated that §25.341(3)(F)(i) exclude from CES status maintenance services provided to customers that were leasing facilities from an electric utility prior to January 1, 2002.

TXU/Oncor stated that TIEC's proposal could create confusion for customers in Oncor's service area because pursuant to PURA §39.051 and the commission's rules, Oncor no longer leases transformation facilities to customers and no longer provides maintenance service on those facilities. TXU/Oncor recommended that if TIEC's proposal be accepted, the rule should ensure that utilities in the same position as Oncor are not required to begin providing such maintenance services again. To achieve that end, Oncor suggested that TIEC's proposed language be revised to make the criterion date "on" instead of "prior to" January 1, 2002.

For many of the same reasons discussed under Question 2, CSSP opposed the proposals by TIEC and AEP to grandfather facilities-maintenance service for customer-owned facilities that were installed prior to September 1, 2000 or January 1, 2002.

Commission response

The commission finds that it is not appropriate at this time to provide a grandfather exception to allow a utility to maintain customer-owned facilities, as proposed by AEP and TIEC. The commission notes that this issue is different from facilities-rental service discussed under Question 3 because facilities-rental service involves a potential transfer of ownership of the equipment or other actions, such as re-metering, on the part of the customer. In addition, the commission believes that the changes to §25.343(g) discussed above to allow a utility to maintain customer-owned equipment that is an integral part of the utility's system may resolve the billing issues mentioned by TIEC.

§25.341(3)(F) - Purchase of utility-owned equipment

TIEC proposed adding new §25.341(3)(F)(iii) to allow a customer to purchase utility-provided equipment that has been designated as "competitive energy services" at book value plus 10% and that the total cost of an individual facility not exceed original market cost, adjusted for depreciation and un-depreciated contributions in aid of construction, plus $15,000. Celanese

Chemicals also suggested that if a decision is made to require the customer to purchase equipment on the customer's side of the delivery point, the selling price should be set at the equipment-rental-plus-maintenance-percentage basis for a period to not exceed one year.

In reply, CenterPoint and EGSI disagreed with TIEC's proposal for allowing a customer to purchase utility equipment. EGSI argued that this rulemaking project is not one in which generic and novel ratemaking policies can or should be adopted, particularly at this late stage of the project. EGSI observed that TIEC's proposal would not likely be in the public interest and would actually create more confusion, at least in the form of administrative litigation. CenterPoint cited the commission's findings in Reliant Energy HL&P's UCOS case, in which the commission rejected a similar proposal made by TIEC. CenterPoint stated that it is inappropriate to reconsider the issue in this project because the parties have previously litigated the requirement to sell facilities and the commission has ruled upon the issues.

AEP indicated that TIEC's proposal would effectively redefine the pricing methodology approved in Docket Number 21989, the proceeding to separate the AEP companies' competitive energy services. AEP explained that under that stipulation, AEP was required to calculate and make a one-time price offer that would remain frozen until the sale/purchase of the facilities was completed. AEP opined that it appears that TIEC's proposal would garner customers an additional three years of depreciation, and opposed any such revision to the rules. In addition, AEP agreed with other parties that specific pricing of such equipment should not be determined in this proceeding.

Commission response

The commission declines to amend the rule as proposed by TIEC and Celanese to allow a customer to purchase utility-owned equipment under a specific pricing methodology. The commission agrees with AEP and EGSI that it is inappropriate to make ratemaking decisions of general applicability in this rulemaking, particularly at this late stage. The implications of these proposals are simply not known. The commission is also concerned that these proposals could contradict or otherwise affect the pricing methodologies or other terms approved previously by the commission in other dockets.

§25.341(3)(J) - Non-roadway security lighting

Several parties commented on the proposed definition of "non-roadway security lighting" in §25.341(3)(J).

Starlite asserted that local electrical contractors in all regions of the state are providing some services such as non-roadway lighting, and that the emergence of these electrical contractors in the non-roadway lighting field has proven beneficial to both consumers and to local journeymen by providing additional revenue and requested service within markets located in large cities and small towns across Texas. Starlite stated that the service has grown locally in all markets and should therefore be allowed to flourish.

EGSI disagreed with Starlite and argued that non-roadway lighting, particularly lighting provided from the utility's side of the meter, has not "emerged" as a competitive energy service, at least in its territory.

A multiple business owner in East Texas expressed concerns with deregulation of energy services and specifically, security lighting in areas where customer choice has been delayed. The commenter stated that his businesses have been informed by the utility that the utility cannot provide maintenance on existing security lights and cannot provide new security lights on the utility company's poles. He also expressed concerns over the availability of service providers in East Texas to provide security lighting and related services, and suggested that non-roadway security lighting be exempted as a competitive energy service until a service provider enters the market in his geographic area. Similar to this commenter, EGSI, speaking generally about competitive energy services, specifically cited non-roadway security lighting as an example of a service demanded by customers with no real supplier in the market at this time. EGSI suggested that an electric utility be allowed to immediately re-enter the market to provide the service as an unbundled service if there are no other service providers offering the service in the geographic area. As part of its recommendation, EGSI suggested that the definition of non-roadway security lighting be amended to recognize such an exception.

AEP also recommended that the rule allow the utility, at its discretion, to install new non-roadway lights on existing common-use distribution poles because electrical clearance safety

requirements for overhead distribution facilities essentially eliminate the options for customer-installed lighting facilities in many locations. AEP suggested that allowing installation of new non-roadway lights on existing distribution poles could provide customers a much better choice to solve their security lighting needs where clearance issues are a problem.

The commission finds that if a customer is currently receiving non-roadway security lighting service from a utility, the utility is responsible for maintaining those lighting facilities pursuant to its tariff. The amendments to §25.343(3)(J) also provide that a utility can maintain on a going-forward basis existing non-roadway security lighting facilities, including replacement lighting fixtures.

With regard to the installation of additional non-roadway security lighting facilities, the commission finds that CenterPoint's current tariff is an appropriate model and revises the rule accordingly. Under this approach, a utility is allowed to install and maintain lights that are owned by the retail customer or by a REP on utility-owned facilities that are suitable for this purpose. Thus, the retail customer or REP would provide the utility-approved lighting fixture to be installed by the utility. This would not require the utility, however, to install new poles to be used solely for this purpose. The commission concludes that this approach ensures that customers have a cost-effective option for installing additional lights, particularly in those locations that may not be suitable for installation behind the meter, where clearance issues are of concern, or where competitive service providers may not be widely available. In addition, this approach addresses the safety and system reliability concerns raised by utilities regarding non-

utility entities installing or maintaining lighting fixtures in close proximity to the utility's energized wires and equipment. Accordingly, the commission revises §25.341(3)(J) to allow a utility to provide this type of service on a going-forward basis.

§25.341(3)(J) - Utility exiting non-roadway lighting business

AEP argued that the language in the definition does not and should not be construed to prohibit a utility from exiting the non-roadway lighting business if it so chooses, and that having that option available increases the chances that a robust, competitive market for these services will develop in Texas.

