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**PROJECT NO. 54233**

<b>TECHNICAL REQUIREMENTS AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>INTERCONNECTION PROCESS</b>	<b>§</b>	
<b>FOR DISTRIBUTED ENERGY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RESOURCES (DERs)</b>		

**COMMENTS OF  
TEXAS ELECTRIC COOPERATIVES, INC.**

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January 6, 2023

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INTERCONNECTION PROCESS §  
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**PROJECT NO. 54233**

<b>TECHNICAL REQUIREMENTS AND INTERCONNECTION PROCESS FOR DISTRIBUTED ENERGY RESOURCES (DERs)</b>	<b>§ § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**COMMENTS OF  
TEXAS ELECTRIC COOPERATIVES, INC.**

Texas Electric Cooperatives, Inc. (TEC) respectfully submits these comments in response to the Public Utility Commission of Texas (Commission) Staff’s (Staff) Discussion Draft for Proposed Changes to §25.211 and §25.212.<sup>1</sup> TEC is the statewide association of electric cooperatives operating in Texas, representing its members except as their interests may be separately represented.<sup>2</sup> The request for comments directs responses to be filed by January 6, 2023. These comments are timely filed.

**I. Comments**

Consistent with PURA,<sup>3</sup> electric cooperatives are not governed by the Commission’s rules regarding the interconnection of on-site distributed resources.<sup>4</sup> Except for a limited subsection specifically authorized by statute, since their inception the Commission’s rules on Interconnection of On-Site Distributed Resources (16 TAC § 25.211) have not applied to electric cooperatives. This is because PURA does not grant the Commission jurisdiction or statutory authority to apply these rules to electric cooperatives but instead reserves such authority for the cooperative’s locally elected board of directors.<sup>5</sup> An electric cooperative’s board of directors has exclusive jurisdiction to set all terms of access, conditions, and rates applicable to services provided by the electric cooperative and to manage and operate its utility system, including, for example, control over

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<sup>1</sup> Technical Requirements and Interconnection Processes for Distributed Energy Resources (Nov. 22, 2022) (Staff Discussion Draft – Proposed Changes to §25.211 and §25.212) (hereafter, “Discussion Draft”).

<sup>2</sup> TEC’s 75 members include distribution cooperatives that provide retail electric utility service to approximately 5,000,000 consumers in statutorily authorized service areas that encompass more than half of the total area of the state. TEC’s G&T members generally acquire generation resources and power supply for their member distribution cooperatives and deliver electricity to them at wholesale.

<sup>3</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001 – 66.016 (PURA).

<sup>4</sup> Current 16 Texas Administrative Code (TAC) § 25.211(a) (“The only part of this section that applies to electric cooperatives is subsection (o) of this section.”).

<sup>5</sup> Importantly, there is a subset of Texas electric cooperatives located outside ERCOT that are subject to federal jurisdiction with respect to wheeling in interstate commerce.

resource acquisition and integration.<sup>6</sup> Staff’s discussion draft proposes to apply all of the new rules regarding distributed energy resources (DERs), including a mandatory access (or interconnection) process, to electric cooperatives as distribution service providers (DSPs). TEC asserts such application is prohibited by law.

TEC’s comments are limited to this jurisdictional issue. TEC does not address, at this time, Staff’s question regarding the appropriateness to include technical and operational requirements in the Commission’s substantive rules or ERCOT Protocols, or the details regarding the proposed interconnection process or technical and operational requirements for parallel operation.<sup>7</sup> TEC recommends that a simple change to the applicability section of proposed new Section 25.211—to apply only new Subsection (k) to electric cooperatives that have not yet adopted customer choice—will bring the proposed new rule into compliance with PURA. Further, TEC recommends the Commission retain the federal preemption language of current Section 25.211 to ensure the rule does not conflict with or supersede the requirements of federal law.

