



Control Number: 49794



Item Number: 37

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OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDA

MEETING DATE: November 14, 2019

DATE DELIVERED: November 13, 2019

AGENDA ITEM NO.: 26

CAPTION: **Project No. 49794 – Rulemaking for Broker Registrations**

DESCRIPTION: Memoranda by Chairman Walker and Commissioner Botkin

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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



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Governor

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Mark Hovenkamp
Commission Advising

RE: *Rulemaking for Broker Registrations*, Project No. 49794, Commissioner Memos,
November 14, 2019 Open Meeting, Item No. 26.

DATE: November 13, 2019

Please find enclosed memoranda by Chairman Walker and Commissioner Botkin regarding the above-referenced docket.

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker, 

DATE: November 13, 2019

RE: Open Meeting of November 14, 2019 – Agenda Item No. 26
Project No. 49794 – *Rulemaking for Broker Registrations*

The *Scope of Competition in Electric Markets in Texas* Report for the 2019 Legislative Session stated the following: “The Commission recommends that the Legislature require retail electric brokers to register with the Commission in a manner similar to retail electric aggregators to ensure that customers who use a retail electric broker have adequate consumer protections.” Based upon the representations in that report, the 86th Legislature passed Senate Bill 1497 to require registration by brokers. It is my intention in adopting a rule that the Commission stand by the recommendations that the brokers be subject to a registration process that provides adequate customer protections.

I would like to thank the Commission Staff for their hard work on this rulemaking. There were many comments filed in response to the Staff Strawman Rule, and I believe that the Commission Staff has taken significant efforts to address many of the concerns raised in those comments. As set forth below, I continue to have some concerns with the proposal. However, I can support publishing the documents filed on November 7, 2019 in order to receive input on the issues for my decision on the final adoption of a rule. The below discussion sets forth my concerns for which I hope to have additional information provided in comments.

- 16 TAC §25.112(d)(2) allows for the applicant to identify information in the application as confidential. Subsection (c) of the proposed rule sets forth seven specific sets of information that must be filed in an application. In my opinion, the information required in subsection (c) should not be considered confidential. Therefore, I am not inclined to include provisions to file such information as confidential. If the applicant believes that any of the information is confidential, then there are other provisions in the Commission’s rules that allow for filing such information. Thus, I do not believe subsection (c) is necessary. However, I would like further input from commenters on the type of information in the seven requirements that could be considered confidential.

- 16 TAC §25.112(e) requires the renewal of broker registrations every three years. Many of the comments on the Staff Strawman Rule raised concerns with this requirement. Those comments stated that no other registration at the Commission requires a renewal. I discussed the issue with the Commission Staff, and I believe they have a legitimate purpose in

including a renewal process. The Commission Staff raised the concern that brokers will go out of business, and there is no way for the Commission to know to remove those brokers from the existing list of brokers. Over time the list of brokers will become long and cumbersome without removing the brokers that are no longer in business. I also discussed with the Commission Staff that the renewal process should be simple, and notice should be provided to the registered brokers prior to the expiration of the three years. I would like further input on the renewal process and the need to maintain an accurate list of brokers.

- 16 TAC §25.112(f)(5) requires the broker to provide the following information: “A description of how the broker will be compensated for providing brokerage services and by whom. If the broker is compensated directly by the client, the broker must disclose the details of the compensation.” At this point, I do not believe that the broker needs to provide this level of detail on compensation in a competitive market. In my discussions with the Commission Staff, the concern was raised about transparency on compensation to brokers from the customer. I fully agree that brokers must be transparent in charges that will be paid by the customer. However, if the broker is being compensated by an entity other than the customer, I do not believe such information needs to be disclosed. Therefore, ultimately, I am likely to consider deleting the first sentence and maintaining the second sentence in this subsection. However, I would like further input on the balance of providing the customers with sufficient information on compensation to be paid by the customer and the privacy of the broker’s compensation from other sources.

Based on the above, if the Commission adopts the proposal as filed, I request that the commenters specifically address each of the issues raised above. I look forward to discussing this matter with you at the open meeting.

Public Utility Commission of Texas

Memorandum

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea

FROM: Commissioner Shelly Botkin *Sw*

DATE: November 13, 2019

RE: Open Meeting of November 14, 2019 – Agenda Item No. 26
Project No. 49794 – *Rulemaking for Broker Registrations*

I appreciate Commission Staff's diligent work and interested participants' input in this rulemaking project. Reading the public comments on the strawman was particularly helpful.

As you know, subsection 1(e) of Senate Bill 1497 authorized the Commission to adopt disclosure requirements as part of the broker-registration process, and the draft proposal for publication includes, in proposed subsection 25.486(f), disclosures that must be made to a client before brokerage services are initiated. I propose that the Commission add to that subsection a requirement that a broker must disclose any retail electric provider that is an affiliate of the broker. To be clear, I have not decided whether I believe the final rule should require such a disclosure. This addition would be in order to solicit public comment on this point.

I also propose delegating to Commission Staff the authority to make any modifications to the proposed rule to conform to the *Citation and Style Guide for the Public Utility Commission of Texas*, the style requirements of the *Texas Register*, and to make other non-substantive changes for matters such as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.