Commission response

The commission agrees with AEP that §25.341(3)(J) does not prohibit a utility from exiting the non-roadway lighting business if it chooses to do so. The commission notes, however, that regulatory considerations, such as notice of the sale and the treatment of proceeds, may need to be addressed if the utility seeks to sell its lighting assets to a third party. Therefore, prior to the execution of a sale, a utility shall provide the commission reasonable notice of the proposed transaction to provide the commission an opportunity to evaluate any legal or policy implications associated with the transaction. The commission adds new subsection (i) to §25.343 to memorialize this notice requirement.

§25.341(3)(J) - Petitioned service

TXU/Oncor commented on the language in §25.343(3)(J) that refers to "lighting facilities installed as a petitioned service by the utility as of October 1, 2003." They noted that the language appears to allow a utility to provide new lighting facilities only to the extent that the utility has petitioned the commission, had the petition approved, and has installed the facilities by October 1, 2003. TXU/Oncor suggested that given the short time deadline, the exception may ultimately prove to be of little value, and that the time deadline of October 1, 2003, is unnecessary. TXU/Oncor further noted that the existing rules appear to be structured so as to allow a utility to petition to provide a service at any time, and suggested that it is in the best interest of customers for a utility to continue to have the ability to petition to provide that service.

Commission response

The commission agrees with TXU/Oncor that the "October 1, 2003" cutoff is not necessary and amends the rule accordingly.

§25.341(3)(J) - Unbundled embedded-cost tariff

EGSI indicated that §25.341(3)(J) allows an unbundled utility with an approved tariff to provide non-roadway security lighting in certain instances, but that this provision does not apply to

bundled utilities. EGSI pointed out that the only way a bundled utility can provide this service is by petitioning the commission under §25.343(d). Therefore, EGSI suggested amendments to specify that this service could be provided pursuant to an unbundled or a *bundled* embedded-cost tariff.

Commission response

The language in §25.341(3)(J) related to "an approved fully unbundled embedded-cost tariff" applies to both bundled and unbundled utilities. The term "unbundled" in this instance refers to the requirement that the utility have a separate rate schedule for security lighting service that recovers only those costs related to this service and not other utility costs. The commission notes that this terminology is also used in §25.343(d)(1) and (d)(1)(C) in the context of a utility's provision of a petitioned service, as well as in §25.343(g)(3) in the context of providing emergency service. Therefore, no change to the rule is necessary.

§25.341(3)(W) - Other activities

To promote clarity, TXU/Oncor suggested that §25.341(3)(W) be amended by replacing the word "authorized" with the phrase "determined to be a competitive energy service" so that this provision reads "other activities determined to be a competitive energy service by rule or order."

Commission response

The commission makes the clarifying change requested by TXU/Oncor.

§25.342 (Electric Business Separation)

EGSI proposed that §25.342(d)(5) and (e) be revised to accommodate a utility such as EGSI that has had its business-separation plan (BSP) approved but has not yet unbundled. AEP stated that SWEPCO also filed a BSP that was consolidated with its UCOS case in which no final order has been issued. AEP recommended that the proposed rule be revised to accommodate SWEPCO's situation so that an additional BSP is not required.

CSSP commented that the proposed rule implies that SWEPCO and EGSI have not stopped providing competitive energy services, but according to the final orders in Docket Numbers 21989 and 21984, the companies have done so. However, CSSP commented that if the intent of the language is to revoke the final orders in these dockets for these companies, the language does not reflect this intention and CSSP would be strongly opposed to that intention.

Commission response

The commission agrees with EGSI and AEP that a utility that has already had its business-separation plan approved should not have to file an additional plan. If necessary, however, the

commission may require a utility to file modifications or updates to its existing business-separation plan.

The commission acknowledges CSSP's concern that the proposed rule appears to presume that EGSI and SWEPCO have not already separated their competitive energy services, despite the fact that these utilities discontinued these services on September 1, 2000 in accordance with the existing CES rules. Therefore, the commission clarifies the final rule by limiting the reference in §25.342(c) and (d) to apply only to Southwestern Public Service Company and El Paso Electric Company, which have not yet already separated their competitive energy services from their regulated business activities.

The commission amends §25.342(c)-(e) to address the concerns by EGSI, AEP, and CSSP.

§25.343 (Competitive Energy Services)

§25.343(d) - Notice

AEP stated that with regard to the utility's filing of a petition to provide a competitive energy service, the cost of the required notice to all REPs in Texas and newspaper publication will deter the filing of such petitions. It urged that the notice requirements in §25.343(d)(1)(B) be tailored to reach the affected market participants, thus reducing costs.

CSSP stated that the notice under this provision should be provided, most importantly, to potential vendors or providers of CES, not just to REPs. Noting that the market for energy services is different from the market for REPs' electricity services, it stated that competitive service provider input in the petition process is more important than REP input. It further stated that because the petition process is related to the development of the market for CES, it strongly believes that CES-provider participation is necessary in the petition process. Thus, it stated that notice should be sent to CES providers. It suggested that the commission allow for a list of interested persons to be developed, as has been done in other projects, and that the commission require that notice be provided to parties participating in this rulemaking project. It further maintained that there is an urgent need for customer education regarding CES because many customers are accustomed to receiving these services from their utilities and either do not know that CES are available from competitive providers or lack information regarding the multiple competitive providers that exist. In addition to the list of CES providers, it suggested that the commission consider requiring that transmission and distribution utilities (TDUs) inform their customers that some CES providers have provided contact information at the commission, provide relevant docket numbers, address of the commission's website, and the commission's phone number.

In reply comments, with regard to the sufficiency of notice for a petition, TXU/Oncor stated that a TDU has no method by which to identify potential vendors or providers of CES and that newspaper notice as provided in the rule should be sufficient. Also, it stated that TDUs should

not be forced to essentially become marketing agents for competitive service providers and that Oncor's rates do not provide for cost recovery for such customer education.

AEP questioned the usefulness of an "interested persons" list for providing notice when a utility petitions the commission to provide a CES. AEP noted that if the services are available and providers are actively and effectively marketing their services, it is highly unlikely that a utility would expend the resources to file a petition. Also, AEP adamantly opposed any requirement that the utility provide to its customers a list or any other information about competitive service providers. According to AEP, service providers competing to provide these services should engage in their own marketing campaign and utilities should not be involved.

Commission response

The commission considers the input of competitive energy service providers to be very important in making a determination regarding a petition under §25.343(d). Therefore, the commission modifies §25.343(d) to require that notice in petition proceedings be given to all entities that have requested notice of petitions by filing such request in a separate project to be established by the commission for this purpose. While the commission agrees with AEP that notice should be tailored to reach affected interests, the commission maintains that notice in the newspaper, to all certified REPs in Texas, and to entities specifically requesting such notice are appropriate methods to achieve that goal, especially given the broad array of competitive energy services that could be addressed in a utility's petition. The commission does not find that the required

newspaper notice is overly burdensome or costly for a utility. It simply requires notice once a week for two weeks in a newspaper in general circulation throughout the service area for which the petition is requested.

