

The Public Utility Commission of Texas (commission) proposes new §25.431, relating to Retail Competition Pilot Projects. The proposed new rule will establish the parameters under which electric utilities shall offer customer choice for 5.0% of the load in their Texas service areas beginning on June 1, 2001, through the implementation of retail competition pilot projects. Project Number 21407 has been assigned to this proceeding.

Project Number 21407 is noteworthy because it is the first rulemaking conducted by this commission using the negotiated rulemaking procedures set forth in Texas Government Code, Chapter 2008. In October 1999, the commission internally assessed the feasibility of using negotiated rulemaking to establish rules relating to the retail competition pilot projects. Based on a positive internal assessment, the agency contracted with the Center for Public Policy Dispute Resolution (the Center) at the University of Texas School of Law to serve in the role of Convener. The duty of the Convener is to assist the agency in identifying persons likely to be affected by the proposed rule and to recommend to the commission whether negotiated rulemaking is an appropriate method to develop the proposed rule. Interviews with persons likely to be affected by the rules were conducted by the Center and commission staff to identify potential issues and explore the feasibility of negotiated rulemaking. Based on information gained through these interviews, the Center issued a Convening Report on January 4, 2000,

which concluded that negotiated rulemaking was a feasible option for the pilot project rulemaking.

On January 13, 2000, the commission voted to publish notice of its intent to proceed with negotiated rulemaking, and invited stakeholders to comment on the commission's intent to use negotiated rulemaking, as well as on the commission's proposed negotiating committee structure and membership (25 *TexReg* 631). A public meeting was hosted by the commission staff on February 7, 2000, to provide an opportunity for interested stakeholders to discuss the proposed committee structure and to nominate specific individuals to serve on the committee. Based on the discussion at this meeting and on the written comments filed, the commission voted on March 1, 2000, to formally appoint the committee and its facilitators.

Meetings of the negotiating committee were held in Austin, Texas, every Monday from March 6 through May 1, 2000, with additional meetings held on Tuesday, April 4 and Thursday, May 11. Additional caucus meetings were held as necessary, and the committee members relied heavily on electronic communication to work through issues between meetings. The committee will remain intact until the conclusion of this rulemaking, so that it may consider comments filed by interested parties and possibly offer recommendations to the commission regarding solutions to the issues raised in the comments.

The negotiating committee consists of the following members (where two names are listed, the first person is the primary representative for the interest group and the second person is the alternate):

Don Lee of Conference of Urban Counties, representing Public Aggregators; Mike W. Brasovan of Fowler Energy Company, representing Private Aggregators; Mark W. Smith of Casey, Gentz & Sifuentes, representing Industrial Customers; Kristen Doyle of The Office of Public Utility Counsel, representing The Office of Public Utility Counsel; Janee Briesemeister of Consumers Union and Randy Chapman of Texas Legal Services Center, representing General Residential Customers; Roy Baker of American Association of Retired Persons (AARP) and George T. Berasley of AARP, representing Residential Customers-AARP; Carol Biedrzycki of Texas Ratepayers Organization to Save Energy and Randy Chapman of Texas Legal Services Center, representing Special Needs Residential Customers; Chris K. Albrecht of The May Department Stores Company and Sondra Simpson of The Law Offices of Jim Boyle, representing Commercial Customers; Kent Saathoff of The Electric Reliability Council of Texas (ERCOT), representing ERCOT; Shannon Noble of Texas Air Conditioning Contractors Association and Bob King of Good Company Associates, representing Energy Services Companies; Joe McGoldrick of Reliant Energy, representing investor-owned utility (IOU) Affiliated Retail Electrical Providers/Generating Companies (within ERCOT); Carl Grossardt of Central and South West Services, representing IOU Affiliated Retail Electrical Providers/Generating Companies (non-ERCOT); Jan McCorstin of TXU Electric & Gas,

representing IOU Transmission & Distribution Companies (within ERCOT); Rick Riley of Entergy Services, Inc. and James E. Striedel of Entergy Services, Inc., representing IOU Transmission & Distribution Companies (non-ERCOT); Jimmy Glotfelty of Calpine Corporation and David Itz of Calpine Corporation, representing Independent Power Producers; Wayne Callender of City Public Service of San Antonio, representing Large Municipal Electric Utility Systems; Dan Wilkerson of Bryan Texas Utilities and Richard Crozier of Davidson & Troilo, representing Small Municipal Electric Utility Systems; Dale Day of The General Land Office, representing The General Land Office; Roger B. Borgelt of The Office of the Attorney General and Denis Feary of General Services Commission, representing Certain State Agencies; Snapper Carr of Texas Municipal League and Geoffrey Gay of Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, representing Cities (in capacities other than as municipal electric utility systems); Kathleen E. Magruder of Enron Corporation and Marianne Carroll of Carroll & Gross, representing Non-Affiliated REPs-Industrial; Gillan A. Taddune of GreenMountain.com, representing Non-Affiliated REPs-Residential; Vanus J. Priestley of New Energy, representing Non-Affiliated REPs-Commerical; Suzanne Bertin of The Public Utility Commission of Texas and Connie Corona of The Public Utility Commission of Texas, representing commission staff; Richard L. Dillon of Southwest Power Pool, representing Southwest Power Pool; Wendell Bell of Texas Electric Cooperatives and Shawn P. St. Clair of McGinnis, Lochridge & Kilgore, representing Cooperatives.

The committee facilitators appointed by the commission include Tom Reavley, Attorney at Law; John Fleming, of the Center; and Terri Eaton of The Public Utility Commission of Texas. Ms. Eaton was assigned as a "shadow" facilitator to observe the negotiated rulemaking process from the perspective of the facilitators, and did not participate in any negotiations as a representative of the commission staff.