**A. The Commission has limited jurisdiction over electric cooperatives.**

An agency has only the jurisdiction expressly given to it by the Legislature:

[T]he proposition that a commission has only those powers conferred upon it in clear and unmistakable language is simply an element of the standard we always apply when asked to review an agency action to see whether the agency has exceeded its statutory authority. As we have said before, “the PUC is a creature of the legislature and has no inherent authority.” This is true of every state administrative agency, and as a result every such agency has only those powers expressly conferred upon it by the Legislature...<sup>8</sup>

When the Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express obligations, but “[a]n agency may not . . . exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes.”<sup>9</sup>

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<sup>6</sup> PURA § 41.055(1), (6).

<sup>7</sup> TEC’s comments are focused on the legal applicability of the proposed discussion draft rule to electric cooperatives. While TEC has identified potential operational and technical issues regarding the proposal, it refrains from commenting on these issues until the formal rulemaking phase, if necessary.

<sup>8</sup> *Pub. Util. Comm’n v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 315-16 (Tex. 2001) (footnotes omitted).

<sup>9</sup> *Id.* at 316.

**1. The Commission’s jurisdiction does not extend to interconnections, operations, and rates for electric cooperative distribution facilities.**

Chapter 41 of PURA delimits the Commission’s jurisdiction over electric cooperatives in relevant part as follows:

Except as specifically provided otherwise in this chapter, the commission has jurisdiction over electric cooperatives *only* as follows:

(1) to regulate wholesale transmission rates and service, including terms of access, to the extent provided in Subchapter A, Chapter 35;

...

(4) to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives *providing customer choice*, as provided in Section 39.203.<sup>10</sup>

Similarly, Chapter 41 spells out the jurisdiction of an electric cooperative’s board of directors in relevant part as follows:

A board of directors has *exclusive* jurisdiction to:

(1) *set all terms of access, conditions, and rates applicable to services provided by the electric cooperative*, except as provided by Sections 41.054 [Service Outside Certificated Area] and 41.056 [Anticompetitive Actions], including nondiscriminatory and comparable *rates for distribution* but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under Subchapter A, Chapter 35, provided that the rates for distribution established by the electric cooperative shall be comparable to the distribution rates that apply to the electric cooperative and its subsidiaries;

...

(6) *manage and operate the electric cooperative’s utility systems*, including exercise of control over *resource acquisition* and any related expansion programs;

(7) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers;

...

(9) determine any other utility matters that the board of directors believes should be included;

...

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<sup>10</sup> PURA § 41.004(1), (4) (emphasis added).

(12) make any other decisions affecting the electric cooperative's method of conducting business that are not inconsistent with the provisions of this chapter.<sup>11</sup>

The Legislature, therefore, divided authority between a board of directors and the Commission. With respect to wholesale transmission, the Commission has jurisdiction over electric cooperatives for purposes of access, rates, and service as set out in Subchapter A, Chapter 35 of PURA. Pursuant to Subchapter A, Chapter 35, the Commission has adopted open access rules for transmission service in ERCOT at 16 TAC §§ 25.191 - 25.203. These rules apply to electric cooperatives as DSPs or TSPs for the purpose of transmitting (or wheeling) electric power at wholesale, whether over transmission voltage facilities or distribution voltage facilities. These rules (a) do not govern the interconnection of a retail customer (including one that owns DER) to an electric cooperative's distribution facilities, (b) do not apply to the terms, conditions, or rates for such services, and (c) may not encroach upon a cooperative's statutorily granted right to manage and operate its utility system. With respect to distribution facilities, the Commission has jurisdiction over open access terms and conditions, but not rates, for electric cooperatives *only if* the cooperative is providing customer choice.<sup>12</sup> The only electric cooperative in Texas that has adopted customer choice is Nueces Electric Cooperative. Thus, the Commission does not have jurisdiction over any aspect of access to distribution facilities for any other electric cooperative in Texas.<sup>13</sup> That jurisdiction is reserved exclusively to the electric cooperative board, and includes terms of access to (i.e., interconnection), operation of, and rates for use of distribution facilities.

## **2. The discussion draft would improperly expand the Commission's powers.**

The discussion draft, at new Section 25.211(a) (titled, "Application"), would apply all of Section 25.211 to "distribution service providers (DSPs), distribution resource providers, and distribution resources interconnected or seeking interconnection with a DSP's distribution system in the state of Texas."<sup>14</sup> A DSP is defined as "[a]n electric utility, municipally-owned utility, or *electric cooperative* that owns or operates for compensation in this state equipment or facilities that are *used for the distribution of electricity to retail customers* including retail customers served

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<sup>11</sup> PURA § 41.055(1), (6), (7), (9), (12) (emphasis added).

<sup>12</sup> PURA § 41.004(4) ("Except as specifically provided otherwise in this chapter, the commission has jurisdiction over electric cooperatives only as follows: (4) to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives *providing customer choice*, as provided in Section 39.203.") (emphasis added).

<sup>13</sup> Hereafter, unless the context indicates otherwise, the term "electric cooperative" refers to an electric cooperative that has not adopted customer choice, which is all electric cooperatives in Texas except Nueces Electric Cooperative.

<sup>14</sup> Discussion Draft, § 25.211(a).

at transmission voltage levels.”<sup>15</sup> Thus, the discussion draft purports to apply all of new Section 25.211 to electric cooperatives as DSPs, but only if they own facilities for the distribution of electricity to retail customers. Accordingly, new Section 25.211 is specifically intended to govern access to an electric cooperative’s distribution facilities used for distribution of electricity at retail.<sup>16</sup> Any DER interconnection with an electric cooperative’s distribution system, even those involving residential member consumers, would be subject to new Section 25.211, regardless of the electric cooperative’s own tariff. This proposal is a significant change from the current rule, which only applies Subsection (o) to electric cooperatives.<sup>17</sup> Subsection (o) of the current rule relates to distributed natural gas generation and may be applied to electric cooperatives pursuant to PURA § 35.036.

New Section 25.211 would inappropriately apply to all electric cooperatives in every DER scenario (whether residential or commercial, retail or wholesale). It would apply numerous requirements pertaining to an electric cooperative’s distribution system, including terms of access, operations, and rates.<sup>18</sup> New Section 25.211 would require an electric cooperative to interconnect a DER under specific terms, which do not allow charges for use of distribution facilities, operations and maintenance expenses, wheeling export power, or disconnection of a DER.<sup>19</sup> The terms would dictate metering requirements; distribution tariff updates; the provision of back-up, supplemental, and maintenance power services for DERs; and contractual terms between an electric cooperative and its members.<sup>20</sup> The discussion draft would dictate how an electric cooperative conducts pre-screen studies of its distribution system to accommodate a DER interconnection<sup>21</sup> and require electric cooperatives to follow an interconnection process that includes when an electric cooperative may or may not reject an application, the studies that must be performed and their contents, the timing for the process, and the interconnection agreement that must be entered into.<sup>22</sup>

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<sup>15</sup> 16 TAC § 25.5(33) (emphasis added).

<sup>16</sup> It also appears that new Section 25.211 would apply to wholesale transmission service, as the term “distribution resource” includes “both generators and energy storage technologies, including a DESR, capable of exporting energy to a distribution system.” Discussion Draft, § 25.211(b)(4). This would directly conflict with 16 TAC § 25.191(d)(2), regarding wholesale transmission service at distribution voltage.

<sup>17</sup> Current 16 TAC § 25.211 (a).

<sup>18</sup> Discussion Draft, § 25.211.

<sup>19</sup> Discussion Draft, § 25.211(d)(1)-(2).

<sup>20</sup> Discussion Draft, § 25.211(d)(2)(B)-(D).

<sup>21</sup> Discussion Draft, § 25.211(e).

<sup>22</sup> Discussion Draft, § 25.211(f).



All of these requirements relate to the terms of access, conditions, operations, and rates of an electric cooperative's distribution system, and dictate how an electric cooperative may need to manage or operate its utility system, over which the electric cooperative's board has exclusive jurisdiction.<sup>23</sup> TEC's point is not about whether these requirements are reasonable or appropriate for DER interconnections, which TEC does not comment on at this time. Rather, the point is that, for electric cooperatives, any such requirements promulgated by the Commission should continue to serve only as a guide to electric cooperatives. Electric cooperatives have the statutory authority and ability to address DER interconnections in their tariffs, which usually incorporate a detailed distributed generation manual (specific to an electric cooperative's service area) that sets out the interconnection process, costs, studies, metering, and technical and operational requirements identified in the discussion draft. Consistent with Chapter 41 of PURA, however, the electric cooperatives' boards—not the Commission—adopt those requirements and should continue to do so in the future.