The commission believes that utilities should not be required to provide specific information regarding competitive service providers in their respective service areas. While the utility should have a role in educating customers about competitive energy services generally, when appropriate, it is not the utility's responsibility to serve as a reference for customers to find individual competitive service providers or to direct customers to the commission for this purpose.

As discussed previously, however, the commission agrees with CSSP that additional education regarding the availability of competitive energy services is needed, and it is willing to provide general information on its website. But the commission does not find that it is appropriate for the commission to maintain a list of specific CES providers and their contact information. In addition to potential liability issues arising from the perception that the commission's inclusion of a provider on the list is a tacit endorsement of that provider's services, the commission is concerned, based on prior experience, that such a contact list could lead to customer calls or complaints about service providers over which the commission has no formal jurisdiction. Consumer transactions between competitive energy service providers and their customers are governed generally by laws that are not within the commission's authority to enforce. The commission is also concerned with staffing such an activity. For these reasons, the commission

finds that such a clearinghouse function would be more properly provided by business alliances, trade associations, and other general commercial marketing avenues, rather than by the commission or utilities.

§25.343(d) - Length of time a utility may provide a petitioned service

With regard to §25.343(d)(1)(C)(ii), CSSP stated that the utility should be able to provide a CES pursuant to petition for only two years and not for three as is currently proposed. It stated that a term longer than two years creates a disincentive for stimulating development of the market, i.e., that the longer a utility provides a service, the longer customers and competitive providers will wait to take actions to participate in the market for the particular service. In reply comments, TXU stated that the three year period is better than a two year period because allowing a TDU to provide the CES for a longer period of time should result in a longer period for amortizing the costs associated with them, thereby benefiting consumers.

Commission response

The commission believes that a three-year period is the best approach with regard to the length of time that a TDU may provide a petitioned service. The three-year period affords the TDU an opportunity to pull together the necessary components to provide the service and to do so for a meaningful amount of time before being required to terminate the service again or to re-petition the commission to continue offering the service. Quite simply stated, it might not be worthwhile

for a TDU to offer such a service for a period shorter than three years. Further, the petition process under §25.343(d)(2) serves as a check and balance by which a petitioned service may be ended if such service has become widely available to customers in an area. Therefore, the commission declines to modify the rule as proposed by CSSP.

Proposed §25.343(f)(1) - Definition of emergency situation (now (g)(1))

CSSP stated that the language, "a significant interruption to customer's business activities," should not be a criterion that constitutes an emergency situation in which a TDU is allowed to provide transformation and protection equipment and/or transmission and substation repair services on the customer facilities. CSSP commented that this phrase is difficult to define because from many customers' perspectives, every interruption is significant. CSSP noted that if business interruption is important to customers, then certain actions should have been taken by the customer to avoid getting into an "emergency situation" in which the customer requires the TDU's services.

CSSP also stated that allowing for provision of these services by a TDU goes against the foundation of SB 7 and interferes with the competition that can be developed in the market for the energy services. CSSP stated that the inclusion of this criterion with a vague definition in the description of an emergency situation allows TDUs complete flexibility to participate in a vital retail market for the energy services being provided. CSSP also noted that allowing these services by a TDU would affect the customers' business decisions and may deter development of

a vital market for the services, and that customers would be discouraged from seeking these services from providers other than the TDU in order to avoid interruption because the TDU can provide the services at a price that is ultimately subsidized by the utilities' ratepayers. According to CSSP, this creates an unfair market condition for those businesses that have chosen to take a more conservative approach to significant interruptions and have invested capital on their facilities, either when initially constructed or by adding system enhancements to existing facilities, compared to those businesses with no redundant equipment or significant interruption plans (and as a result with less cost and backup service).

TXU/Oncor argued that CSSP is incorrect in its contention that the utility will provide the emergency services at a price ultimately subsidized by the utility's ratepayers because proposed §25.343(f)(4) clearly specifies that the emergency service shall be based on a fully unbundled embedded cost-based discretionary services tariff. In addition, TXU/Oncor disagreed with the position that if a customer in an emergency situation needs transformation and protection equipment, then the utility should provide the equipment and allow the installation to be provided by competitive service providers.

CSSP recommended numerous amendments to the proposed rule if the commission maintains the language regarding a significant interruption to business activities. One proposed amendment would limit the term "emergency situation" to only the interruption to the customer's emergency systems, and would also provide definitions of "emergency systems" and "vital electric service." CSSP stated that customer profits and financial impact should not be a consideration in

determining whether a significant interruption constitutes an emergency situation. CSSP also proposed another criterion to be used to determine whether a competitive energy service could be provided in an emergency situation, i.e., whether the utility could respond more quickly than the available competitive service provider in order to avoid a health-threatening emergency. CSSP also proposed language to require that the customer provide proof that the CES provider contacted by the customer cannot procure the equipment within 48 hours and that the utility can procure the equipment within 48 hours, or alternatively, that the customer has not been able to procure the equipment in this amount of time since the emergency has occurred. CSSP also suggested amendments to the reporting and record-keeping requirements to require proof of such record-keeping and reporting to be provided.

TXU/Oncor argued that CSSP's proposed definition of "emergency situation" is too complex, would be impossible to implement, and would render the provision useless for customers. TXU/Oncor stated that it is not in the best interests of customers, the competitive energy services market, or the State of Texas for customers to be without power for 48 hours before the situation can be classified as an emergency. TXU/Oncor also argued that a situation does not have to be as grave as "life-threatening" to be an emergency. In addition, TXU/Oncor disagreed with CSSP's proposed definition of vital electric service, which TXU/Oncor stated comes from extracted provisions of the National Electric Code in an attempt to justify CSSP's proposed limitation on emergency assistance. TXU/Oncor maintained that these proposed changes make the rule too complicated. TXU/Oncor inquired how a customer, let alone the utility, is supposed to determine if the customer's loss of power meets the proposed definition.

Commission response

The commission intends for emergency services under §25.343(g) (§25.343(f) in the proposed rule) to be provided by utilities to end-use customers only on a limited basis as a safeguard and not as a substitute for routine maintenance activities or other non-emergency purposes. The commission recognizes, however, that the criterion in the proposed rule related to a "likely risk of significant interruption of business activities" is vague and could lead to inappropriate requests by customers to obtain emergency services from utilities as a matter of convenience and not true necessity. As pointed out by CSSP, any outage may be viewed as "significant" by the affected customer. The commission is concerned that including this criterion in the rule may lead to abuse of this emergency service exception. Also, while the commission appreciates CSSP's efforts to further clarify this term, the commission does not believe that it is necessary or appropriate to make such a change. The purpose of this provision is to ensure a safety net in the event of a true necessity, and the commission finds that the remaining criteria related to safety, health, and the environment are sufficient to accomplish this purpose. Therefore, the commission amends the rule by deleting the criterion related to a significant interruption of business activities and makes other clarifying changes to this subsection.

