

The Public Utility Commission of Texas (commission) proposes new §25.43 relating to Provider of Last Resort (POLR). Proposed new §25.43 will establish the requirements and procedures for applying to serve as POLR and the terms and conditions of service. The Public Utility Regulatory Act (PURA) §39.106 requires the commission to designate, no later than June 1, 2001, one or more retail electric providers (REPs) to serve as POLRs in each Texas transmission and distribution utility (TDU) service area that is open to competition. The POLR must offer a standard retail service package at a fixed, non-discountable rate, to any customer requesting it. The statute also requires the POLR to ensure no interruption of service if a REP fails to provide service to a customer. Project Number 21408 has been assigned to this proceeding.

Project Number 21408, *Provider of Last Resort*, was established in October 1999 as one of many projects to implement Senate Bill 7 (SB7), Act of May 21, 1999, 76th Legislature, Regular Session, 1999 Texas Session Law Service 2543 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§11.001-64.158).

In Project Number 21408, the commission staff posted questions for comments on its Internet site on January 21, 2000 and published an invitation to comment in the Texas Register on

January 21, 2000 (25 TexReg 468). Written comments were received and the staff held a workshop on February 24, 2000. The written comments and the input received at the workshop were used to determine the issues that the rule addresses. Subsequently, the staff held four public task force meetings to discuss the parties' different positions on the issues and seek resolution of these differences. The staff then prepared a draft of §25.43 in May 2000, which was discussed at a workshop, held on June 8, 2000.

The commission seeks comments on the proposed rule from interested persons. Parties should organize their comments in a manner that parallels 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 only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other states' restructuring efforts.

In addition to comments on other provisions of the rule, the commission requests that parties specifically address the following issues:

1. In the event that a customer who is not eligible for the price to beat (PTB) fails to make arrangements to be served by a REP, should service to this customer be provided by the affiliated REP or by the POLR?

2. Should the POLR be allowed to require that a default customer take service for a minimum term as a condition of continued service? If so, should the POLR be allowed to disconnect the default customer who refuses to agree to a minimum term?
3. Should customers who request POLR service be offered the option to either take service at the POLR hedged rate and sign a contract for a term, or take service at a market indexed rate? Under the first alternative, how long should the minimum term of service be? In answering this question, please refer to the Pennsylvania Public Utility Commission Tentative Order (adopted June 2, 2000) and Final Order (adopted June 22, 2000) in Docket Number M-00960890F0017.
4. Should an affiliated REP be precluded from being designated to serve as POLR in its affiliated TDU area unless no other REP applies or is qualified to serve as POLR in that area?
5. Please comment on an "insurance" proposal made by Entergy at the June 8, 2000 workshop. Should this proposal be adopted as an alternative to the selection process and POLR pricing method currently included in the draft rule? If so, is it desirable to add a surcharge to transmission and distribution rates as the premium for this insurance, recognizing that it would reduce the headroom for competitive REPs? Does the commission have the authority to impose an additional surcharge on customers to fund such a program? Under the Entergy proposal:
 - (a) The commission would establish a price per kWh in the request for proposal (RFP) for each POLR area that would be slightly higher than the PTB. This

price would be the "fixed, nondiscountable rate" approved by the commission for residential customers.

- (b) All residential customers would be billed a monthly insurance premium for POLR service, similar to the non-bypassable charge on their telephone bill for 911 service.

- (1) Each POLR territory would fund its own POLR provider, so the amounts of the POLR premium would vary from territory to territory. The premium would be used to fund the successful POLR bidder, so the amount of the premium would be set for the two-year term of the POLR.

- (2) By sharing the risk between all customers, no customer would be forced to pay abnormally high electricity costs for POLR service. This would encourage switching, because it would establish POLR as an affordable safety net for those who actually fall into POLR service.

- (c) POLR rates would be set by the commission, not determined by the bidders. The bids would be for support amounts each REP would need to guarantee electricity at the pre-determined rates.

- (d) The commission would require each bidder to submit confidential information to demonstrate that it has a sound plan for providing the service at the support amount level it bids.