As a result of its negotiations, the committee was able to reach consensus on most aspects of the proposed rule. Consequently, in accordance with the committee's ground rules, the committee members have agreed that they will not file comments in opposition to the consensus rule language. There were two issues, however, on which the committee was unable to reach consensus: 1) whether to allow a utility the option to use a process to identify customers interested in the pilot project, followed by a lottery, to select participants in the residential customer class, and 2) how to set nonbypassable charges for the pilot if by, May 2001, the commission has not set interim rates in the utilities' unbundled cost of service (UCOS) cases filed pursuant to PURA §39.201. The committee agreed that these two issues should be identified in this preamble for the purpose of soliciting public comment, and that all members of the committee were free to offer comments on these two issues.

Proposed subsection (g)(1) sets forth a procedure for residential customer participation that is first come, first served; as customers authorize switches to retail electric providers, they are counted toward the 5.0% load limit until such limit is reached. Another proposal was to give the

utility the option to allow customers to first indicate interest in participating in the pilot project. The utility would track customer interest and indicate whether more than 5.0% expressed a desire to participate in the pilot. Customers would then be placed on a marketing list if they indicated interest in receiving solicitations from retail electric providers; provided, however, that such solicitations could not begin until the utility released its initial marketing list in April 2001. If customer interest exceeded the 5.0% limit, then a lottery would be held to determine which residential customers could have the opportunity to switch providers. Under the proposal, if a utility elects the option to conduct a lottery, the costs incurred for conducting the lottery would not be eligible for cost recovery under any circumstances. The commission requests comment on these two options for residential customer participation and invites commenters to suggest additional alternatives for commission consideration.

Proposed subsection (h) is silent regarding how the commission will set rates in the event that interim rates are not set in the UCOS cases in time for use in the pilot. Although it is the commission's intent to have interim rates set by May 2001, and the committee members agreed that the UCOS interim rates are the most appropriate rates to be used during the pilot, the committee believed that the commission needs a contingency plan in the event that procedural delays in those cases result in interim rates not being set in time. Several options were discussed by the committee. First, the rule could be silent on the issue. Second, the commission could rely on the proposed rates filed by the utilities in their UCOS cases, or, similarly, on testimony filed by rate design witnesses for the commission's Office of Regulatory Affairs in those cases.

Third, the commission could rely on the methodology employed in §25.227 of this title (relating to Electric Utility Service for Public Retail Customers). Section 25.227 uses the functional cost percentages for each rate class developed for each utility in the final staff report in Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas* (May 1999), to determine transmission and distribution (T&D) rate components. Section 25.227 also includes a methodology for determining competition transition charges (CTC). The committee members agreed that interim rates determined by the commission in a utility's UCOS case should not be subject to true-up once final transmission and distribution rates are set. However, the issue of true-up remains unresolved in the event a contingency plan is employed. The commission requests comment on these options, and invites all interested parties to suggest additional alternatives for commission consideration.

In addition to the two specific issues identified above, the commission also invites comments from interested parties on all other provisions of the proposed rule, subject to the limitations mentioned previously for committee members, who are obligated to adhere to the committee ground rules. 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.

Suzanne L. Bertin, Director, Office of Policy Development, 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. Bertin 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 consistency in utilities' implementation of retail competition pilot projects, and an improved ability by the commission to ensure a smooth transition to full retail customer choice. The pilot projects may be used by the commission to evaluate the readiness of a power region for retail competition, and will serve to encourage participation in a competitive retail market and to inform customers about customer choice. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. The economic cost to persons who are required to comply with the section as proposed is expected to vary from person to person and cannot be determined at this time. The public benefit anticipated as a result of enforcing the section is expected to outweigh the cost to persons who are required to comply with this section.



Ms. Bertin 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 if a public hearing is requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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 14 days after publication. Reply comments may be submitted within 21 days after publication. 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 21407.

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 §39.104, which states that the commission shall require utilities to conduct pilot projects beginning June 1, 2001, and PURA

§39.405, which sets forth additional requirements for pilot projects conducted by utilities that are subject to the provisions of PURA Chapter 39, Subchapter I.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.104 and 39.405.

**§25.431. Retail Competition Pilot Projects.**

(a) **Purpose.** This section establishes the parameters under which an electric utility shall offer customer choice for 5.0% of the load in its Texas service area beginning on June 1, 2001, through the implementation of retail competition pilot projects. The commission may use these pilot projects to evaluate the ability of each power region to implement full customer choice on January 1, 2002, including the operational readiness of support systems. The pilot projects conducted under this section also will serve to encourage participation in a competitive retail market and to inform customers about customer choice.

(b) **Application.**

(1) This section applies to an electric utility as defined in the Public Utility Regulatory Act (PURA) §31.002(6). An electric utility exempt from PURA Chapter 39 in accordance with PURA §39.102(c) may conduct a customer choice pilot project consistent with the requirements of this section upon expiration of its exemption. A pilot project commencing before the adoption of this section may fulfill portions of the requirements of this section, as determined by the commission.

- (2) Other entities, including retail electric providers (REPs) certified by the commission, and aggregators, power generation companies, and power marketers registered with the commission may participate in the pilot projects under the terms and conditions established by this section.
- (c) **Intent of pilot projects.** Pilot projects conducted under this section are intended to implement customer choice for all applicable customers in the same manner in which full customer choice will be offered starting January 1, 2002, to the extent practicable. Unless determined otherwise through a subsequent commission proceeding, or unless stated otherwise in this section, all pilot project participants who are not retail customers shall abide by all applicable commission rules, including but not limited to, rules relating to customer protection and transmission and distribution terms and conditions, and all rules of an independent organization as defined in PURA §39.151.
- (1) **Utility's obligation to serve.** A utility shall continue to provide electric service in accordance with PURA and the commission's substantive rules to requesting customers in its certificated service area who do not wish to take service from a REP.
- (2) **Indemnification.** Market participants, including utilities, shall be held harmless for any damages resulting from any non-willful system or process failures during the pilot project.
- (3) **Performance standards.**