With regard to CSSP's proposed criterion regarding whether the utility could respond more quickly than the available competitive service provider in order to avoid a health-threatening emergency, the commission finds that such criterion is not necessary because the rule already

contains a requirement that the utility consider whether the customer has been unable to procure within a reasonable time the necessary services from a competitive provider. The commission also finds that the reporting and record-keeping requirements in the proposed rule are sufficient to ensure that this provision is not abused and is closely monitored by the commission and other interested parties. The commission does not believe that additional proof related to the customer's actions is needed or is appropriate to include in this rule.

Proposed §25.341(f)(1) - Discretion of electric utility in emergency situations

EGSI stated that the provision of competitive energy services even in emergency situations must be at the discretion of the electric utility and cannot be mandatory. EGSI explained that in some cases, such as a major storm, the utility must be allowed to address the needs of all of its customers and not be required to address the needs of a sole customer. Accordingly, EGSI proposed an additional criterion to be considered by the utility when determining whether to provide the service in an emergency situation, i.e., whether provision of such service would adversely affect service to the utility's remaining customers.

Commission response

The commission agrees with EGSI that it is appropriate to include an additional criterion in the rule to clarify that the utility shall consider whether provision of the emergency service would interfere with the utility's ability to meet its system needs. It is not the intent of this emergency

provision to jeopardize the utility's remaining customers. And while the commission agrees with EGSI that the utility's provision of emergency services is discretionary, it notes that if such service is provided, it must be provided to any affected customer on a non-discriminatory basis based on the criteria set forth in this subsection. Accordingly, the commission adds new subparagraph (C) to §25.343(g)(1) to include the additional criterion related to system needs and amends §25.343(g)(4) to clarify that the tariff-filing requirement is mandatory only for utilities providing emergency service. The commission also finds that it is appropriate to modify the definition of "discretionary service" in §25.341(4) to explicitly include emergency services under §25.343(g).

Proposed §25.343(f)(3) - Written verification of emergency situation

EGSI also pointed out that an electric utility can only request a written statement of the emergency situation from a customer, and has no authority to require such a statement. Finally, EGSI stated that 48 hours is not enough time for the utility to obtain the required statement.

Commission response

The commission agrees with EGSI that it is appropriate to provide additional time for the utility to obtain the written statement from a customer. And while the commission stresses the importance of obtaining the customer's statement for record-keeping purposes, the commission recognizes that the utility has no authority to require such a written statement from the customer.

Therefore, the commission amends §25.343(g)(3)(A) as proposed by EGSI to allow three business days for the utility to attempt to obtain the statement from the customer.

Proposed §25.343(f)(4) - Charges for a CES in an emergency situation

TXU/Oncor expressed concern over the portion of the proposed rule that requires the charges for a competitive energy service in an emergency situation to be based on a filed and fully unbundled, embedded cost-based discretionary tariff. TXU/Oncor noted that, from its perspective, it already has such a tariff approved in its unbundling case, and that, as such its existing approved charges are already based on fully unbundled, embedded costs. TXU/Oncor expressed concern that it would be very difficult, if not impossible, to create a detailed tariff that includes specific charges for every potential cost or service that could be needed in an emergency situation. TXU/Oncor also requested that proposed subsection (f)(4) be clarified to reflect that the charge for such discretionary services can be billed directly to the requesting party.

Commission response

The commission agrees with TXU/Oncor that it is not necessary to develop a new rate schedule solely for emergency service and agrees that it would be nearly impossible to identify the specific charges for every potential cost or service. However, the commission finds that

emergency service should be separately identified in the utility's discretionary charges rate schedule with a description of the service, and amends §25.343(g)(4) accordingly.

The commission also agrees with TXU/Oncor that it would be appropriate for the utility to directly bill the requesting entity for emergency services provided under §25.343(g), and amends the rule to make this explicit. Pursuant to the Tariff for Retail Delivery Service (§25.214 of this title, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), TDUs are currently allowed to bill end-use customers for construction-related discretionary services. While the tariff does not currently permit a TDU to bill an end-use customer for other discretionary services, the commission finds that it is reasonable to allow such direct billing for emergency services, especially given that these services will be provided infrequently and will involve direct interaction between the TDU and the end-use customer. The commission notes that it would be necessary in the future to amend §5.8.1 of the Tariff for Retail Delivery Service to clarify that a TDU can directly bill a customer for this limited purpose; nonetheless, the commission includes language in §25.343(g) to clarify that direct customer billing is permitted prior to such tariff changes.

§25.343 - Additional comments

TXU/Oncor proposed a new subsection to §25.343 and language to address possible situations in which the protocols, guides, or rules of an independent organization require a TDU to take an

action that could be perceived as a service for an end-use customer. TXU/Oncor recommended adding a new subsection to provide an exception from the CES rules for these situations.

In reply comments, CSSP strongly disagreed with this proposal because it believes that this creates a situation in which the TDU can provide any of the services listed in §25.341(3) as long as they receive approval at ERCOT. CSSP stated that ERCOT protocols, etc., should comply with the commission's rules, not the other way around, and that the TDUs should review the ERCOT protocols, etc., and raise any possible conflicts at ERCOT to ensure consistency.

Commission response

The commission agrees with CSSP and, therefore, declines to make the requested change.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.002(a), 14.001, 14.002, 38.022, 39.001, 39.051, 39.402 (Vernon 1998, Supplement 2003) (PURA). Section 11.002(a) requires the establishment of a comprehensive and adequate regulatory system by the commission to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate

and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 39.001 states the legislative policy and purpose for a competitive electric power industry. Section 39.051 requires that on or before September 1, 2000, each electric utility separate from its regulated utility activities any customer energy services business activities that are already widely available in the competitive market. Section 39.402 addresses the regulation of Southwestern Public Service Company and its transition to competition.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 38.022, 39.001, 39.051, and 39.402.

§25.341. Definitions.

The following words and terms, when used in Division 1 of this subchapter (relating to Unbundling and Market Power), shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Advanced metering** — Includes any metering equipment or services that are not transmission and distribution utility metering system services as defined in this section.

(2) **Additional retail billing services** — Retail billing services necessary for the provision of services as prescribed under Public Utility Regulatory Act (PURA) §39.107(e) but not included in the definition of transmission and distribution utility billing system services under this section.

