

The Public Utility Commission of Texas (commission) proposes new §25.41 relating to Price to Beat. The proposed new rule will implement the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.202 and §39.406 (Vernon 1998, Supplement 2000) as they relate to the regulation of the price to be offered by affiliated retail electric providers (REPs) for the five year period succeeding the implementation of retail choice. Project Number 21409 has been assigned to this proceeding.

The proposed rule establishes the calculation methodology and other requirements under which the price to beat will be established and administered by affiliated REPs. The commission believes that the 6.0% rate reduction embodied in Senate Bill 7, 76th Legislative Session, is an integral part of the restructuring process in Texas. However, the commission is cognizant of the experiences in other states. Where default services have not been reflective of the market prices of electricity for some or all of the months in a year, the development of a robust market has been largely stunted. Many retail customers who switched providers have returned to the default service during summer months, and in some cases, on a more permanent basis.

Under the proposed rule, the existing base rate structure will be maintained for price to beat rates and each rate component will be reduced by 6.0%. However, the proposed rule also requires the establishment of two seasonal fuel factors in order to complement the existing seasonality in the base rate structures of utilities in Texas. This requirement is

intended to assist the development of the retail electricity market by making the price to beat reflective of the differing costs of power during summer and non-summer months.

The obligation to offer the price to beat expires at the end of 60 months after the beginning of competition. The affiliated REP may also not offer rates other than the price to beat rates for residential or small commercial customers until the earlier of 36 months after competition begins, or when 40% of the residential or small commercial load served by the affiliated transmission and distribution utility prior to customer choice is served by non-affiliated REPs. The proposed rule establishes the methodology for calculating the 40% threshold for each class.

The proposed rule also sets procedures under which the fuel factor portion of the price to beat may be adjusted for changes in the price of electricity in the market, in accordance with PURA. The proposed adjustment mechanism is based on a percentage change in average forward gas prices from the gas prices used in setting the seasonal final fuel factors that will be effective beginning January 1, 2002. The proposed rule provides for a minimum 10% materiality threshold before the fuel factors may be adjusted. Under this standard, if the percentage change in gas prices exceeds 10%, then the affiliated REP may petition to adjust the seasonal fuel factor by percentage equal to the change in gas prices.

The proposed rule also establishes criteria for determining whether or not a customer is eligible for price to beat service. Under the proposed rule, all residential customers and small commercial customers with a peak demand of less than 1,000 kilowatts are eligible

for the price to beat. If a customer's peak demand exceeds 1,000 kilowatts, the customer is no longer eligible for price to beat service. However, a customer may be eligible again if the customer's peak demand does not exceed 1,000 kilowatts for a period of 12 consecutive months.

The commission staff conducted workshops to receive input from potentially affected persons on March 24, 2000, and June 23, 2000, in Austin. Written comments from a number of interested parties were submitted in connection with both of these workshops.

Thomas S. Hunter, Director, Legal Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hunter has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased retail competition and lower electric prices for residential and small commercial customers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to affiliated retail electric providers and transmission and distribution utilities that are required to comply with the proposed section. These costs may vary from business to business and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Moreover, Mr. Hunter has determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission seeks comments on the proposed rule from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rule. When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. Is the use of the NYMEX natural gas price index referenced in subsection (f)(3) appropriate for the establishment of two seasonal fuel factors? If not, what mechanism should be included in the rule to appropriately reflect the different cost of power in summer and non-summer months?
2. Is the use of the NYMEX natural gas price index referenced in subsection (g)(1) the appropriate mechanism to use in adjusting the fuel factor for significant

- changes in the price of natural gas and purchased energy? If a purchased power index should be used instead of the gas price index, what index should the commission use? Are there other adjustment mechanisms that would more accurately reflect significant changes in the price of natural gas and purchased energy?
3. In the provisions of paragraph (g)(1), is 10% the appropriate threshold for an adjustment to the fuel factors? If an index other than NYMEX natural gas prices is ultimately chosen by the commission, what threshold would be appropriate for that index?
  4. In light of the seasonal fuel factors proposed in subsection (f)(3), is the minimum contract term established in proposed PUC Substantive Rule §25.477(a)(8) (published in the September 1, 2000 *Texas Register* at 25 TexReg 8554) an appropriate or necessary mechanism to discourage customers from gaming the affiliate REPs' price to beat rates?
  5. Should the commission further define what showing should be required by an affiliated REP under subsection (g)(2) to demonstrate that the affiliated REP will not be able to maintain its financial integrity under the price to beat? If so, what standard should be used in this determination?
  6. Can the registration agent provide verification for small commercial customers similar to that described for residential customers in subsection (l)(4)(C)(i)?