- (A) Call center performance may be compromised by potential large increases of customer inquiries generated because of the customer education program and pilot project activities. For the period February 1, 2001 through December 31, 2001, as applicable to each utility,
    - (i) a reduction of five percentage points will be applied to the percentage of calls to be answered in the allowable time; or
    - (ii) 5.0% of the calls with the longest wait time will be subtracted from the calculation of average answer time.
  - (B) An affected utility shall track and report such performance during the pilot project in accordance with applicable commission rules and orders. An affected utility does not waive any rights to request an adjustment or waiver of performance standards directly affected by the customer education program or pilot project.
- (4) **Effect of pre-existing service agreements or contracts.**
- (A) To the extent a customer is otherwise eligible to participate in a pilot project in accordance with this section, a utility shall not challenge a customer's right to participate:
    - (i) based upon a claimed failure to provide notice of cancellation in accordance with the requirements of an existing service agreement, contract, or tariff; or

(ii) in the event that the customer's service agreement or contract is beyond its primary term.

(B) To the extent a customer is otherwise eligible to participate in a pilot project in accordance with this section, customers in the primary term of a service agreement or contract shall have the right to participate in the pilot project subject to a challenge by the utility based upon a service agreement or contractual issue other than failure to provide notice of cancellation in compliance with an existing service agreement, contract, or tariff. The procedure for any such challenge shall be as follows:

(i) A utility contending that a customer that has been otherwise selected to participate in the pilot project is not eligible to participate, because of an existing service agreement or contract in its primary term, shall inform the customer not later than seven days after the date scheduled for the lottery for the applicable class in the event the class is oversubscribed or the date the customer requests participation in the event the class is undersubscribed.

(ii) If the customer wishes to dispute the utility's contention, the customer must, within seven days of receipt of the utility's notification, so inform the utility. Pending resolution of the

dispute, the utility shall reserve a place for that customer on the participant list.

(iii) The customer shall be entitled to participate in the pilot project unless the utility informs the commission of the pilot project eligibility dispute within seven days of receipt of the customer's notification to the utility disputing the claim of ineligibility. Upon receipt by the commission of timely notice of the dispute, the commission will resolve the dispute within 30 days after filing, and may do so administratively.

(iv) If the commission determines that the customer is eligible to participate, the customer will be included within the pilot project as soon as practicable after the decision.

(5) **Right to withdraw from pilot project.** For any reason, and at a customer's request, the REP and the incumbent utility shall restore a residential customer's account to pre-pilot project services and rates. In the event a customer's REP ceases to do business in Texas during the pilot project, the incumbent utility shall restore any customer's account to pre-pilot project services and rates at the customer's request.

(6) **Application of renewable energy rule.** To encourage access to energy generated from renewable resources by customers participating in the pilot projects, the renewable energy mandate provisions of §25.173 of this title

(relating to Goal for Renewable Energy) will be extended on a voluntary basis during the pilot projects to the competitive portion of the market, with the following changes:

- (A) Each REP may acquire and retire renewable energy credits (RECs) consistent with its share of retail kilowatt-hour sales during the pilot period (June 1, 2001 through December 31, 2001), at a rate consistent with REC obligations for the year 2002, and in the manner specified in §25.173(h) of this title;
  - (B) Each REC retired for the pilot period will reduce the REC obligations of the REP for the year 2002 compliance period;
  - (C) The voluntary settlement period for the pilot project renewable energy program will commence January 1, 2002 and end March 31, 2002; and
  - (D) Penalty provisions of §25.173(o) of this title are not applicable.
- (7) **End of pilot projects.** The pilot projects will end on December 31, 2001, unless determined otherwise by the commission in accordance with subsection (j) of this section. For an electric utility exempt from PURA Chapter 39 in accordance with PURA §39.102(c), the pilot project, if undertaken, will begin and end on dates deemed reasonable by the commission. A customer will remain with the REP by which he or she was served on the last day of the pilot project until the customer or the REP elects otherwise. By participating in the



pilot project, a customer does not waive any right to take service under the price to beat in accordance with PURA §39.202.

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

(1) **Aggregation** – includes the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations or as part of a voluntary association of electricity customers. An electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

(2) **Customer class** – a grouping of customers, specific to the pilot projects, for the purpose of allocating loads available for customer choice during the pilot projects. The five customer classes used in the pilot projects are:

(A) **Residential** – all customers identified by an electric service identifier (ESI) who purchase electricity under a utility's residential rate schedule.

(B) **Non-residential, non-demand metered** – all customers identified by an ESI who:

- (i) do not purchase electricity under a utility's residential rate schedule; and
- (ii) do not purchase electricity under a utility's municipal or school rate schedule; and

- (iii) do not purchase electricity under a utility's rate schedule that is based on metered or estimated demand during the twelve month period ending December 31, 2000.
- (C) **Industrial demand-metered** – all customers identified by an ESI who:
  - (i) do not purchase electricity under a utility's residential rate schedule; and
  - (ii) purchase electricity under a utility's rate schedule that is based on a metered demand; and
  - (iii) purchase electricity under a utility's industrial rate schedules (or are identified as industrial by the utility's rate code if the utility does not have industrial rate schedules) or have filed a manufacturing or processing tax exemption certificate with the utility.
- (D) **Commercial and all other demand-metered** – all customers identified by an ESI who:
  - (i) do not purchase electricity under a utility's residential rate schedule; and
  - (ii) do not come within the definition of the industrial demand metered customer class; and
  - (iii) purchase electricity under a utility's rate schedule that is based on a metered demand.

- (E) **Other** – The other customer class is composed of all customers identified by an ESI who:
  - (i) purchase electricity under a utility's rate schedule that is based on known usage patterns, not actual metered data (i.e., unmetered loads); or
  - (ii) purchase electricity under a utility's municipal or school rate schedules; or
  - (iii) purchase electricity under utility rate schedules applicable to seasonal agricultural use, such as cotton gins, irrigation, or grain elevators.
- (3) **Electric service identifier (ESI)** – premise-based identifier assigned to each electric service delivery point between a transmission and distribution utility and an end-use load, which is used in the Texas customer registration system and the Electric Reliability Council of Texas (ERCOT) settlement system.
- (4) **Lottery** – fair process in which ESIs or aggregator packets of ESIs are selected for participation in a pilot project by using standard statistical methods for simple random sampling; each ESI or aggregator packet of ESIs should have an equal chance of actually being selected.
- (5) **Participation** – occurs when the customer takes service from a retail electric provider that is not the incumbent, integrated utility.

(e) **Requirements for participants that are not retail customers.**

- (1) A REP must be certified by the commission pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers) prior to participating in pilot projects established pursuant to this section. An affiliated REP shall not participate in the certificated service area of the electric utility with which it is affiliated.
- (2) An aggregator, other than a self-aggregator, must be registered with the commission pursuant to §25.111 of this title (relating to Registration of Aggregators) prior to participating in pilot projects established pursuant to this section.
- (3) A power generation company must be registered with the commission pursuant to §25.109 of this title (relating to Registration of Power Generation Companies) prior to participating in pilot projects established pursuant to this section. A utility need not be registered as a power generation company in order to generate power for sale during the pilot projects.
- (4) A power marketer must be registered with the commission pursuant to §25.105 of this title (relating to Registration and Reporting by Power Marketers) prior to participating in pilot projects established pursuant to this section.
- (5) An independent transmission organization outside of ERCOT may require a market participant to register with that organization in order to become a wholesale buyer and seller of energy across the transmission system.

- (f) **Customer education.** Customer education for the pilot projects shall be conducted as part of the statewide customer education campaign for introducing customer choice. Included in this campaign will be announcements regarding the opportunity to participate in the pilot project and instructions on obtaining further information about the pilot project. The commission shall mail information written in English and in Spanish explaining the pilot project to eligible non-residential customers no later than March 1, 2001, and to eligible residential customers no later than April 15, 2001. The utility shall provide the commission or its designee with customer information necessary to implement this subsection. For purposes of this subsection, §25.272(g)(1) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates) does not apply with regard to proprietary customer information released to the commission or its designee. The mailing may contain information including, but not limited to:
- (1) a description of the pilot project;
  - (2) the commission's central call center phone number and Internet website operating to respond to customer questions and requests for information;
  - (3) a list of REPs certified as of a date certain, including the telephone number and, if available, Internet website address for each REP, and a statement disclosing that the REP list is continually updated and how the customer can obtain an updated list; and
  - (4) a clear, plain language description of customer choice and the price to beat.

(g) **Customer choice during pilot projects.** The following procedures shall be used for customers to participate in the pilot projects within the designated time periods for each applicable customer class.

(1) **Administration.** For all customer classes, a REP shall submit requests to switch customers participating in the pilot projects to the registration agent beginning on May 31, 2001, and power delivery in conjunction with the pilot projects may begin on June 1, 2001. For purposes of this section, any electronic submission to the utility shall be executed using a standard electronic data interface (EDI) protocol (814) to be included in the utility's compliance filing.

(A) Except where explicitly stated otherwise in this section, a REP shall electronically submit switch requests to the utility for counting and validation purposes prior to submitting such requests to the registration agent. The utility shall maintain a weekly updated list of non-matching, rejected ESIs on its pilot project Internet website.

(B) Except for the industrial demand-metered class, there shall be no out-of-cycle meter reading requests submitted for purposes of the pilot project before July 1, 2001.

(C) Members of the non-residential customer classes may elect to waive the verification and recision process of the registration agent.

- (D) A participating customer shall have the right to change from one REP to another REP in accordance with the switching procedures adopted by the commission.
- (E) Beginning April 16, 2001, a REP shall electronically report to the utility any switch request for a customer or an aggregation packet with a listing of the ESIs to be switched to the REP as set forth in this paragraph. After the utility confirms that the non-residential ESI or aggregation packet is on the associated participant list, the utility shall submit the ESI to the registration agent. The registration agent shall keep a record of all the ESIs identified by the utility for participation in the pilot. The REP shall be responsible for submitting to the registration agent the ESIs associated with the switch request to serve. If the ESI identified by the REP matches an ESI identified by the utility, then the registration agent shall allow the registration process to continue.
- (F) Because the utility is assigned the responsibility to administer the pilot project, except for complaints arising under §25.272 of this title, which may be made in accordance with procedures established under that section, a claim by any party of unreasonableness associated with the administration of the pilot project will first be addressed by the pilot implementation working group established by subsection (j)(4) of this section. If the complaint is not resolved within ten working days of

initial notification to the pilot implementation working group, the complaint may be filed with the commission.

(2) **Residential customer class.**

(A) **Determination of the 5.0% load available for customer choice.**

For residential customers, the load available for customer choice shall be determined by calculating 5.0% of the number of ESIs in this customer class as of December 31, 2000. No later than January 31, 2001, the utility shall determine the amount of load available for this customer class and shall make that information publicly available through its pilot project Internet website. For this customer class, 20% of the 5.0% load available for customer choice shall be initially set aside for each customer class (hereafter referred to as the 1.0% set-aside) for aggregated loads.

(B) **Initiating switching.** Beginning February 15, 2001, a REP may accept authorizations to switch providers from residential customers. A REP shall notify the utility of such authorizations for residential customers.

(C) **Reaching the 5.0% load limit.** For purposes of this subparagraph the total number of ESIs eligible to switch determined in subparagraph (A) of this paragraph, less the number of ESIs that have already authorized a switch, shall be referred to as the amount of available load.



- (i) As each customer in this class authorizes a switch to another provider, the amount of available load shall be decremented by one.
- (ii) When the amount of available load reaches zero, no more switch authorizations shall be accepted.