(3) **Competitive energy services** — Customer energy services business activities that are capable of being provided on a competitive basis in the retail market. Examples of competitive energy services include, but are not limited to the marketing, sale, design, construction, installation, or retrofit, financing, operation and maintenance, warranty and repair of, or consulting with respect to:

(A) energy-consuming, customer-premises equipment;

(B) the provision of energy efficiency services, the control of dispatchable load management services, and other load-management services;

(C) the provision of technical assistance relating to any customer-premises process or device that consumes electricity, including energy audits;

(D) customer- or facility-specific energy efficiency, energy conservation, power quality, and reliability equipment and related diagnostic services provided, however, that this does not include reasonable diagnostic actions by an electric utility when responding to service complaints;

(i) reasonable diagnostic actions include actions necessary to determine if a power quality problem resides with the customer's equipment or with the utility's equipment and to notify the customer that the problem has been attributed to either the utility's equipment or the customer's equipment;

(ii) reasonable diagnostic actions do not include recommendations or actions to correct problems related to equipment on the customer's side of the delivery point that is owned by the customer or by a third-party entity that is not an electric utility;

(E) the provision of anything of value other than tariffed services to trade groups, builders, developers, financial institutions, architects and engineers, landlords, and other persons involved in making decisions relating to investments in energy-consuming equipment or buildings on behalf of the ultimate retail electricity customer;

(F) except as provided in §25.343(f) and (g) of this title (relating to Competitive Energy Services), transformation equipment, power-generation equipment, protection equipment, or other electric apparatus and infrastructure located on the customer's side of the point of delivery

that is owned by the customer or by a third-party entity that is not an electric utility. For purposes of this subparagraph, point of delivery means the point at which electric power and energy leave the utility's delivery system;

(G) the provision of information relating to customer usage other than as required for the rendering of a monthly electric bill, including electrical pulse service, provided however that the provision of access to pulses from a meter used to measure electric service for billing in accordance with §25.129 of this title (relating to Pulse Metering), shall not be considered a competitive energy service;

(H) communications services related to any energy service not essential for the retail sale of electricity;

(I) home and property security services;

(J) non-roadway, outdoor security lighting; however, an electric utility may, pursuant to an approved fully unbundled, embedded-cost tariff:

(i) continue to maintain lighting facilities installed prior to September 1, 2000 and lighting facilities installed as a petitioned service by the utility. Maintenance service includes the installation of replacement lighting fixtures on such lighting facilities; and

(ii) install and maintain utility-approved lighting fixtures that are owned by and provided to the utility by a retail customer or a retail

electric provider, provided that the lighting fixtures are installed on utility-owned poles that are suitable for this purpose;

(K) building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;

(L) hedging and risk management services;

(M) propane and other energy-based services;

(N) retail marketing, selling, demonstration, and merchant activities;

(O) facilities operations and management;

(P) controls and other premises energy management systems, environmental control systems, and related services;

(Q) customer-premises energy or fuel storage facilities;

(R) performance contracting (commercial, institutional, and industrial);

(S) indoor air quality products (including, but not limited to air filtration, electronic and electrostatic filters, and humidifiers);

(T) duct sealing and duct cleaning;

(U) air balancing;

(V) customer-premise metering equipment and related services other than as required for the measurement of electric energy necessary for the rendering of a monthly electric bill or to comply with the rules and procedures of an independent organization; and

(W) other activities determined to be a competitive energy service by the commission by rule or order.

(4) **Discretionary service** — Service that is related to, but not essential to, the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with a retail customer or other third-party facilities. This term also includes emergency services provided by an electric utility on customer facilities pursuant to §25.343(g) of this title.

(5) **Distribution** — For purposes of §25.344(g)(2)(C) of this title (relating to Cost Separation Proceedings), distribution relates to system and discretionary services associated with facilities below 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with a retail customer or other third-party facilities, and related processes necessary to perform such transformation and movement. Distribution does not include activities related to transmission and distribution utility billing services, additional billing services, transmission and distribution utility metering services, and transmission and distribution customer services as defined by this section.

(6) **Electrical pulse (or pulse)** — The impulses or signals generated by pulse metering equipment, indicating a finite value, such as energy, registered at a point of delivery as defined in the Tariff for Retail Delivery Service.

(7) **Electrical pulse service** — Use of pulses for any purpose other than for billing, settlement, and system operations and planning.

(8) **Electronic data interchange** — The computer-application-to-computer-application exchange of business information in a standard format.

(9) **Energy service** — As defined in §25.223 of this title (relating to Unbundling of Energy Service).

(10) **Generation** — For purpose of §25.344(g)(2)(A) of this title, generation includes assets, activities, and processes necessary and related to the production of electricity for sale. Generation begins with the acquisition of fuels and their conversion to electricity and ends where the generation company's facilities tie into the facilities of the transmission and distribution system.

(11) **Pulse metering equipment** — Any device, mechanical or electronic, connected to a meter, used to measure electric service for billing, which initiates pulses, the number of which are proportional to the quantity being measured, and which may include external protection devices. Except as otherwise provided in §25.311 of this title (relating to Competitive Metering Services), pulse metering equipment shall be considered advanced metering equipment that shall be owned, installed, operated, and maintained by a transmission and distribution utility and such ownership, installation, operation and maintenance shall not be a competitive energy service.

(12) **Stranded cost charges** — Competition transition charges as defined in §25.5 of this title (relating to Definitions) and transition charges established pursuant to PURA §39.302(7).

(13) **System service** — Service that is essential to the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facility, to the point of interconnection with a retail customer or other third-party facility. System services include, but are not limited to, the following:

(A) the regulation and control of electricity in the transmission and distribution system;

(B) planning, design, construction, operation, maintenance, repair, retirement, or replacement of transmission and distribution facilities, equipment, and protective devices;

(C) transmission and distribution system voltage and power continuity;

(D) response to electric delivery problems, including outages, interruptions, and voltage variations, and restoration of service in a timely manner;

(E) commission-approved public education and safety communication activities specific to transmission and distribution that do not preferentially benefit an affiliate of a utility;

(F) transmission and distribution utility standard metering and billing services as defined by this section;

(G) commission-approved administration of energy savings incentive programs in a market-neutral, nondiscriminatory manner, through standard offer programs or limited, targeted market transformation programs; and

(H) line safety, including tree trimming.

(14) **Transmission** — For purposes of §25.344(g)(2)(B) of this title, transmission relates to system and discretionary services associated with facilities at or above 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with distribution, retail customer or other third-party facilities, and related processes necessary to perform such transformation and movement. Transmission does not include activities related to transmission and distribution utility billing system services, additional billing services, transmission and distribution utility metering system services, and transmission and distribution utility customer services as defined by this section.

(15) **Transmission and distribution utility billing system services** — For purposes of §25.344(g)(2)(E) of this title, transmission and distribution utility billing system services relate to the production and remittance of a bill to a retail electric provider for the transmission and distribution charges applicable to the retail electric provider's customers as prescribed by PURA §39.107(d), and billing for wholesale transmission service to entities that qualify for such service. Transmission and distribution utility billing system services may include, but are not limited to, the following:

(A) generation of billing charges by application of rates to customer's meter readings, as applicable;

(B) presentation of charges to retail electric providers for the actual services provided and the rendering of bills;

(C) extension of credit to and collection of payments from retail electric providers;

(D) disbursement of funds collected;

(E) customer account data management;

(F) customer care and call center activities related to billing inquiries from retail electric providers;

(G) administrative activities necessary to maintain retail electric provider billing accounts and records; and

(H) error investigation and resolution.

(16) **Transmission and distribution utility customer services** — For purposes of §25.344(g)(2)(G) of this title, transmission and distribution customer services relate to system and discretionary services associated with the utility's energy efficiency programs, demand-side management programs, public safety advertising, tariff administration, economic development programs, community support, advertising, customer education activities, and any other customer services.

(17) **Transmission and distribution utility metering system services** — For purposes of §25.344 of this title, services that relate to the installation,

maintenance, and polling of an end-use customer's standard meter. Transmission and distribution utility metering system services may include, but are not limited to, the following:

(A) ownership of standard meter equipment and meter parts;

(B) storage of standard meters and meter parts not in service;

(C) measurement or estimation of the electricity consumed or demanded by a retail electric consumer during a specified period limited to the customer usage necessary for the rendering of a monthly electric bill;

(D) meter calibration and testing;

(E) meter reading, including non-interval, interval, and remote meter reading;

(F) individual customer outage detection and usage monitoring;

(G) theft detection and prevention;

(H) installation or removal of metering equipment;

(I) the operation of meters and provision of information to an independent organization, as required by its rules and protocols; and

(J) error investigation and re-reads.

§25.342. Electric Business Separation.

(a) **Purpose.** The purpose of this section is to identify the competitive electric industry business activities that must be separated from the regulated transmission and distribution utility and performed by a power generation company (PGC), a retail electric provider (REP), or some other business unit pursuant to the Public Utility Regulatory Act (PURA) §39.051. This section establishes procedures for the separation of such business activities.

(b) **Application.** This section shall apply to electric utilities, as defined in §25.5 of this title (relating to Definitions).

(c) **Compliance and timing.**

(1) The commission shall prescribe a schedule for the filing of a business separation plan prior to the introduction of customer choice for an electric utility that is subject to PURA §39.102(c) or §39.402. Pursuant to such schedule, an affected electric utility shall separate from its regulated utility activities its customer energy services business activities and shall separate its business activities in accordance with subsection (d) of this section.

(2) Upon review of the filing, the commission shall adopt the electric utility's plan for business separation, adopt the plan with changes, or reject the plan and require the electric utility to file a new plan.

(d) **Business separation.**

(1) An electric utility may not offer competitive energy services; however, an electric utility may petition the commission pursuant to §25.343(d) of this title (relating to Competitive Energy Services) for authority to provide to its Texas customers or some subset of its customers any service otherwise identified as a competitive energy service.

(2) Each electric utility shall separate its business activities and related costs into the following units: power generation company; retail electric provider; and transmission and distribution utility company. An electric utility may accomplish this separation either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission utility and distribution utility companies.

(3) Each electric utility, subject to PURA §39.157(d), shall comply with this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with PURA §39.157(d) and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(4) All transfers of assets and liabilities to separate affiliated or nonaffiliated companies, a power generation company, retail electric provider, or a transmission and distribution utility company during the initial business separation process shall be recorded at book value.

(5) The commission, in approving a plan under subsection (c) of this section, may prescribe dates for the discontinuation of competitive energy services and the separation of business activities.

(e) **Business separation plans.** Each electric utility subject to PURA §39.051(e) that has not separated its business functions shall file a business separation plan with the commission according to a commission-approved Business Separation Plan Filing Package (BSP-FP) on a date prescribed by the commission. An electric utility for which the commission has previously approved a business separation plan is not required to file an additional plan under this section. If necessary, however, the commission may require such electric utility to file updated information or modifications to its existing business separation plan.

(1) The business separation plan shall include, but shall not be limited to, the following:

(A) A description of the financial and legal aspects of the business separation, the functional and operational separations, physical separation, information systems separation, asset transfers during the initial unbundling, separation of books and records, and compliance with §25.272 of this title both during and after the transition period.

(B) A description of all services provided by the corporate support services company, as well as any corporate support services provided by another separate affiliate including pricing methodologies.

(C) A proposed internal code of conduct that addresses the requirements in §25.272 of this title and the spirit and intent of PURA §39.157. The internal code of conduct shall address each provision of §25.272 of this title, and shall provide detailed rules and procedures, including employee training, enforcement, and provisions for penalties for violations of the internal code of conduct.

(D) A description of each competitive energy service provided within Texas by the electric utility, including a detailed plan for completely and fully separating these competitive energy services, as set forth in §25.343 of this title.

(E) Descriptions of all system services, discretionary services, and other services pursuant to subsection (f) of this section to be provided within Texas by the transmission and distribution utility.

(2) To the extent that not all of the detailed information required to be filed on the date prescribed by the commission is available, the electric utility shall provide a firm schedule for supplemental filings. The commission shall approve only portions of the business separation plan for which complete information is provided.

(f) **Separation of transmission and distribution utility services.**

(1) **Classification of services.** Each service offered, or potentially offered, by a transmission and distribution utility shall be classified as one of the following:

(A) **System service.** The costs associated with providing system service are system-wide costs that are borne by the retail electric provider serving all transmission and distribution customers.

(B) **Discretionary service.**

(i) The cost associated with each discretionary service is customer-specific and should be borne only by the retail electric provider serving the transmission and distribution customer who purchases the discretionary service.

(ii) Each discretionary service shall be provided by the transmission and distribution utility on a nondiscriminatory basis pursuant to a commission-approved embedded cost-based tariff.

(iii) The costs associated with providing discretionary services are tracked separately from costs associated with providing system services.

(iv) A discretionary service is not a competitive energy service as defined by §25.341 of this title (relating to Definitions).

(C) **Petitioned service.** Service in which a petition to provide a specific competitive energy service has been granted by the commission pursuant to §25.343(d)(1) of this title.

(D) **Other service.**

(i) The offering of any other services shall be limited to those services which:

(I) maximize the value of transmission and distribution system service facilities; and

(II) are provided without additional personnel and facilities other than those essential to the provision of transmission and distribution system services.

(ii) If the transmission and distribution utility offers a service under clause (i) of this subparagraph, the transmission and distribution utility shall:

(I) track revenues and to the extent possible the costs for each service separately;

(II) offer the service on a non-discriminatory-basis, and if the commission determines that it is appropriate, pursuant to a commission-approved tariff, and;

(III) credit all revenues received from the offering of this service during the test year after known and measurable adjustments are made to lower the revenue requirement of the transmission and distribution utility on which the rates are based.

(2) **Competitive energy services**. A transmission and distribution utility shall not provide competitive energy services as defined by §25.341 of this title except as permitted pursuant to §25.343 of this title.

§25.343. Competitive Energy Services.

(a) **Purpose.** The purpose of this section is to identify competitive energy services, as defined in §25.341 of this title (relating to Definitions), that shall not be provided by affected electric utilities.

(b) **Application.** This section applies to electric utilities, as defined by the Public Utility Regulatory Act (PURA) §31.002(6), which include transmission and distribution utilities as defined by PURA §31.002(19). This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period. This section shall not apply to an electric utility subject to PURA §39.402 until customer choice begins in the utility's service area.

(c) **Competitive energy service separation.** An electric utility shall not provide competitive energy services, except for the administration of energy efficiency programs as specifically provided elsewhere in this chapter, and except as provided in subsections (f) and (g) of this section.

(d) **Petitions relating to the provision of competitive energy services.**

(1) **Petition by an electric utility to provide a competitive energy service.** A utility may petition the commission to provide on an unbundled-tariffed basis a competitive energy service that is not widely available to customers in an area. The utility has the burden to prove to the commission that the service is not

widely available in an area. The utility's petition may be filed jointly with an affected person or with commission staff.