- (e) The commission would select the lowest bid for each POLR area, consistent with the threshold eligibility criteria in the draft.
 - (f) All other provisions of the rule would remain the same—separation of service between the REP's competitive and POLR functions, term of service, procedures for a defaulting POLR, etc.
- 6. Should the provisions in subsection (g), separation of service, be relaxed to allow the POLR to engage in some limited marketing of its parent REP services? If so, what marketing activities would be allowed?
- 7. Should the list of POLR customers be available to all REPs certified to serve electric customers in a designated POLR area for marketing purposes?
- 8. PURA §41.053(c) states that a rural electric cooperative (REC) shall designate itself or another entity as the POLR for retail customers in its service area. Can an REC delegate that authority to the commission and request that the commission designate the POLR for its service area at the time when the commission is engaged in designating a POLR for a contiguous or surrounding TDU service area? If so, under what conditions?
- 9. If the competitive selection process for the POLR fails, should the commission retain the flexibility to appoint a POLR to serve in a service area for more than one year? If so, how should that be reflected in the rule?

Ms. Danielle Jaussaud, Director of Economic and Strategic Analysis, Office of Regulatory Affairs, 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.

Ms. Jaussaud has 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 to make available a standard retail electric service package to all customers eligible for customer choice in the service areas of TDUs in Texas at a fixed, non-discountable price, without any interruption of service. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Jaussaud has also 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 staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, August 18, 2000 at 9:30 a.m. in the Commissioners' Hearing Room located on the 7th floor.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 31 days after publication. Parties are also requested to e-mail a copy of comments to danielle.jaussaud@puc.state.tx.us, if possible.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21408.

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 specifically, PURA §39.106, which requires the commission to designate a provider of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.106.

§25.43. Provider of Last Resort (POLR).

(a) **Purpose.** The purpose of this section is to ensure that, as mandated by the Public Utility Regulatory Act (PURA) §39.106:

- (1) A basic, standard retail service package will be offered by a POLR at a fixed, non-discountable rate to any requesting customer in all Texas transmission and distribution utilities' (TDUs) service areas that are open to competition; and
- (2) All customers will be assured continuity of service if a retail electric provider (REP) terminates service (pending resolution of right of REP to disconnect).

(b) **Application.** This section applies to REPs that may be designated as POLRs in TDU service areas in Texas. Rural electric cooperatives (RECs) and municipally owned utilities (MOUs) must opt into competition and meet the requirements for REP certification in Texas to be eligible to serve as POLR outside of their service areas.

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

- (1) **Basic firm service** — Electric service not subject to interruption and that does not include value added options offered in the competitive market. Basic firm

service excludes, among other competitively offered options, emergency or back-up service, and stand-by service.

- (2) **Default customer** — A customer who is automatically assigned to be served by the POLR because the customer is no longer served by the customer's selected REP (pending resolution of right of REP to disconnect).
- (3) **Fixed rate** — A rate that is established when the POLR is designated and does not change over the term of the POLR. The POLR rate may be structured so as to reflect a seasonal differential.
- (4) **Hedged rate** — A rate that contains no market-indexed energy component. When a hedged rate is offered, it is up to the POLR to mitigate the risk associated with energy price fluctuations.
- (5) **Large non-residential** — A non-residential customer with a peak demand above one megawatt (MW).
- (6) **Non-discountable rate** — A rate that does not allow for any deviation from the price offered to all customers within a class.
- (7) **Provider of last resort (POLR)** — A REP certified in Texas that has been designated by the commission to provide a basic, standard retail service package to requesting or default customers.
- (8) **Requesting customer** — A customer who selects the POLR to provide electric service.

- (9) **Small non-residential customer** — A non-residential customer with a peak demand of one megawatt (MW) or below.
 - (10) **Unhedged rate** — A rate that contains a market-indexed energy component.
- (d) **POLR service.**
- (1) For the purpose of POLR service, there will be three classes of customers: residential, small non-residential, and large non-residential.
 - (2) The POLR may be designated to serve any of the three customer classes in a POLR area. Within the customer class it is designated to serve, the POLR shall provide service to the following customers:
 - (A) Any customer requesting POLR service; and
 - (B) Any customer not receiving service from its selected REP for any reason who is automatically assigned to the POLR.
 - (3) The POLR basic, standard retail service package will be limited to:
 - (A) Basic firm service;
 - (B) Call center facilities for customer inquiries;
 - (C) Standard retail billing (this service may be provided either by the POLR or another entity);
 - (D) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund; and

- (E) Standard metering, consistent with PURA §39.107 (a) and (b) (this service may be provided either by the POLR or another entity).