(3) **Non-residential customer classes.**

(A) **Determination of the 5.0% load available for customer choice.**

No later than January 31, 2001, the utility shall make the results of the following calculations for each non-residential customer class publicly available through its pilot project Internet website. For each non-residential customer class, 20% of the 5.0% load available for customer choice shall be initially set aside for each customer class (hereafter referred to as the 1.0% set-aside) for aggregated loads.

- (i) **Non-residential, non-demand metered customers.** For non-residential, non-demand metered customers, the load available for customer choice shall be determined by calculating 5.0% of the number of ESIs in that customer class as of December 31, 2000.
- (ii) **Industrial demand-metered customers; commercial and all other demand-metered customers.** For each of the demand metered customer classes, the load available for

customer choice shall be determined by calculating 5.0% of the sum of the kilowatts invoiced by the utility to all ESIs in each customer class for meter reading dates during the utility's peak demand month in the year 2000. In addition, the utility shall determine the individual ESI load caps for each demand metered customer class by calculating 20% of the load available for the pilot project in each demand-metered customer class.

- (iii) **Other customers as defined in subsection (d)(2)(E) of this section.** For all other customers, the load available for customer choice shall be determined by calculating 5.0% of the sum of the kilowatt-hours for which all ESIs in this customer class were invoiced by the utility during the twelve month period ending December 31, 2000. In addition, the utility shall determine the individual ESI load caps for this customer class by calculating 20% of the kilowatt-hours available for the pilot project in this customer class.

- (B) **Amount of available load.** For purposes of this paragraph, the total load available for customer choice determined in subparagraph (A) of this paragraph, less the amount of the customer's ESI load used for calculation in subparagraph (A) of this paragraph, shall be referred to as the amount of available load for each non-residential customer class.

For an ESI that was not included in the calculation in subparagraph (A) of this paragraph, hereinafter called a new ESI, the customer's ESI load shall be determined as follows:

- (i) For the non-residential, non-demand metered class, a new ESI shall count as one ESI against the total number of ESIs.
- (ii) For the demand-metered classes, the demand allocated to a new ESI shall be 95% of the utility-estimated demand for the new ESI.
- (iii) For the other class as defined in subsection (d)(2)(E) of this section, the energy allocated to a new ESI shall be 95% of the utility-estimated annual kilowatt-hours for the new ESI.

- (C) **Open interest period.** Beginning February 15, 2001, and continuing through March 15, 2001, interested customers may request the opportunity to participate in a utility's pilot project by submitting to the utility through its pilot project Internet website the account number and zip code information necessary to determine the customer's ESI. An eligible ESI is one that does not exceed the individual ESI load cap established in subparagraph (A) of this paragraph. By March 21, 2001, the utility shall determine if the non-residential customer classes are either oversubscribed or undersubscribed, including the amount of

load oversubscribed or undersubscribed, and shall make such information publicly available through its pilot project Internet website.

- (i) **Participant list.** The utility shall create a list of customers eligible to participate in the pilot project, referred to as the participant list. The participant list shall include each ESI and related service address, the name in which the customer is billed, and customer class as defined in this section. No later than March 21, 2001, the utility shall make available its integrated voice response (IVR) system or its pilot project Internet website to allow a customer having an ESI in the lottery to determine whether its ESI has been selected for the participant list. The participant list for each customer class shall be provided to the commission no later than March 21, 2001.
- (ii) **Oversubscription.** On March 21, 2001, if a non-residential customer class is oversubscribed, the utility shall use a lottery to develop the participant list. As each ESI is selected through the lottery, the ESI's load used for the calculation in subparagraph (A) of this paragraph shall be subtracted from the total amount of load available for customer choice as determined in subparagraph (A) of this paragraph. The ESI that causes the 4.0% load limit (i.e., the 5.0% load limit less the 1.0% set-

aside) to be reached shall be the final ESI selected through the lottery; the 4.0% limit may be exceeded only for the purpose of accommodating the entire load associated with the final ESI selected, except that such excess shall not cause the amount of load available for customer choice to be greater than 4.1%.

Once the 4.0% load limit is reached, the selected ESIs shall be included on the participant list.

(iii) **Undersubscription.** If a non-residential customer class is undersubscribed, all eligible ESIs submitted shall be included on the participant list. Beginning March 21, 2001, any unsubscribed load will be the available load available for subscription by customers in that customer class on a first come, first served basis.

(D) **Negotiation period.** Between March 21, 2001 and May 10, 2001, customers on the participant list may negotiate and contract with REPs. A REP shall notify the utility of execution of a contract. If a customer has not entered into a confirmed REP contract for a specific ESI by May 10, 2001, that ESI shall be removed from the participant list, and the load associated with that ESI shall be added to the amount of available load. On May 11, 2001, the utility shall post, on its pilot project Internet website, a list of submitted ESIs that do not match a

customer on the participant list. REPs shall have until May 14, 2001 to correct any ESI listed by the utility on May 11, 2001. On May 17, 2001, the utility shall determine the amount of available load for each non-residential customer class and shall make such determination publicly available through its pilot project Internet website.

(E) **Monitoring and adjusting the amount of available load.** Following the negotiation period, participation shall be allowed on a first come, first served basis.

(i) As each non-residential customer in a class executes a contract, the amount of available load for that class shall be decremented by the amount of the customer's ESI load used for the calculation in subparagraph (A) of this paragraph.

(ii) The ESI that causes the amount of available load to reach zero shall be the final ESI selected; the amount of available load may drop below zero only for the purpose of accommodating the entire load associated with the final ESI selected, subject to the limitations described in subparagraph (C)(ii) of this paragraph.

(4) **Aggregated load set-aside.** Customers participating in customer choice may use aggregation to the extent they choose, and may participate by self aggregation or multiple customer aggregation. For purposes of pilot project administration, aggregators must submit to the utility their groupings of utility

account numbers and associated zip codes, or ESIs if available, for participation in the pilot project subject to the 1.0% set-aside. Such groupings (hereafter referred to as aggregation packets) shall be submitted by customer class as defined in subsection (d) of this section with a listing of utility account numbers and associated zip codes.