(A) **Review of petition.** In reviewing an electric utility's petition to provide a competitive energy service, the commission may consider, but is not limited to, the following:

(i) geographic and demographic factors;

(ii) number of vendors providing a similar or closely related competitive energy service in the area;

(iii) whether an affiliate of the electric utility offers a similar or closely-related competitive energy service in the area;

(iv) whether the approval of the petition would create or perpetuate a market barrier to entry for new providers of the competitive energy service.

(B) **Petition deemed approved.** A petition shall be deemed approved without further commission action on the effective date specified in the petition if no objection to the petition is filed with the commission and adequate notice has been completed at least 30 days prior to the effective date. The specified effective date must be at least 60 days after the date the petition is filed with the commission. Notice shall be provided to all entities that have requested notice of petitions by filing such request in a project to be established by the commission, to all retail electric providers in Texas that are certified at the time of the petition, and through a newspaper

publication once a week for two consecutive weeks in a newspaper in general circulation throughout the service area for which the petition is requested. Such notice shall state in plain language:

(i) the purpose of the petition;

(ii) the competitive energy service that is the subject of the petition; and

(iii) the date on which the petition will be deemed approved if no objection is filed with the commission.

(C) **Approval of petition.**

(i) If a petition under this paragraph is granted, the utility shall provide the petitioned service pursuant to a fully unbundled, embedded cost-based tariff.

(ii) The utility's petition to offer the competitive energy service terminates three years from the date the petition is granted by the commission, unless the commission approves a new petition from the utility to continue providing the competitive energy service.

(iii) The costs associated with providing this service shall be tracked separately from other transmission and distribution utility costs.

(2) **Petition to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service.** An affected person or the commission staff may petition the commission to classify a service as a competitive energy service or to end the designation of a competitive

energy service as a petitioned service. The commission may consider factors including, but not limited to, the factors in paragraph (1) of this subsection (where applicable) when reviewing a petition under this paragraph.

(e) **Filing requirements.**

(1) An electric utility shall file the following as part of its business separation plan pursuant to §25.342 of this title (relating to Electric Business Separation):

(A) descriptions of each competitive energy service provided by the utility;

(B) detailed plans for completely and fully separating competitive energy services; and

(C) petitions, if any, with associated unbundled tariffs to provide a competitive energy service(s) pursuant to subsection (d)(1) of this section. As part of this filing, affected utilities shall provide all supporting workpapers and documents used in the calculation of the charges for the petitioned services.

(2) An electric utility shall file complete cost information related to paragraph (1) of this subsection pursuant to §25.344 of this title (relating to Cost Separation Proceedings) and the Unbundled Cost of Service Rate Filing Package (UCOS-RFP).

(f) **Exceptions related to certain competitive energy services.** An electric utility may not own, operate, maintain or provide other services related to equipment of the type

described in §25.341(3)(F) of this title, except in any of the following instances or as otherwise provided in this subchapter or by commission order.

(1) An electric utility may provide equipment, maintenance, and repair services in an emergency situation as set forth in subsection (g) of this section.

(2) An electric utility may provide maintenance service to high-voltage protection equipment and other equipment located on the customer's side of delivery point that is an integral part of the utility's delivery system. For purposes of this subsection, the point of delivery means the point at which electric power and energy leave a utility's delivery system.

(3) An electric utility may own equipment located on the customer's side of the point of delivery that is necessary to support the operation of electric-utility-owned facilities, including, but not limited to, billing metering equipment, batteries and chargers, system protection apparatus and relays, and system control and data acquisition equipment.

(4) Until the earlier of January 1, 2008, or the date the commission grants a petition by an affected person to discontinue facilities-rental service provided by an electric utility under this subsection, an electric utility may, pursuant to a commission-approved tariff, continue to own and lease to a customer distribution-voltage facilities on the customer's side of the point of delivery, if the customer was receiving facilities-rental service under a commission-approved tariff prior to September 1, 2000, and the customer elects to continue to lease the facilities.

Facilities-rental service shall be provided in accordance with the following requirements.

(A) If the customer elects to continue to lease the facilities from the electric utility, the customer will retain the options of purchasing the rented facilities, renting additional facilities at that same point of delivery, or terminating the facilities-rental arrangement.

(B) Once all of the facilities formerly leased by the electric utility to the customer have been removed from the customer's side of the point of delivery or have been acquired by the customer, the electric utility may no longer offer facilities-rental service at that point of delivery.

(C) The electric utility may continue to operate and maintain the leased facilities pursuant to a commission-approved tariff.

(D) No later than March 1, 2007, an electric utility that provides facilities-rental service shall file with the commission a report on the status of affected facilities and market conditions for this service. At that time, the electric utility shall also file either a plan to discontinue providing facilities-rental service or a petition pursuant to subsection (d)(1) of this section to continue such service.

(E) An affected person or the commission staff may file a petition under subsection (d)(2) of this section to have facilities-rental service classified as a competitive energy service. If the commission grants such a petition,

the affected electric utility shall discontinue facilities-rental service pursuant to a schedule determined by the commission.

(g) **Emergency provision of certain competitive energy services.**

(1) **Emergency situation.** Notwithstanding subsection (c) of this section, in an emergency situation, an electric utility may provide transformation and protection equipment and transmission and substation repair services on customer facilities. For purposes of this subsection, an "emergency situation" means a situation in which there is a significant risk of harm to the health or safety of a person or damage to the environment. In determining whether to provide the competitive energy service in an emergency situation, the utility shall consider the following criteria:

(A) whether the customer's facilities are impaired or are in jeopardy of failing, and the nature of the health, safety, or environmental hazard that might result from the impairment or failure of the facilities; and

(B) whether the customer has been unable to procure, or is unable to procure within a reasonable time, the necessary transformation and protection equipment or the necessary transmission or substation repair services from a source other than the electric utility.

(C) whether provision of the emergency service to the customer would interfere with the electric utility's ability to meet its system needs.

(2) **Notification and due diligence.** Prior to providing an emergency service as set forth in paragraph (1) of this subsection, the electric utility shall inform the customer that the requested service is a competitive energy service and that the utility is not permitted to provide the service unless it is an emergency situation. The utility must determine, based on information provided from the customer or by other methods, whether the situation is an emergency situation, as defined in paragraph (1) of this section.

(3) **Record keeping and reporting.**

(A) Not later than three business days after the determination of an emergency situation, the electric utility shall attempt to obtain from the customer a written statement explaining the emergency situation and indicating that the customer is aware that the service provided by the utility is a competitive energy service.

(B) The electric utility shall maintain for a period of three years a record of correspondence between the customer and the utility pertaining to the emergency provision of a competitive energy service in accordance with this subsection, including the statement required by subparagraph (A) of this paragraph.

(C) The electric utility shall include in a clearly identified manner the following information for the prior calendar year (January 1 through December 31) in its service quality report filed under §25.81 of this title (relating to Service Quality Reports):

(i) the number of instances in which the utility provided a competitive energy service pursuant to this subsection in the prior calendar year; and

(ii) a brief description of each event, excluding any customer-specific information, and the utility's action to respond to the emergency situation.

(4) **Discretionary service charge for provision of competitive energy services in emergency situation.** The charge for providing service pursuant to this subsection shall be based on a fully unbundled, embedded cost-based discretionary service tariff. An electric utility that seeks to provide emergency service under this subsection shall file with the commission an updated discretionary service rate schedule to implement this subsection. Notwithstanding other provisions in this chapter, an electric utility may directly bill the requesting entity for emergency service provided under this subsection.

(5) **Commission review.** Upon request, an electric utility shall make available to the commission all required records regarding the provision of competitive energy services pursuant to this subsection.

(h) **Evaluation of competitive energy services.** Every two years beginning in October 2005 or as otherwise determined by the commission, the commission shall evaluate the degree of competition for the competitive energy services described in §25.341 of this title to determine if they are widely available in areas throughout Texas.

(i) **Sale of non-roadway security lighting assets.** Prior to the execution of a sale of an electric utility's non-roadway security lighting assets described in §25.341(3)(J)(i) and (ii) of this title, the electric utility shall provide the commission reasonable notice of the proposed transaction.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

(a) **Purpose.** The purpose of this section is to identify and separate electric utility metering and billing service activities and costs for the purposes of unbundling.

(b) **Application.** This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002. This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period. This section shall not apply to an electric utility subject to PURA §39.402 until customer choice begins in the utility's service area.

(c) **Separation of transmission and distribution utility billing system service costs.**

(1) Transmission and distribution utility billing system services shall include costs related to the billing services described in §25.341(15) of this title (relating to Definitions).

(2) Charges for transmission and distribution utility billing system services shall not include any additional capital costs, operation and maintenance expenses, and any other expenses associated with billing services as prescribed by PURA §39.107(e).

(d) **Separation of transmission and distribution utility billing system service activities.**

(1) Transmission and distribution utility billing system services as defined in §25.341 of this title shall be provided by the transmission and distribution utility.

(2) The transmission and distribution utility may provide additional retail billing services pursuant to PURA §39.107(e).

(3) Additional retail billing services pursuant to PURA §39.107(e) shall be provided on an unbundled discretionary basis pursuant to a commission-approved embedded cost-based tariff.

(4) The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).

(e) **Uncollectibles and customer deposits.**

(1) The retail electric provider is responsible for collection of its charges from retail customers and measures to secure payment.

(2) For the purposes of functional cost separation in §25.344 of this title (relating to Cost Separation Proceedings), retail customer uncollectibles and deposits shall be assigned to the unregulated function, as prescribed by §25.344(g)(2)(I) of this title.

(f) **Separation of transmission and distribution utility metering system service costs.** Transmission and distribution utility metering system services shall include costs related to the transmission and distribution utility metering system services as defined in §25.341 of this title.

(g) **Separation of transmission and distribution utility metering system service activities.**

(1) **Metering services before the introduction of customer choice.**

(A) An electric utility shall continue to provide metering services pursuant to commission rules and regulations, but shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services).

(B) An electric utility may continue to use metering equipment installed, operated, and maintained by the utility prior to the introduction of customer choice, but may not use the information gained from its provision of the meter or metering services as defined in §25.341(3)(G) of this title except as permitted in §25.341(7) of this title.

(C) When requested by the end-use customer, an electric utility shall charge the end-use customer the incremental cost for the replacement of an end-use customer's meter with an advanced meter owned, operated, and maintained by the electric utility.

(2) **Metering services on and after the introduction of customer choice until metering services become competitive.** On the introduction of customer choice in a service area, metering services as described by §25.341(17) of this title for the area shall continue to be provided by the transmission and distribution utility

affiliate (or successor in interest) of the electric utility that was serving the area before the introduction of customer choice, but the transmission and distribution utility shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title.

(A) Standard meter.

(i) The standard meter shall be owned, installed, and maintained by the transmission and distribution utility except as prescribed by §25.311 of this title (relating to Competitive Metering Services).

(ii) The transmission and distribution utility shall bill a retail electric provider for non-bypassable charges based upon the measurements obtained from each end-use customer's standard meter.

(iii) If the retail electric provider requests the replacement of the standard meter with an advanced meter, the transmission and distribution utility shall charge the retail electric provider the incremental cost for the replacement of the standard meter with an advanced meter owned, operated, and maintained by the transmission and distribution utility.

(iv) Without authorization from the retail electric provider, the transmission and distribution utility's use of advanced meter data shall be limited to that energy usage information necessary for the calculation of transmission and distribution charges in accordance

with that end-use customer's transmission and distribution rate schedule.

(B) Meter reading. Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of determining an end-use customer's energy usage.

(C) End-use customer meters. Nothing in this section precludes the end-use customer or the retail electric provider from owning, installing, and maintaining metering equipment on the customer-premise side of the standard meter.

(D) Advanced metering services.

(i) The transmission and distribution utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title.

(ii) A transmission and distribution utility may continue to use metering equipment installed, operated, and maintained by the transmission and distribution utility consistent with the effective date established under paragraph (1)(B) of this subsection, but may not use the data obtained from its provision of the meter or metering services, except as permitted in subchapter O of this chapter (relating to Unbundling and Market Power).

(iii) The installation of advanced metering equipment on the transmission and distribution utility's standard meter must be

performed by transmission and distribution utility personnel or by contractors under the supervision of the utility.

(iv) For services relating to clause (iii) of this subparagraph, the transmission and distribution utility's charges to the retail electric provider for the installation and removal of any advanced metering equipment shall be reasonable and non-discriminatory and made pursuant to a commission-approved embedded cost based tariff. Except as otherwise provided in this section or by a commission order, the advanced metering equipment shall not be provided by the transmission and distribution utility.

(v) Advanced metering equipment provided to the transmission and distribution utility for installation onto the standard meter shall meet all current industry safety standards and performance codes consistent with §25.121 of this title (relating to Meter Requirements).

(vi) All advanced metering services and related costs shall be borne by the retail electric provider, except for charges for pulse metering equipment, installation and removal, which shall be borne by the entity executing the pulse metering equipment installation agreement.

(h) **Competitive energy services.**

(1) Nothing in this section is intended to affect the provision of competitive energy services, including those that require access to the customer's meter.

(2) An electric utility shall not provide any service that is deemed a competitive energy service under §25.341 of this title except as provided under §25.343 of this title.

(i) **Electronic data interchange.**

(1) **Standards.** All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission or the independent organization.

(2) **Settlement.** All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission or the independent organization.

(3) **Costs.** Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection, to the extent not collected elsewhere, such as through the Electric Reliability Council of Texas administrative fee.

This agency hereby certifies that the rules, as adopted, have 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 §25.341, relating to Definitions; §25.342, relating to Electric Business Separation; §25.343, relating to Competitive Energy Services; and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 18th DAY OF SEPTEMBER 2003.

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 Parsley, Commissioner