

**PROJECT NO. 30719**

<b>AMENDMENT TO COMPETITIVE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ENERGY SERVICES RULE RELATING</b>	<b>§</b>	
<b>TO CERTAIN SERVICES ON</b>	<b>§</b>	<b>OF TEXAS</b>
<b>MILITARY BASES</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENT TO §25.343  
AS APPROVED AT THE JUNE 16, 2005, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.343, relating to Competitive Energy Services, with changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1390). The amendment will allow an electric utility to provide operation and maintenance services to a military base electric distribution system, whether that system is owned by the military base or is located on the base and is owned by the electric utility or a third party, rather than barring provision of such services as competitive energy services. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). This amendment is adopted under Project Number 30719.

The commission received comments on the proposed amendment from AEP Texas North Company, AEP Texas Central Company, and Southwest Electric Power Company (collectively, the AEP Companies,) and reply comments from TXU Electric Delivery Company (TXU).

The AEP Companies supported the proposed amendment because the existing rule prevents them from bidding for operation and maintenance service contracts for military bases despite their ability to provide those services. The AEP Companies believe that the amendment will allow them to meet the bases' needs relating to such services, to the benefit of military bases in areas

that otherwise have limited options, and they believe the amendment exemplifies the State of Texas's support for military bases. The AEP Companies did not seek any change to the language of the proposed amendment.

*Commission response*

**The commission agrees with the AEP Companies' comments.**

**Prior to this amendment to §25.343, the commission classified operations and maintenance services for customer-owned electric facilities, including those owned by military bases or owned by third parties but located within military bases, as competitive energy services; §25.343 barred electric utilities from providing those services. Military bases in Texas that are not situated within or very near major metropolitan areas have had difficulty attracting offers for such services on a competitive basis from private providers. Transmission and distribution utilities (TDUs), however, can credibly offer operation and maintenance service for a military base distribution system. The amendment will permit TDUs to operate and maintain military base distribution systems by providing that operations and maintenance services to those bases shall be considered discretionary services rather than competitive energy services.**

TXU expressed concern that an ambiguity existed in the rule as proposed because the Utility System Privatization Act, codified at 10 U.S.C. §2688, provides for conveyance or leasing of a military base distribution system, while the purpose of the proposed rule is to provide TDUs the opportunity to bid for operation and maintenance contracts for military base distribution systems.

TXU asked, “Is it Staff’s intent that this amendment allow electric utilities to provide services to facilities owned by military bases, as contemplated by AEP, or only to facilities located on military bases but owned by a third party as a result of a conveyance” under the Utility System Privatization Act?

*Commission response*

**The commission agrees with TXU’s comments that the rule should be clarified.**

**The rule’s language has been clarified to address the ambiguity identified by TXU by removing the reference to the Utility System Privatization Act and to describe more specifically the services that may be offered. The commission’s intent in adopting this amendment is to remove the regulatory prohibition against a TDU operating and maintaining a distribution system, whether that distribution system is owned by a military base or is located on a military base and owned by the electric utility or a third party. The commission does not intend to limit the exemption only to those situations in which a military base has already conveyed or leased its distribution system to a third party.**

This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §14.001, which authorizes the commission to regulate the business of public utilities within its jurisdiction; §39.001, which authorizes the commission to adopt rules for transition to a fully competitive electric power industry; §39.051, which requires each electric

utility to separate its regulated utility activities from its customer energy services activities by unbundling its business activities to create, *inter alia*, a separate transmission and distribution utility; and §39.203, which requires TDUs to provide transmission and distribution services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.001, 39.051, and 39.203.

**§25.343. Competitive Energy Services.**

(a)-(e) (No change.)

(f) **Exceptions related to certain competitive energy services.** An electric utility may not own, operate, maintain or provide other services related to equipment of the type described in §25.341(3)(F) of this title, except in any of the following instances or as otherwise provided in this subchapter or by commission order.

(1)-(4) (No change.)

(5) An electric utility may operate and maintain a distribution system located behind the electric utility's point of delivery on a military base, whether that distribution system is owned by the military base or a third party. In addition, an electric utility may own such a distribution system. For purposes of this subsection, "point of delivery" means the point at which electric power and energy are metered. The provision of such services by an electric utility shall be considered discretionary services and shall not be considered competitive energy services.

(g)-(i) (No change.)

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 §25.343 relating to Competitive Energy Services is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2005.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**JULIE PARSLEY, COMMISSIONER**

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**PAUL HUDSON, CHAIRMAN**

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**BARRY T. SMITHERMAN, COMMISSIONER**