

PROJECT NO. 37007

RULEMAKING FOR	§	PUBLIC UTILITY COMMISSION
ADMINISTRATIVE CORRECTION TO	§	
SUBST. R. §25.491, RECORD	§	OF TEXAS
RETENTION AND REQUIREMENTS	§	

**ORDER ADOPTING AMENDMENT TO §25.491
AS APPROVED AT THE OCTOBER 8, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.491, relating to Record Retention and Reporting Requirements, with changes to the proposed text as published in the July 17, 2009 issue of the *Texas Register* (34 TexReg 4716). The amendment removes the June 1st reporting deadline and instead requires a retail electric provider to provide the report when it files its annual report pursuant to §25.107, relating to Certification of Retail Electric Providers (REPs). The amendment also conforms the titles of §25.475 and §25.476 to the titles adopted in amendments to those rules. The amendment is a competition rule subject to judicial review as specified in Public Utility Regulatory Act §39.001(e). The amendment is adopted under Project Number 37007.

The commission received comments on the proposed amendment from Reliant Energy Retail Services, LLC (Reliant) and jointly filed comments from the Alliance for Retail Markets (ARM) and the Texas Energy Association of Marketers (TEAM).

Summary of Comments

ARM and TEAM supported the final adoption of the proposed amendments to §25.491.

Reliant recommended that the commission clarify in the rule its expectation that the information required by §25.491 will be submitted with a retail electric provider's *annual* report pursuant to §25.107. Reliant stated that this clarification will avoid confusion regarding whether the information is required in the semiannual report pursuant to §25.107.

Reliant further noted that a reference to the June 1 reporting date also exists in §25.480, relating to Bill Payment and Adjustments, and recommends the commission make a similar amendment to that rule in another rulemaking.

Commission Response

The commission agrees that the language recommended by Reliant provides additional clarification and modifies the rule accordingly.

The commission declines to adopt an amendment to §25.480 because that rule is outside the scope of this rulemaking. The commission will, however, consider initiating a rulemaking to amend §25.480.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, and 39.101.

§25.491. Record Retention and Reporting Requirements.

- (a) **Application.** This section does not apply to a municipally owned utility where it offers retail electric power or energy outside its certificated service territory or to a retail electric provider (REP) that is an electric cooperative.
- (b) **Record retention.**
- (1) Each REP and aggregator shall establish and maintain records and data that are sufficient to:
 - (A) Verify its compliance with the requirements of any applicable commission rules; and
 - (B) Support any investigation of customer complaints.
 - (2) All records required by this subchapter shall be retained for no less than two years, unless otherwise specified.
 - (3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter shall be provided to the commission within 15 calendar days of its request.
- (c) **Annual reports.** In its annual report, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) to the commission and the Office of Public Utility Counsel (OPUC) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

- (1) The number of residential customers served, by nine-digit zip code and census tract, by month;
- (2) The number of written denial of service notices issued by the REP, by month, by customer class, by nine-digit zip code and census tract;
- (3) The number and total aggregated dollar amount of deposits held by the REP, by month, by customer class, by nine-digit zip code and census tract;
- (4) Information relating to the REP's bill payment assistance program for residential electric customers required by §25.480(g)(2)(B) of this title (relating to Bill Payment and Adjustments);
- (5) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:
 - (A) Refusal of electric service, which shall include all complaints pertaining to the implementation of §25.477 of this title (relating to Refusal of Electric Service);
 - (B) Marketing and quality of customer service, which shall include complaints relating to the interfaces between the customer and the REP, such as, but not limited to, call center hold time, responsiveness of customer service representatives, and implementation of §25.472 of this title (relating to Privacy of Customer Information), §25.475 of this title (relating to General REP Requirements and Information Disclosures to Residential and Small Commercial Customers), §25.473 of this title (relating to Non-English Language Requirements), §25.476 of this title (relating to Renewable and Green Energy Verification), and §25.484 of this title (relating to Texas

Electric No-Call List), and which shall not include issues for which the REP is not responsible, such as, but not limited to, power quality, outages, or technical failures of the registration agent;

- (C) Unauthorized charges, which shall encompass all complaints pertaining to §25.481 of this title (relating to Unauthorized Charges);
 - (D) Enrollment, which shall encompass all complaints pertaining to the implementation of §25.474 of this title (relating to the Selection of Retail Electric Provider), §25.478 of this title (relating to Credit Requirements and Deposits), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
 - (E) Accuracy of billing services, which shall encompass all complaints pertaining to the implementation of §25.479 of this title (relating to Issuance and Format of Bills); and
 - (F) Collection and service termination, and disconnection, which shall encompass all complaints pertaining to the implementation of §25.480 of this title, and §25.483 of this title (relating to Disconnection of Service).
- (6) In reporting the number of informal complaints received pursuant to paragraph (4) of this subsection, a REP may identify the number of complaints in which it has disputed categorization or assignment pursuant to the provisions set forth in §25.485 of this title (relating to Customer Access and Complaint Handling).
- (d) **Additional information.** Upon written request by the commission, a REP or aggregator shall provide within 15 days any information, including but not limited to marketing

information, necessary for the commission to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).

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 §25.491, relating to Record Retention and Requirements, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF OCTOBER 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER