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**RULEMAKING FOR BROKER
REGISTRATIONS** §

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

INITIAL STRAWMAN COMMENTS

I. INTRODUCTION

Competitive Assets, LLC, has been a stakeholder in the Texas electric market from the inception of deregulation in January 2002. Since then, the company has worked with many market participants, providing services that include strategic planning, regulatory compliance support, and monitoring activities at the legislature, PUCT, and ERCOT. We have assisted in the certification of many Retail Electric Providers (REPs), and helped them with marketing plans, for which many utilize brokers. Competitive Assets timely submits these comments for consideration in the drafting of the proposed rule on broker registrations.

As the filings in Project No. 49779, *Interim Broker Registrations*, indicate, there are in Texas today more than 1,100 brokers and/or companies offering brokerage services to the public. It is reasonable for the Commission to know who these entities are and to make them subject to certain regulations; specifically, to protect customers and to maintain the integrity of the Texas electric retail market.

Based on the filed registration forms, it seems, most brokers are small businesses or even just individuals. For many of them, this may be their first foray into the world of regulation. For the approved rules to fulfill their stated purpose, they need to take into account the characteristics of the target audience, so that compliance is both effective and manageable. With that in mind,

Competitive Assets offers the following suggestions to clarify some of the provisions in the filed strawman rule.

II. RULE COMMENTS

The 9/17/19 staff strawman, filed in Project No. 49794, *Rulemaking for Broker Registrations*, contains language for two new rules and makes amendments to several existing rules. Competitive Assets recommends clarifications for the following sections, although this is not meant to be an exhaustive list:

- **Sec. 25.112(8) and (9)** – There may be small businesses that have not made filings at the Secretary of State’s (SOS) office or their respective counties. Is it the intent of the rule to assure that such filings be made, or do these sections apply only to entities that have already filed with the proper agencies? A clarification on this point may make compliance easier.
- **Sec. 25.112(10)** – The reference to “any other information ... approved by the commission” may be too open-ended, as the existing businesses have no way to anticipate or prepare for this requirement.
- **Sec. 25.112(c)(4)** – While the Commission approval of the broker business names is reasonable, the timing of this process could pose a problem for such businesses’ ongoing activities. For example, if an entity’s name is found to be not appropriate and must be changed – and if such a name had been registered with SOS or the county – the change process may take longer than the rule envisions. The question related to this example – and for the approval process in general – is whether the registering

broker must suspend all business activities during the 60 days it would take for the Commission to approve the registration (or even longer if a name change is required)? One may assume that the interim registration in Project No. 49779 is sufficient for continued operations, but it could also be that the newly adopted approval process resets the permission to operate. To avoid market disruptions, entities that filed interim registrations in Project No. 49779 could be deemed as “registered,” until such time that the Commission either approves or denies their final applications. Otherwise, there is a concern that in the absence of such grandfathering, these businesses would have to cease operations for a certain time, with potentially detrimental effects to both brokers and REPs. Clarifications on these points would be helpful.

- **Sec. 25.112(e)(3)** – This states that a broker must notify the PUCT within 10 business days of any change. It should be noted, though, that the aggregator rule – Sec. 25.111(i)(3) and (4) – provides for 10 days only for changes in name, address, or phone number; other changes must be provided within 30 days. It is not clear why the proposed language for brokers differs. Additionally, the proposed language is vague as to the process of filing amendments by brokers. In comparison, Sec. 25.111(h)(1) for aggregators is more specific.
- **Sec. 25.112(f)(3)** – This refers to a possible suspension or revocation of registration for “failure to meet the requirements of PURA,¹ commission rules, or orders.” Given that the proposed rule is aimed at small businesses not previously subject to regulation, greater specificity in language here would make compliance more feasible. For

¹ Public Utility Regulatory Act.

example, Sec. 25.111(h)(3)(C) for aggregators specifically mentions “marketing guidelines of PURA.”

- **Sec. 25.5(12)** – The proposed definition for “brokerage services” includes “providing advice... to a retail electric customer...” This wording seems overly broad, to the point of being unenforceable. One can imagine friends in a general conversation “providing advice” on which REP to select, as based on their own experience. Surely, they would not be considered “brokers.” If the word “advice” is to be retained, it could be further defined as “advice with an expectation of compensation,” or some such wording to limit or refine what is meant by “advice.”
- **Sec. 25.473(e)** – If acceptable to the Commission, it would be helpful to state that brokers can obtain dual language documents from REPs and use those, instead of assuming that they must develop their own documents.
- **Sec. 25.474(f)(1)(B) and 25.474(g)(2) and (3)** – There is a reference to “[t]he individual who represents the REP...” Could this be interpreted to include brokers? A similar question applies to Sec. 25.474(f)(2)(B), in which “a third-party vendor retained by ...” is referenced; and to Sec. 25.474(f)(4), referring to “independent third party retained by the REP...” These five sub-sections (and there could be more) were written at a time, when brokers did not feature prominently in the market. But with 1,100 entities known to the Commission today, clarifying what is meant by an “individual,” a “third-party,” or a “vendor” seems necessary.
- **Sec. 25.486(d)(5)** – This subsection directs brokers to disclose “the amount or method of calculation of the compensation” to their clients. In contrast, aggregators, in Sec. 25.111(f)(1)(M), must only disclose “sources” of compensation. Arguably,

compensation amounts are considered confidential or competitively sensitive information that should not be subject to disclosure. Additionally, in this case, brokers are held to a much higher standard than aggregators. We urge staff to revise this language to make it consistent with the rules for aggregators.

- **Sec. 25.486(d)(6)** – The subsection requires disclosure of all REP certificate numbers with whom a broker has brokerage agreements. The purpose of this language is not apparent. Unless a client is interested in an electric plan offering, why would he or she need to know other REPs' certificate numbers? For example, why would a client in Houston be interested in REP certificate numbers for REPs who do not serve the Houston area? We would suggest revising this language to limit REP certificate number disclosures by a broker only for those REPs whose plans the client is considering, or one that the client finally chooses.
- **Sec. 25.486(f)(3)** – Would it be permissible for a broker to direct the client to a REP's website to obtain the necessary information? Or does the Commission envision that all brokers would maintain their own websites, with required information for each REP?

III. CONCLUSION

Suggestions offered here were drafted with a focus on clarity, consistency, and efficiency. These mostly small businesses have not been regulated before, but within four months, they will have to comply with two new rules and eleven existing rules. It may be appropriate for the Commission to consider how best to implement and communicate so many changes (and, eventually, application reviews) within such a short timeframe.

Respectfully submitted,

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