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326,

Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 53 days after publication. All comments should refer to Project Number 21409.

The commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on January 10, 2001 in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §39.202 which establishes the price to beat obligation for affiliated retail electric providers.

Cross Reference to Statutes: PURA §§14.002, 39.152, 39.202, 39.262, and 39.406 .

**§25.41. Price to Beat.**

- (a) **Applicability.** This section applies to all affiliated retail electric providers (REPs) and transmission and distribution utilities, except river authorities. This section does not apply to an electric utility subject to Public Utility Regulatory Act (PURA) §39.102(c) until the end of the utility's rate freeze.
- (b) **Purpose.** The purpose of this section is to promote the competitiveness of the retail electric market through the establishment of the price to beat that affiliated REPs must offer to retail customers beginning on January 1, 2002 pursuant to PURA §39.202.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:
  - (1) **Affiliated electric utility** — The electric utility from which an affiliated REP was unbundled in accordance with PURA §39.051.
  - (2) **Competitive retailer** — A REP or a municipally owned utility or distribution cooperative that offers customer choice in the restructured competitive electric power market or any other entity authorized to sell electric power and energy at retail in Texas.
  - (3) **Nonaffiliated REP** — Any competitive retailer conducting business in a transmission and distribution utility's (TDU's) certificated service territory that is not affiliated with that TDU.

- (4) **Peak demand** — The highest 15-minute demand recorded during a 12-month period.
- (5) **Price to beat period** — The price to beat period shall be from January 1, 2002 to January 1, 2007. In a power region outside the Electric Reliability Council of Texas (ERCOT) the price to beat period continues until the later of 60 months after the date customer choice is introduced in the power region or the date the commission certifies the power region as a qualified power region.
- (6) **Provider of last resort** — As defined in §25.43 of this title (relating to Provider of Last Resort).
- (7) **Registration agent** — As defined in §25.454 of this title (relating to Rate Reduction Programs).
- (8) **Residential customer** — Retail customers classified as residential by the applicable transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity for personal, family or household purposes and who are not resellers of electricity.
- (9) **Small commercial customer** — A non-residential retail customer having a peak demand of 1,000 kilowatts (kW) or less.
- (10) **Transmission and distribution utility** — As defined in §25.5 of this title (relating to Definitions), except for purposes of this section, this term does not include a river authority.

- (d) **Price to beat offer.** Beginning with the first billing cycle of the price to beat period and continuing through the last billing cycle of the price to beat period, an affiliated REP shall make available to residential and small commercial customers of its affiliated transmission and distribution utility rates that, on a bundled basis, are 6.0% less than the affiliated electric utility's corresponding average residential and small commercial rates that were in effect on January 1, 1999, adjusted to reflect the fuel factor determined in accordance with subsection (f)(3)(A) of this section and adjusted for any base rate reduction as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999.
  
- (e) **Eligibility for the price to beat.** The following criteria shall be used in determining eligibility for the price to beat:
  - (1) **Residential customers.** All current and future residential customers, as defined by this section, shall be eligible for the price to beat rate(s) for which they meet the eligibility criteria in the applicable price to beat tariffs for the duration of the price to beat period. An affiliated REP may not refuse service under the price to beat to a residential customer unless that customer is delinquent in payment to the affiliated REP. An affiliated REP may not require residential customers to enter into service agreements with a term of service as a condition of obtaining service under the price to beat, nor may an affiliated REP provide any

inducements to encourage customers to agree to a term of service in conjunction with service under the price to beat.

