

**PROJECT NO. 30769**

**AMENDMENTS TO PUC SUBST. R. § PUBLIC UTILITY COMMISSION  
25.472(b)(3) REGARDING § OF TEXAS  
PRIVACY OF CUSTOMER §  
INFORMATION**

**ORDER ADOPTING AN AMENDMENT TO §25.472  
AS APPROVED AT THE NOVEMBER 17, 2005 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.472(b)(3), relating to Privacy of Customer Information with no changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5463). The proposed amendment deletes the following language from subsection (b)(3) of the rule: “For industrial and commercial customers, the TDU (Transmission and Distribution Utility) or REP (Retail Electric Provider) shall not release any information of a prior occupant of the premise, if a prior occupant has designated the information as competitively sensitive.” This rule is a competition rule subject to judicial review as specified in §39.001(e) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN., Title II (Vernon 1998 & Supp. 2004-2005) (PURA). This amendment is adopted under Project Number 30769.

The commission received comments on the proposed amendment from “Joint Commenters” comprised of AEP Texas Central Company; AEP Texas North Company; CenterPoint Energy Houston Electric, LLC; TXU Electric Delivery Company; Texas-New Mexico Power Company; CPL Retail Energy; Direct Energy; Entergy Solutions Ltd.; First Choice Power; Gexa Energy; Green Mountain Energy Company; Reliant Energy; Stream Energy; TXU Energy; WTU Retail Energy; Competitive Assets on behalf of its undisclosed retail electric provider clients; and the Alliance for Retail Markets, consisting of APS Energy Services, Constellation New Energy, Inc.,

Direct Energy, Entergy Solutions Ltd., Green Mountain Energy Company, Hino Electric, Strategic Energy, Stream Energy and Utility Choice Electric. The commission also received comments on the proposed amendment from Texas Industrial Energy Consumers (TIEC).

Joint Commenters stated that they agreed with Staff's recommendation that the language mentioned above should be deleted from P.U.C. SUBST. R. §25.472(b)(3). Joint Commenters stated that market meetings were initiated at the direction of the Retail Market Subcommittee to identify a means of complying with the existing rule and to identify additional options. Despite numerous meetings, the group could only reach one recommendation which would comply with the rule. This recommendation would require transactional and process changes for each market participant, including the Electric Reliability Council of Texas, Inc. (ERCOT) and would be unduly costly to those parties. Joint Commenters stated that the TX SET working group deemed this option financially and technically excessive and that the Joint Commenters agreed with that conclusion.

Joint Commenters stated that to date, no market participant or customer has requested that historical data be held as competitively sensitive, and therefore it appears that it would be in the best interest of consumers and the Texas market to amend the rule to avoid requiring market participants to expend the financial capital and resources necessary to implement the rule.

TIEC stated that the proposed rule change would delete the current requirement that was put in place to provide continued protection for customer-specific usage after a customer vacated the premises. TIEC stated that this issue appears to typically arise when one business sells a premise

or facility to another business. TIEC stated that while they originally supported this provision, it has become apparent that there is no readily available mechanism by which ERCOT can protect a prior customer's data. TIEC also stated that it has become apparent that most commercial and industrial customers are in a good position to protect the confidentiality of their usage data contractually.

*Commission Response*

**The commission agrees with the comments of both Joint Commenters and TIEC. As no commenter requested changes to the proposed amendment, the commission will make no changes to the proposed text as published.**

TIEC stressed that the confidentiality afforded customer-specific usage data be maintained since release of such data could cause tremendous competitive harm. Therefore, TIEC requested that the commission be clear that by removing the language noted above, the commission is not reducing the protections afforded such data. Additionally, TIEC asked that if the protection that is being removed ever becomes necessary, that the commission consider other mechanisms to ensure that competitively sensitive customer data is protected.

*Commission response*

**The commission acknowledges the importance of the confidentiality of customer-specific usage data and finds that the removal of the language noted above does not reduce the protections afforded to such data. The commission agrees that should the provision that is being removed ever prove to be necessary for the protection of competitively sensitive**

**customer-specific data, the commission will consider requiring the development of a mechanism or mechanisms to ensure such data is protected.**

This amendment is adopted under PURA §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this amendment pursuant to PURA §39.101, which grants the commission authority to establish protections for retail customers.