- (A) **Set-aside cap.** No single aggregation packet may contain an ESI or ESIs that represent more than 20% of the 1.0% set-aside for that customer class, with the exception of the residential class.
- (B) **Registration dates.** Aggregators may register non-residential customer class aggregation packets, subject to the limitation in subparagraph (A) of this paragraph, with the utility beginning February 15, 2001. Aggregators may register residential aggregation packets beginning March 1, 2001.
- (C) **Undersubscription for all non-residential customer classes.** If an aggregation packet contains non-residential ESIs from a class that is undersubscribed as of April 2, 2001, then that aggregation packet shall have a reserved allotment of the 1.0% set-aside until May 21, 2001. If by May 31, 2001, the 1.0% set-aside for aggregation in any non-residential class is undersubscribed, then the utility shall determine the unused class capacity and add it to the amount of available load for that class. No later than June 10, 2001, the utility shall make the updated

amount of available load publicly available through the utility's pilot project Internet website.

(D) **Aggregation selection process for customer classes.** The eligibility for the 1.0% set-aside for each customer class shall be determined as follows:

(i) **Residential customer class.** Beginning on March 1, 2001, an aggregator may accept authorizations from residential customers to switch providers as a part of an aggregation packet. Aggregators shall submit aggregated utility account numbers and associated service address zip codes to the utility for tracking the 1.0% set-aside on a first come, first served basis. Aggregation packets shall be accepted until either the 1.0% set-aside is reached or June 15, 2001, whichever comes first. If the 1.0% set-aside is not fully subscribed by June 15, 2001, the utility shall determine the unused class capacity and add that unused capacity to the total amount of available load for the residential class.

(ii) **Non-residential customer classes.** The initial set-aside for each of the non-residential customer classes shall be 1.0% of the eligible load by customer class. To be eligible for the aggregation participant list, an aggregator must provide utility



account number and service address zip code information, or  
ESIs if available, to the utility by April 2, 2001.

- (I) **Oversubscription for the non-residential, non-demand metered customer class.** If the total number of ESIs in aggregation packets submitted for the pilot for a non-residential, non-demand class as of April 2, 2001 exceeds the 1.0% set-aside, then the utility shall use a lottery to determine the aggregation participant list for this class. Aggregation packets eligible for the aggregation participant list shall be selected by the utility by April 5, 2001. As each aggregation packet is selected through the lottery, the ESI count shall be subtracted from the total number of ESI available for the 1.0% set-aside. Aggregation packets shall be selected until none of the 1.0% set-aside is left. If the last aggregation packet selected causes the 1.0% set-aside to be exceeded, the selection of the final aggregation packet for this class shall be done in accordance with subparagraph (E) of this paragraph. By April 6, 2001, the utility shall determine whether an aggregation packet has been selected, and shall make

such information publicly available through its pilot project Internet website.

- (II) **Oversubscription for the industrial demand-metered and commercial and all other demand-metered classes.** If the total combined load of all aggregation packets submitted for each of the industrial demand-metered and commercial and all other demand-metered classes exceeds the 1.0% set-aside as of April 2, 2001, then the utility shall use a lottery to determine the aggregation participant list for each customer class. Aggregation packets eligible for the aggregation participant list shall be selected by the utility by April 5, 2001. As an aggregator packet is selected through the lottery, the demand for that ESI used to determine the available capacity for that customer class shall be subtracted from the total demand amount available for the 1.0% set-aside. Aggregation packets shall be selected until none of the 1.0% set-aside is left. If the last aggregation packet selected causes the 1.0% set-aside to be exceeded, the selection of the final aggregation packet for the class shall be done in

accordance with subparagraph (E) of this paragraph.

No later than April 6, 2001, the utility shall make the list of ESIs eligible for the pilot project publicly available through its pilot project Internet website.

- (III) **Oversubscription for the other customer class as defined in subsection (d)(2)(e) of this section.** If the total combined load of all aggregation packets submitted for the other class exceeds the 1.0% set-aside as of April 2, 2001, then the utility shall use a lottery to determine the aggregation participant list for this class. Aggregation packets eligible for the aggregation participant list shall be selected by the utility by April 5, 2001. As each aggregation packet is selected through the lottery, the energy in kilowatt-hours for that ESI used to determine the size of the customer class shall be subtracted from the total amount of energy available for the 1.0% set-aside. Aggregation packets shall be selected until none of the 1.0% set-aside is left. If the last aggregation packet selected causes the 1.0% set-aside to be exceeded, the selection of the final aggregation packet for the class shall be

done in accordance with subparagraph (E) of this paragraph. No later than April 6, 2001, the utility shall make the list of ESIs eligible for the pilot project for the class publicly available through its pilot project Internet website.

- (E) **Non-residential customer classes oversubscription lottery selection of last aggregation packet.** If the final aggregation packet chosen in a customer class lottery causes the 1.0% set-aside for that customer class to be exceeded by more than 10%, that is if that aggregation packet increases the size of the customer class to greater than 1.1%, that aggregation packet shall be rejected and another aggregation packet shall be chosen if available. If no other aggregation packet is available to fill each non-residential customer class without exceeding the 10% overage limit, that remaining increment of capacity set-aside will not be subscribed, but will be added to the amount of available capacity for aggregation for that non-residential customer class and will be available on a first come, first served basis. An aggregation packet that does not exceed the 10% overage limit will be allowed. When the results of the oversubscription lottery are posted by the utility, the utility shall also make publicly available the information concerning this available capacity through its pilot project Internet website.