(2) **Small commercial customers.**

(A) A non-residential customer taking service from the affiliated electric utility on December 31, 2001, shall be considered a small commercial customer under this section and shall be eligible for service under price to beat tariffs if that customer's peak demand during the calendar year 2001 does not exceed 1,000 kilowatts (kW). A non-residential customer with a peak demand in excess of 1,000 kW during calendar year 2001, or during the price to beat period, shall no longer be considered a small commercial customer under this section. However, any non-residential customer whose peak demand does not exceed 1,000 kW for any period of 12 consecutive months after it became ineligible to be a small commercial customer under this section shall be considered a small commercial customer for purposes of this section.

(B) All small commercial customers, as defined by this section, shall be eligible for the price to beat rate(s) for which they meet the eligibility criteria in the applicable price to beat tariffs for the duration of the price to beat period. An affiliated REP may not refuse service under the price to beat to a small commercial customer unless that customer is delinquent in payment to the affiliated REP. An affiliated REP may not require small

commercial customers to enter into service agreements with a term of service as a condition to obtaining service under the price to beat, nor may an affiliated REP provide any inducements to encourage customers to agree to a term of service in conjunction with service under the price to beat.

(f) **Calculation of the price to beat.**

(1) **Rates to be used for price to beat calculation.** The following criteria shall be used in determining the rates to be used for the price to beat calculation.

(A) Residential. A price to beat rate shall be calculated for each rate and service rider under which a residential customer was taking service on December 31, 2001, except for any special, temporary, or experimental rates or riders, such as real-time pricing, time of use, curtailable, interruptible, discounted, or marginal cost-based rates.

(i) Beginning with the first full billing cycle of the price to beat period, residential customers served by the affiliated REP shall be placed on the price to beat rate derived from the rate under which they were taking service on December 31, 2001.

(ii) Beginning with the first full billing cycle of the price to beat period, residential customers served by the affiliated

REP who were taking service under special, temporary, or experimental rates on December 31, 2001, shall be placed on the price to beat rate derived from any eligible residential rate that was available to the customer on December 31, 2001.

- (iii) New residential customers after December 31, 2001 may choose any price to beat rate for which they meet the eligibility requirements as detailed in the applicable price to beat tariff.
  - (iv) Residential customers who return to the affiliated REP after being served by a non-affiliated REP may choose any price to beat for which they meet the eligibility requirements as detailed in the applicable price to beat tariff(s).
  - (v) Notwithstanding clauses (i) – (iv) of this subparagraph, residential customers may request service under any price to beat rate for which they are eligible. Selection of the most advantageous rate shall be the sole responsibility of the residential customer.
- (B) Small commercial. A price to beat rate shall be calculated for each rate and service rider under which a small commercial customer was taking service, except for any special, temporary, or experimental rates or riders, such as real-time pricing, time of use, curtailable, interruptible, discounted, or marginal cost-based rates.

- (i) Beginning with the first full billing cycle of the price to beat period, small commercial customers served by the affiliated REP shall be placed on the price to beat rate derived from the rate under which they were taking service on December 31, 2001.
- (ii) Beginning with the first full billing cycle of the price to beat period, small commercial customers served by the affiliated REP beginning in January of 2002 who were taking service under special, temporary, or experimental rates on December 31, 2001 shall be placed on a price to beat rate derived from an eligible rate that was available to the customer on December 31, 2001.
- (iii) New small commercial customers after December 31, 2001 may choose any price to beat rate for which they meet the eligibility requirements as detailed in the applicable price to beat tariff.
- (iv) Small commercial customers who return to the affiliated REP after being served by a non-affiliated REP may choose any price to beat rate for which they meet the eligibility requirements as detailed in the price to beat tariff(s).
- (v) Notwithstanding clauses (i) – (iv) of this subparagraph, small commercial customers may request service under any price to beat tariff for which they are eligible. Selection of

the most advantageous rate shall be the sole responsibility  
of the small commercial customer.

- (2) **Base rate component of price to beat.** For the eligible rates identified in paragraph (1) of this subsection, the affiliated REP shall reduce each base rate component in effect for the affiliated electric utility on January 1, 1999, by 6.0% in order to determine the base rate component of the price to beat, with the following exceptions:

- (A) If base rates for the affiliated electric utility were reduced by more than 12% as the result of a final order issued by the commission after October 1, 1998, then the price to beat shall be the rate in effect as a result of a settlement approved by the commission after January 1, 1999.
- (B) For affiliated REPs operating in a region defined by PURA §39.401, the commission may reduce rates by less than 6.0% if the commission determines a lesser reduction is necessary and consistent with the capital requirements needed to develop the infrastructure necessary to facilitate competition among electric generators.
- (C) Except as provided in subparagraphs (A) and (B) of this paragraph, for any affiliated electric utility that has stipulated to rate reductions in a proceeding for which a final order had not been issued by January 1, 1999, such rate reductions shall be deducted from the base rates in effect on January 1, 1999, in addition to the

6.0% reduction. Such rate credits shall also be applied to the rates of the transmission and distribution utility.

(3) **Fuel factor component of price to beat.**

(A) Each affiliated electric utility shall file an application to establish two seasonal factors, to be effective on January 1, 2002, according to the following schedule:

- (i) April 1, 2001 - Reliant Houston Lighting & Power;
- (ii) May 1, 2001 - Texas Utilities Electric Company;
- (iii) June 1, 2001 - Texas-New Mexico Power Company and Entergy Gulf States, Inc.;
- (iv) July 1, 2001 - Central Power & Light Company and West Texas Utilities;
- (v) August 1, 2001 - Southwestern Electric Power Company and Southwestern Public Service Company.

(B) The rate year for the filing shall be calendar year 2002. The affiliated electric utility shall follow the requirements of §25.237(a)(1), (b), (c) and (e) of this title (relating to Fuel Factors) and the Fuel Factor Filing Package of November 23, 1993, for the filing of its seasonal fuel factors.

(C) Two seasonal factors shall be calculated by the affiliated electric utility in its filing to reflect the expected differences in the cost of natural gas in the generation mix between the two respective periods of June through September and October through May.

(D) Each affiliated electric utility shall file additional information on October 1, 2001, to reflect changes in the price of natural gas for the rate year of 2002. The adjustment shall be calculated using the following methodology:

- (i) For the 60-day period ending on September 15, 2001, an average price shall be calculated for each month of 2002 in the closing forward NYMEX Henry Hub natural gas prices, as reported in the Wall Street Journal.
- (ii) All other inputs into the calculation of the fuel factors will be the same as those used to calculate the fuel factor in subparagraph (A) of this paragraph.
- (iii) The fuel factors to be used at the beginning of the price to beat period shall be the fuel factor in effect on January 1, 1999, reduced by 60%, plus the difference between the fuel factors established pursuant to subparagraphs (A), (B) and (C) of this paragraph and the fuel factor in effect on January 1, 1999.

(g) **Adjustments to the price to beat.**

- (1) **Fuel factor adjustments.** An affiliated retail electric provider may request that the commission adjust the seasonal fuel factors established under subsection (f)(3) of this section not more than twice in a calendar year if the affiliated retail electric provider demonstrates that the existing

fuel factors do not adequately reflect significant changes in the market price of natural gas and purchased energy used to serve retail customers. The methodology for calculating the adjustment to the fuel factors shall be the following:

- (A) For each day of the 60-day period ending January 1, 2002, an average of the closing forward 12-month NYMEX Henry Hub natural gas prices, as reported in the Wall Street Journal, is calculated.
- (B) The average price for each subsequent day will then be averaged with the average prices for the preceding 59 days to determine a 60-day rolling price for each day after January 1, 2002.
- (C) The percentage difference between the averaged 60-day rolling price and the 12-month average price calculated under subsection (f)(3)(D) is calculated. If the percentage difference is 10% or more, the current seasonal fuel factors may be adjusted.
- (D) To adjust the current seasonal fuel factors, the percentage difference is added to one and then multiplied by the current factors. The results are the adjusted seasonal fuel factors that will be implemented according to the procedural schedule provided in §25.237(e) of this title.
- (E) Any application to adjust seasonal fuel factors pursuant to this section shall be filed no later than 45 days after the date that the percentage difference is 10% or greater.