(e) **Standards of service.**

- (1) A REP who has been designated by the commission to serve as POLR for a class in a given area shall serve any or all requesting or default customers in that class.
- (2) A POLR shall abide by the applicable customer protection rules as provided for under Subchapter B of this chapter (relating to Customer Service and Protection). In addition, the POLR shall be held to the following general standards:
 - (A) The POLR shall inform any default customer assigned to it that it is now providing service to the customer and disclose all charges the customer will be responsible for;
 - (B) The POLR shall provide default customers and any customer who inquires about selecting a provider a commission maintained list of certified REPs;
 - (C) The POLR shall inform the customer of the risk of any unhedged price it offers, if applicable.
 - (D) The POLR may not require that a default customer sign up for a minimum term as a condition of service.

(E) The POLR may not require as a condition of service that a requesting customer sign up for a minimum term of more than the lesser of six months or the remainder of the POLR term.

(3) The affiliated REP may not be designated to serve as POLR in its affiliated TDU area unless no other REP applies to serve that area or the commission rejects all bids for that area.

(f) **POLR rate.**

(1) The POLR rate shall be established through the competitive bidding process. In the event that the competitive bidding process fails under circumstances described in subsection (i)(3) of this section, the POLR rate may be established through negotiations between the commission and the designated REP. If a REP is designated to become the POLR in its affiliated TDU service territory, the rate will be set at the price to beat for residential and small non-residential customers prior to January 1, 2005 or until the affiliated REP loses 40% of its customers in each customer group.

(2) **Fixed non-discountable rate.** The POLR:

- (A) Shall offer one fixed non-discountable rate for each class of customers identified in this section; and
- (B) Shall offer a hedged rate.

(g) **Separation of service.** The POLR shall keep its REP business separate from its POLR function and shall abide by the following provisions:

- (1) The POLR and its affiliated REP may share the same facilities, but the POLR shall have a separate phone number.
- (2) The POLR and its affiliated REP may share employees.
- (3) An employee answering the POLR phone line will read from a script to describe POLR service and will not market the services of the POLR's affiliated REP. If the customer asks about the services of the POLR's affiliated REP's, the employee may only give the caller the REP's telephone number.
- (4) The POLR's affiliated REP may not use the POLR's customer list to market its services, unless this list is also made available to all other REPs in the POLR's area.

(h) **Transition from REP to POLR service.**

- (1) POLR service for a requesting customer is initiated when the customer makes arrangements for service.
- (2) If the Independent Organization becomes aware that a REP is no longer scheduling for a customer, it will notify the POLR that the customer is switched over to POLR service.
- (3) If the REP terminates service to a customer whose consumption is determined by monthly meter readings without giving notice, the POLR shall prorate the

customer's usage based on the customer's historic data or load profile to establish the customer's charges for the relevant portion of the billing cycle, unless the customer requests and is willing to pay for an out-of-schedule meter read. Nothing in this section precludes a POLR from having an out-of-cycle meter read performed for a new customer on its own initiative provided the POLR does not pass on the cost of the meter read to the customer.

- (4) The POLR is responsible for obtaining resources and services needed to serve the customer once it has been notified that it is serving the defaulting REP's customers. The customer is responsible for charges for POLR service at the POLR rate from that time.
 - (5) If a REP terminates service to a customer, it is financially responsible for the resources and services used to serve the customer until it notifies the Independent Organization of the termination of the service and until the switchover to the POLR is complete.
 - (6) The POLR is financially responsible for all costs of providing electricity to customers from the time the switchover is complete until such time as the customer leaves POLR service.
- (i) **Selection of the POLR.** The commission shall designate certified REPs to serve as POLRs in areas of the State in which customer choice is in effect no later than June 1,

2001, and as required when the term of a POLR ends thereafter, except that the commission shall not designate the POLR in the service areas of RECs and MOUs.