- (F) **Contract notification due date for non-residential customer classes.** By May 21, 2001, a REP must submit verification of executed supply contracts with ESIs and associated zip code to the utility. Any ESI that has not been validated by a REP by this date will relinquish its reserved allotment on the aggregation participant list. The relinquished allotment will then be available for aggregation in that customer class on a first come, first served basis.
- (G) **Notification of executed contract for non-residential customer classes.** The REP shall document the existence of an executed contract for service by electronically submitting a list of ESIs representing executed contracts to the utility. The utility may rely on receipt of this list as proof of the existence of an executed contract. The REP shall file a signed affidavit with the commission attesting to the accuracy of the ESIs on the list.
- (H) **Electronic submissions by aggregators.** All submittals required by this section by aggregators to utilities shall be made in electronic format using a Microsoft Excel spreadsheet using a spreadsheet template posted on the utilities' pilot project Internet website. Utilities will post templates by January 31, 2001.

(I) **New ESIs.** For an ESI that was not included in the calculation in paragraph (3)(A) of this subsection, hereinafter called a new ESI, the customer's ESI load shall be determined as follows:

- (i) For the non-residential non-demand metered classes, a new ESI shall count as one ESI against the total number of ESIs.
- (ii) For the demand-metered classes, the demand allocated to a new ESI shall be 95% of the utility-estimated demand for the new ESI.
- (iii) For the other class as defined in subsection (d)(2)(E) of this section, the energy allocated to a new ESI shall be 95% of the utility-estimated annual kilowatt-hours for the new ESI.

(h) **Transmission and distribution rates and tariffs.**

- (1) **Utilities within ERCOT.** In connection with a utility's pilot project, the utility shall provide transmission service and distribution service in accordance with the rates for non-bypassable delivery charges approved by the commission, on an interim basis for application during the utility's pilot project, in the utility's unbundled cost of service case filed pursuant to PURA §39.201. Notwithstanding the provisions of §22.125 of this title (relating to Interim Relief), such interim rates shall not be subject to surcharge or refund if the rates ultimately established differ from the interim rates.

(2) **Utilities outside of ERCOT.**

- (A) **Jurisdiction of other regulatory bodies.** Processes utilized by non-ERCOT participants shall support the settlement of traditional wholesale markets and shall conform to all Federal Energy Regulatory Commission (FERC) rules and regulations.
- (B) **Transmission service.** In connection with a utility's pilot project, the utility shall provide transmission service in accordance with the rates and delivery charges approved by the FERC. A utility in transition to an independent transmission company (ITC) model shall maintain on file with the commission a copy of its current FERC-approved open access transmission tariff (OATT), as well as any proposed amendments to the OATT submitted to FERC.
- (C) **Distribution service.** In connection with a utility's pilot project, the utility shall provide distribution service in accordance with the rates for non-bypassable delivery charges approved by the commission, on an interim basis for application during the utility's pilot project, in the utility's unbundled cost of service case filed pursuant to PURA §39.201. Notwithstanding the provisions of §22.125 of this title, such interim rates shall not be subject to surcharge or refund if the rates ultimately established differ from the interim rates.

- (3) **Approval of tariffs.** Tariffs implementing pilot project rates must be filed within ten days following the commission's determination of those rates. The commission shall approve such tariffs by May 31, 2001, and may do so administratively.
- (i) **Billing requirements.**
  - (1) A utility shall bill a customer's REP for non-bypassable delivery charges in accordance with the tariffs established pursuant to subsection (h) of this section. The REP must pay these charges.
  - (2) A REP shall be responsible for ensuring that its retail customers are billed for electric service provided. A utility may bill retail customers at the request of a REP, provided that any such billing service shall be offered by the utility on comparable terms and conditions for any requesting REP.
- (j) **Evaluation of the pilot projects by the commission; reporting.** The commission shall evaluate the pilot projects and the operational readiness of each power region, including its support systems, for customer choice.
  - (1) **Evaluation criteria.**
    - (A) Criteria for determining the readiness of a power region for customer choice may include the following:



- (i) whether a power region's operational support systems were tested, and any problems that surfaced during the pilot project were adequately rectified;
  - (ii) whether electric system reliability was significantly affected in an adverse way; and
  - (iii) any other criteria the commission determines appropriate.
- (B) Criteria for determining whether commission rules may need modifications or whether certain aspects of retail competition may require more detailed monitoring by the commission may include the following:
  - (i) whether participants in the pilot projects represented a broad base of customers of diverse demographic characteristics;
  - (ii) whether customers were aware of their rights and responsibilities with respect to customer choice, and whether such awareness increased for customers as a whole over the duration of the pilot projects;
  - (iii) whether a broad range of electric services and products were offered;
  - (iv) whether the quality of customer service with respect to retail customers was affected; and
  - (v) any other criteria the commission determines appropriate.

(2) **Information used for evaluation of pilot projects.** Evaluation of the pilot projects shall be based on information including, but not limited to:

- (A) reports filed in accordance with paragraph (3) of this subsection;
- (B) surveys of retail customers conducted in connection with the commission's customer education program; and
- (C) the quantity and nature of complaints or inquiries regarding the pilot project received by the commission's Office of Customer Protection.

(3) **Reporting by market participants and independent organizations.** Each market participant and independent organization shall file two status reports with the commission under a single project number as designated by the commission's central records division. The first status report shall be filed on November 15, 2001, and the second no later than 30 days following the conclusion of the pilot project. In addition, a utility subject to PURA Chapter 39, Subchapter I, shall file semi-annual reports with the commission for the duration of its pilot project to permit the commission to monitor whether proportional representation is achieved in accordance with subsection (l)(3)(B) of this section.