- (2) **Adjustment for financial integrity.** Upon a finding that an affiliated REP will be unable to maintain its financial integrity if it complies with subsection (f) of this section, the commission shall set the affiliated REP's price to beat at the minimum level that will allow the affiliated REP to maintain its financial integrity. However, in no event shall the price to beat exceed the level of rates, on a bundled basis, charged by the affiliated electric utility on September 1, 1999, adjusted for fuel.
  - (3) **True-up adjustment.** The commission may adjust the price to beat following the true-up proceedings under PURA §39.262.
- (h) **Non-price to beat offers.**
  - (1) **Offers to residential customers.** An affiliated REP may not offer any rates other than the price to beat rates to residential customers until the earlier of 36 months after the date customer choice is introduced, or when the commission determines that an affiliated REP has met or exceeded the threshold target for residential customers described in subsection (i) of this section.
  - (2) **Offers to small commercial customers.** An affiliated REP may not offer rates other than the price to beat rates to small commercial customers until the earlier of 36 months after the date customer choice is introduced, or when the commission determines that an affiliated REP has met or exceeded the threshold target for small commercial customers described in subsection (i) of this section.

- (3) **Offers to aggregated small commercial load.** Notwithstanding paragraph (2) of this subsection, an affiliated REP may charge rates different from the price to beat for service to aggregated loads having an aggregated peak demand in excess of 1,000 kW provided that all affected customers are commonly owned or are franchisees of the same franchisor.
  - (A) If aggregated customers whose loads are served by an affiliated REP in accordance with this subsection disaggregate, those individual customers may resume service under the applicable price to beat rate(s), provided that those customers meet the eligibility requirements of subsection (e) of this section.
  - (B) Any usage removed from the threshold calculation in subsection (i)(1)(B) of this section due to aggregation shall be added back into the threshold calculation upon disaggregation of the aggregated load.
- (i) **Threshold targets.**
  - (1) **Calculation of threshold targets.**
    - (A) Residential target. The residential threshold target shall be equal to 40% of the total number of kilowatt-hours (kWh) consumed by residential customers served by the affiliated electric utility during the calendar year 2000.
    - (B) Small commercial target. The small commercial threshold target shall be equal to 40% of the following difference: the total number

of kWh consumed by small commercial customers served by the affiliated electric utility during the calendar year 2000 minus the aggregated load served by the affiliated REP that complies with the requirements of subsection (h)(3) of this section times 40%. The kWh associated with a customer who becomes ineligible for the price to beat because the customer's peak demand exceeds 1,000 kW shall also be removed from the threshold target.

- (2) **Meeting of threshold targets.** Upon a showing by the affiliated transmission and distribution utility that the electric power consumption of the relevant customer group served by nonaffiliated REPs meets or exceeds the targets determined by the calculation in paragraph (1) of this subsection, the affiliated REP may offer rates other than the price to beat.

(A) Calculation of residential consumption. The amount of electric power of residential customers consumed by nonaffiliated REPs shall equal the number of residential customers served by nonaffiliated REPs, except customers that the affiliated REP has dropped to the provider of last resort (POLR), times the average annual consumption of residential customers served by the affiliated utility during the calendar year 2000.

- (i) The number of customers served by nonaffiliated REPs shall be determined by summing the number of customers in the transmission and distribution utility's certificated service area with a designated REP other than the affiliated

REP in the registration database maintained by the registration agent. Customers dropped to the POLR by the affiliated REP shall not count as load served by a nonaffiliated REP.

- (ii) The average annual consumption shall be calculated by dividing the total kWh consumed by residential customers during the calendar year 2000 by one twelfth of the total number of bills issued to residential customers during the calendar year 2000.

(B) Calculation of small commercial consumption. The amount of electric power consumed by small commercial customers served by nonaffiliated REPs shall be determined using the following criteria, except that customers served by the POLR shall not count as load served by a nonaffiliated REP:

- (i) The amount of electric power of small commercial customers with peak demand less than 20 kW consumed by nonaffiliated REPs shall be equal to the number of small commercial customers with peak demand less than 20 kW served by nonaffiliated REPs times the average annual consumption of small commercial customers with peak demand less than 20 kW served by the affiliated electric utility during the calendar year 2000.