(1) The commission will use a competitive bidding process to select the POLR for each customer class in each designated POLR service area.

(A) A bidder may submit a bid to serve the residential, small non-residential or the large non-residential class. A bidder may submit a bid for more than one class. Bids will be evaluated independently for each class.

(B) A bidder will bid for a two-year term and will have the option to bid different rates for each year of the two-year term.

(2) The competitive bidding process fails if:

(A) The commission does not receive any bids from qualified bidders for a given customer class in a given area; or

(B) The terms and conditions of the bids received are unreasonable, as determined by the commission.

(3) If, in a customer class or area, the competitive bidding process fails, the commission may investigate why the bidding process was unsuccessful and rebid the service with modifications, or the commission may require any certified REP serving a customer class in an area to become the POLR for that customer class in that area. If a REP is required to serve as POLR, the following terms and conditions will apply:

(A) The designated REP will serve as POLR for a one-year term.

- (B) The commission will not require an unwilling REP to serve in an area for two consecutive terms unless it finds that it is necessary.
 - (4) The commission will negotiate the POLR price for each customer class with the designated REP. The commission shall negotiate the rate for each class separately to ensure cross subsidization among classes does not occur.
 - (5) Before the POLR's term of service comes to an end so as to ensure timely continuation of service the commission shall repeat the initial selection process.
- (j) **Termination of POLR status.**
- (1) The commission may revoke a REP's POLR status:
 - (A) If the POLR fails to maintain REP certification;
 - (B) If the POLR fails to provide service in a manner consistent with the commission rule relating to POLR service after it is provided up to 60 calendar days' notice of the deficiency; or
 - (C) At the commission's discretion for good cause provided the commission affords the failing POLR due process.
 - (2) A POLR that wishes to terminate its obligations must inform the commission of the actions it is planning to take to ensure a smooth transition.
 - (A) The departing POLR may, with the approval of the commission, transfer its POLR obligations to a qualified REP willing to assume the departing POLR's terms of service.

- (B) The departing POLR shall notify its customers and inform them of the transfer of POLR obligations to a new POLR at least 60 days before the transfer takes place.
 - (C) If a POLR terminates its obligations without properly informing the commission and the customers and ensuring a smooth transition, the POLR will be subject to the penalties provided for in §25.107(j) of this (title relating to the Certification of Retail Electric Providers (REPs)).
- (3) If a POLR defaults or has its status revoked before the end of its term, the commission may require any certified REP serving a customer class in an area to become the POLR for that customer class in that area until a new POLR is selected to serve at a negotiated rate. The conditions of service under subsections (d)-(g) of this section apply to the interim POLR.

(k) **Procedures and criteria for POLR selection.**

- (1) The general procedure for the request for proposals (RFP) to select the POLRs will be as follows:
 - (A) The commission staff will develop an RFP for commission approval.
 - (B) A commission staff evaluation team will evaluate the proposals submitted in response to the RFP.
 - (C) The evaluation team will forward its recommendation to the commission.
- (2) The following threshold criteria will be used to determine whether bidders qualify:
 - (A) Bidder's competence and qualifications, including prior REP experience.
The bidder should demonstrate that it has retail experience and that it has staff with sufficient electric experience.
 - (B) Quality of the bidder's activity plan, including its demonstrated readiness to provide service at the beginning of the term of POLR service.
 - (C) Minimum standards for technical and managerial resources consistent with §25.107(g) of this title.
 - (D) Minimum standards for financial strength consistent with §25.107(f) of this title.
- (3) The proposals of qualified bidders will be evaluated on the basis of the proposed rates for each customer class.

- (4) If two or more qualified bidders bid equal rates, the commission will enter into price negotiations with each bidder. If the tie is not resolved through negotiations, contribution to enhancement of market competitiveness will be the tie-breaking criterion.
- (l) **Service areas.** The RFP will describe the service areas. The POLR service area should be no larger than an existing TDU service area, and may be smaller. When a TDU service area is divided into smaller areas, the commission will attempt to divide the service area so that the customer composition of the smaller areas will reflect that of the larger TDU service area.

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 30th DAY OF JUNE 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**