- (A) **Reporting by utilities.** Each status report from a utility shall include:
  - (i) The percent of load switched by month and cumulatively, for each customer class as defined in this section, including supporting data;

- (ii) The number of customers that have withdrawn from the pilot project, by customer class;
  - (iii) A summary of any technical problems encountered during the reporting period, including resolutions or proposed resolutions, as appropriate, and supporting data;
  - (iv) A summary of all complaints related to the pilot project received by the utility during the reporting period, including a description of the resolution of the complaints;
  - (v) For a utility in transition to an ITC model, a progress report on the transition to the ITC, including any updates to the initial compliance filing; and
  - (vi) Any other information the utility believes will assist the commission in evaluating the pilot projects and the readiness of a power region for implementation of full customer choice.
- (B) **Reporting by REPs.** Each status report from a REP shall include:
- (i) A summary of any technical problems encountered during the reporting period, including resolutions or proposed resolutions, as appropriate, and supporting data;
  - (ii) A summary of all complaints related to the pilot project received by the REP during the reporting period, including a description of the resolution of the complaints; and

- (iii) Any other information the REP believes will assist the commission in evaluating the pilot projects and the readiness of a power region for implementation of full customer choice.
- (C) **Reporting by an independent organization.** Each status report from an independent organization shall include:
  - (i) Data from the registration agent regarding the average time elapsed between a switch request and the time the switch became effective;
  - (ii) Data from the registration agent, categorized by residential and non-residential customers, listing the total number of switch requests for each month, as well as the average number of switch requests per day for each month, and the total number of switch requests by zip code;
  - (iii) Data from the registration agent regarding the number of rejected switch requests resulting from the anti-slamming verification process;
  - (iv) A summary of all complaints, categorized by REP and by utility, related to the pilot project captured in the registration agent's systems during the reporting period, including a description of the resolution of the complaints;

- (v) A summary from the registration agent and the independent organization, as applicable, of any technical problems encountered during the reporting period, including resolutions or proposed resolutions, as appropriate, and supporting data; and
- (vi) An analysis by the independent transmission organization of system reliability during the pilot projects.

(D) **Other reporting.**

- (i) To the extent low-income rate discounts are offered in accordance with PURA and commission rules, the number of customers receiving a low-income rate discount shall be reported to the commission by the administrator of the system benefit fund.
- (ii) At any time, a pilot project participant who is neither a utility nor a REP may provide the commission with any information the participant believes will assist the commission in evaluating the pilot projects and the readiness of a power region for implementation of full customer choice.

- (4) **Pilot implementation working group.** The commission will establish a pilot implementation working group to oversee the pilot projects. The commission or its designee, based upon a recommendation of the pilot implementation working

group, may revise the operational requirements of the pilot projects in order to resolve technical problems encountered by market participants.

- (5) **Extension of pilot projects.** Should the commission determine that it is necessary to delay competition and extend the pilot projects, it must make such determination by December 31, 2001, except as otherwise authorized by PURA §39.405.
  
- (k) **Pilot project administration and recovery of associated costs.**
  - (1) Each utility shall be responsible for administering the pilot project for its service area. Costs incurred by the utility to administer the pilot project may include expenses for required communications, third-party outsourcing for any or all administration tasks, enrollment process, or lottery administration.
  - (2) The utility may request recovery from the commission of pilot project administrative costs through:
    - (A) inclusion in the annual report filed pursuant to PURA §39.257; or
    - (B) deferral to future retail transmission or distribution rates; or
    - (C) deferral to a proceeding in which the consideration of such costs was pending as of May 1, 2000.
  - (3) Parties do not waive the right to challenge the utility's ability to seek cost recovery for costs associated with the pilot projects at the time that such relief is sought. In addition, nothing in this section shall be construed as resolving the

legal issue of whether utilities may recover costs associated with the pilot projects.

(l) **Compliance filings.**

(1) **Timing and review.** Each utility shall file a pilot project implementation plan with the commission under a single project number as designated by the commission's central records division. An implementation plan filed under this section shall be reviewed administratively to determine whether it is consistent with the principles, instructions and requirements set forth in this section.

(A) Each utility shall file its implementation plan within 45 days of the commission's adoption of this section. Such filings do not constitute contested case proceedings, but are designed to describe the particular application of this section to the filing utility for the purpose of providing information to the public and the commission.

(B) No later than 15 days after filing, interested parties may file comments on the implementation plan.

(C) No later than 25 days after filing, commission staff may file a recommendation concerning the implementation plan.

(D) Unless the commission or presiding officer determines otherwise, an implementation plan filed under this section shall be deemed approved on the thirtieth day after filing. If the implementation plan is not

approved, the utility shall resubmit its plan following consultation with commission staff under a deadline established by the presiding officer.

- (2) **Content.** The compliance filing shall address each provision of this section with a brief narrative explaining how the utility intends to implement that provision, including the utility's pilot project Internet website address and other contact information, as applicable. Numerical and formulaic data shall also be provided where applicable. Specifically, the compliance filing shall detail the calculation of the 5.0% load available for each customer class, including the 1.0% set-aside, and demonstrate the calculation with sample data. The final calculations containing actual data shall be filed with the commission by January 31, 2001.

(3) **Additional requirements for non-ERCOT utilities.**

- (A) A utility subject to PURA Chapter 39, Subchapter I, shall include in its transition plan filed pursuant to PURA §39.402, a plan for extending its pilot project beyond January 1, 2002. The plan for extension of the pilot project shall contain:

- (i) The utility's proposed increase(s) in pilot project participation beyond 5.0%, and proposed timing for such increase(s), including supporting data and workpapers; and
- (ii) A report to the commission on market conditions in the utility's power region, including an analysis of the level of competition



that the region can support and all relevant data and workpapers.

- (B) A utility subject to PURA Chapter 39, Subchapter I, shall include in its compliance filing, a plan to ensure proportional representation in its pilot project between customers receiving service from the utility in an area that is certificated solely to the utility and those customers of the utility located in multiply certificated areas.
- (C) A utility in transition to an ITC model shall include in its compliance filing:
  - (i) a narrative of how its plan for transition to an ITC is expected to affect the pilot project, including relevant supporting data and workpapers; and
  - (ii) an explanation of any requirements of market participants that are unique to its service area (e.g, registration with ITC, data aggregation requirements).

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 1st DAY OF JUNE, 2000 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**