- (I) The number of customers served by nonaffiliated REPs shall be determined by summing the number of small commercial customers with peak demands less than 20 kW served in the transmission and distribution utility's certificated service area with a designated REP other than the affiliated REP in the registration database maintained by the registration agent.
- (II) The average annual consumption shall be calculated by dividing the total kWh consumed by small commercial customers with peak demand of less than 20 kW during the calendar year 2000 by one twelfth of the total number of bills issued to small commercial customers with peak demand of less than 20 kW during the calendar year 2000.
- (ii) The amount of electric power consumed by small commercial customers with peak demand in excess of 20 kW shall be the actual usage of those customers during the calendar year 2000.
- (I) If less than 12 months of consumption history exists for such a customer during the calendar year 2000, the available calendar year 2000 usage history shall be supplemented with the most recent prior history

of service at that customer's location for the unavailable months.

- (II) For customers with service to a new location, the annual consumption shall be deemed to be equal to the estimated maximum annual demand used by the affiliated transmission and distribution utility in sizing the facilities installed to serve that customer multiplied by the product of 8,760 hours and the average annual load factor for small commercial customers with peak demand greater than 20 kW for the year 2000.

- (j) **Prohibition on incentives to switch.** An affiliated REP may not provide an incentive to switch to a nonaffiliated REP, promote any nonaffiliated REP, or exchange customers with any nonaffiliated REP in order to meet the requirements of subsection (f) of this section.
- (k) **Disclosure of price to beat rate.** An affiliated retail electric provider shall disclose to customers, the price to beat in accordance with §25.471 (relating to General Provisions of Customer Protection Rules). In addition, if an affiliated REP offers a rate greater than the price to beat, the price to beat rate must be disclosed along with a statement that the customer is eligible for the price to beat. This disclosure must appear on all written authorizations, Internet authorizations,

the electricity facts label and Terms of Service document. It must also be disclosed during telephone solicitations before the customer authorizes service.

(l) **Filing requirements.**

- (1) On determining that its affiliated retail electric provider has met the requirements of subsection (i) of this section, an electric utility or transmission and distribution utility shall make a filing with the commission attesting under oath to the fact that those requirements have been met and that the restrictions of subsection (h) of this section as well as the true-up in PURA §39.262(e) are no longer applicable.
- (2) An electric utility or transmission and distribution utility shall file a progress report with the commission after its affiliated REP has met the requirements of subsection (i) of this section using a 35% threshold target in lieu of a 40% threshold. Such progress reports(s) shall be filed no later than 30 days after the 35% threshold has been met and shall contain the same information required in this subsection.
- (3) No later than June 1, 2001, each transmission and distribution utility shall determine the power consumption threshold targets under subsection (i) of this section for residential and small commercial customers within its certificated service area and shall file this information with the commission and shall also make this information publicly available through its Internet website.

(4) Any application filed pursuant to this subsection shall contain the following information:

(A) a detailed explanation of how the relevant customer group has met or exceeded the threshold consumption targets in subsection (i) of this section;

(B) calculation of the power consumption threshold target under subsection (i) of this section for the relevant customer group and the date such target was met;

(C) verification of the meeting of the threshold target in the following manner:

(i) for the residential customer class, independent verification from the registration agent verifying the number of customers in the residential customer class within the transmission and distribution utility's certificated service area that are committed to be served by non-affiliated REPs.

(ii) for the small commercial class, an affidavit detailing the number of customers in the small commercial class with peak demand below 20 kW within the transmission and distribution utility's certificated service area committed to be served by non-affiliated REPs and the customers with peak demand in excess of 20 kW with their actual usage calculated in accordance with subsection (i)(2)(B)(ii)

within the transmission and distribution utility's certificated service area that are committed to be served by non-affiliated REPs.

- (iii) For purposes of this subsection, a residential and small commercial customer has committed to be served by a nonaffiliated retail electric provider if the registration agent has received a switch request for that customer and any mandated cancellation period pursuant to applicable commission rule has expired.

- (5) The commission staff shall review all applications filed under this subsection and shall make a recommendation to the commission within ten days after the application is filed to approve or reject the application. If a filing has insufficient information from which the commission can make a determination, the commission may reject the filing without prejudice for refiling the application. The commission shall issue an order approving or rejecting the application within 30 days after the application is filed. An electric utility or transmission and distribution utility filing an application under this subsection shall not charge rates different from the price to beat until the earlier of 36 months after the date customer choice is introduced or the date such application has been approved by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF OCTOBER 2000 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**