Cross Reference to Statutes: PURA §14.002 and §39.101.

**§25.472. Privacy of Customer Information.**

- (a) Mass customer lists. Prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated retail electric providers (REPs) and registered aggregators.
- (1) A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI-ID). All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act (PURA) §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.
- (2) Prior to the release of a mass customer list, an electric utility shall mail a notice to all customers who may be included on the list. The notice shall:
- (A) explain the issuance of the mass customer list;
  - (B) provide the customer with the option of not being included on the list and allow the customer at least 30 days to exercise that option;
  - (C) inform the customer of the availability of the no call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and provide the customer with information on how to request placement on the list;
  - (D) provide a toll free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.

- (3) The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.
  - (4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.
  - (5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.
- (b) Individual customer and premise information.
- (1) A REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's or applicant's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider). This prohibition shall not apply to the release of such information by a REP or aggregator to:
    - (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;
    - (B) an agent, vendor, partner, or affiliate of the REP or aggregator engaged to perform any services for or functions on behalf of the REP or aggregator, including marketing of the REP's or aggregator's own products or services, or products or services offered pursuant to joint agreements between the REP or aggregator and a third party;

- (i) All such agents, vendors, partners, or affiliates of the REP or aggregator shall be required to sign a confidentiality agreement with the REP or aggregator and agree to be held to the same confidentiality standards as the REP or aggregator pursuant to this section; and
- (ii) In the event that a REP shares proprietary customer information with a third party for the purpose of marketing such party's products or services to the REP's customer, prior to the release of information to any such agent, partner or affiliate, a REP or aggregator shall provide the customer an opportunity to opt-out of the release of their information for such marketing purposes by either of the following methods:
  - (I) send a notice to customers explaining the issuance of the each information release and the reason for the information release and provide the customer with the option of not being included in the information release and allow the customer at least 30 days to exercise that option; or
  - (II) include an opportunity for the customer to make a choice as to whether or not the customer wants to be included in all future marketing of other products and services by the REP or its agent, partner, or affiliate. Such opportunity may be provided during the authorization and verification process

detailed in §25.474 or via a separate notice and mailing to customers.

- (C) a consumer reporting agency as defined by the Federal Trade Commission;
  - (D) an energy assistance agency to allow a customer or an applicant to qualify for and obtain other financial assistance provided by the agency. A REP may rely on the representations of an entity claiming to provide energy assistance;
  - (E) local, state, and federal law enforcement agencies;
  - (F) the transmission and distribution utility (TDU) within whose geographic service territory the customer or applicant is located, pursuant to the provisions of the TDU's commission-approved Tariff for Retail Electric Delivery Service;
  - (G) the Office of the Public Utility Counsel, upon request pursuant to PURA §39.101(d);
  - (H) conduct activities required by subsection (a) of this section;
  - (I) the registration agent, another REP, a provider of last resort (POLR), or TDU as necessary to complete a required market transaction, under terms approved by the commission; or
  - (J) the registration agent or a TDU in order to effectuate a customer's move-in, transfer, or switch.
- (2) Under no circumstances shall a REP or aggregator sell, make available for sale, or authorize the sale of any customer-specific information or data obtained.



- (3) Upon receiving authorization from a customer or applicant, a REP shall request from the TDU the monthly usage of the customer's or applicant's premise for the previous 12 months. The TDU, upon receipt of a written request or other proof of authorization, shall provide the requested information to the requesting REP or to the customer or applicant no later than three business days after the request or proof of authorization is submitted.
  - (4) A REP shall, upon the request of an energy assistance agency, provide a 12-month billing history free of charge that includes both usage data and the dollar amount of each monthly billing. If 12 months of billing data are not available from the REP, the REP shall estimate the amount billed using the REP's residential rate. The history shall also clearly designate estimated amounts. A residential billing history requested by an energy assistance agency shall be provided by the end of the next business day after the request is made. A residential billing history requested by a customer shall be provided within five business days of the customer request.
  - (5) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection or termination of electric service with respect to the customer's account.
- (c) This section is effective June 1, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.472 relating to Privacy of Customer Information is hereby adopted with no changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 21st DAY OF NOVEMBER 2005.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**