The Commission has been given limited authority over electric cooperatives and DERs, which precludes the application of the discussion draft to electric cooperatives as contemplated. If new Section 25.211 is adopted, thereby applying all the interconnection and operational requirements to electric cooperatives, it would enlarge the powers of the Commission beyond those delegated to the agency in PURA.<sup>24</sup> Such power is not reasonably necessary to fulfill any express obligation as it relates to electric cooperatives, and it would be a new power that contradicts the powers delegated to the Commission and electric cooperatives under PURA.<sup>25</sup> As such, if new Section 25.211 is adopted, it would be invalid as applied to electric cooperatives.<sup>26</sup>

### **3. The discussion draft could also run afoul of federal law.**

In addition to exceeding the bounds of state law, the Commission must be cognizant of federal law and the exclusive jurisdiction that the Federal Energy Regulatory Commission (FERC) could exert over certain electric cooperatives, either directly as public utilities or indirectly for those cooperatives that place facilities under the control of a regional transmission organization or independent system operator that is subject to FERC regulation. Some electric cooperatives in

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<sup>23</sup> PURA §§ 41.004; 41.055.

<sup>24</sup> *Id.*

<sup>25</sup> *Pub. Util. Comm'n v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001).

<sup>26</sup> *City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d at 324.

Texas (operating outside the ERCOT region) must comply with FERC’s rules, including for example rules concerning interconnection, distributed generation, and charges for one entity’s use of another entity’s utility facilities (e.g., wheeling). The Commission recognized this concern when it adopted the current version of Section 25.211 in 2012. In response to comments from electric cooperatives, the Commission amended its proposed DG interconnection rule to make clear the requirements “do not apply to the extent preempted by federal law.”<sup>27</sup> The Commission should retain this important qualifier if the discussion draft is adopted.

**B. Only certain DER requirements in PURA apply to electric cooperatives, which current Section 25.211 acknowledges.**

The Legislature confirmed the controlling effect of Chapter 41 as follows:

Sec. 41.001. APPLICABLE LAW. Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, and 39.904, this chapter governs the transition to and the establishment of a fully competitive electric power industry for electric cooperatives. Regarding the regulation of electric cooperatives, this chapter shall control over any other provision of this title, except for sections in which the term “electric cooperative” is specifically used.<sup>28</sup>

Thus, unless the term “electric cooperative” is specifically used elsewhere in PURA, then Chapter 41 controls. Moreover, if there is a conflict between a section of Chapter 39 and a section of Chapter 41, then Chapter 41 controls.<sup>29</sup>

As indicated in Section 41.001, there are certain other sections of PURA that apply to electric cooperatives. Some of these sections are relevant to DER, but none give the Commission authority to apply the entire discussion draft to electric cooperatives. For instance, Section 35.036 of PURA<sup>30</sup> specifically applies to electric cooperatives. However, Section 35.036 deals with distributed natural gas generation only. It does not deal more broadly with any other type of DER. This statute was the subject of substantial comment in Project No. 39797 in 2012, when the Commission sought to incorporate Section 35.036 into 16 TAC §§ 25.211-212.<sup>31</sup> In that

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<sup>27</sup> *Rulemaking to Implement SB 365 & SB 981 Relating to Distributed Generation*, Project No. 39797, Order at 12-14 (May 22, 2012).

<sup>28</sup> PURA § 41.001.

<sup>29</sup> PURA § 39.002 (“If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.”).

<sup>30</sup> Notably, Section 35.036 is located in Subchapter B of Chapter 35. It is not within Subchapter A of Chapter 35, which is the extent of PURA’s grant of jurisdiction to the Commission over electric cooperatives’ terms of access, rates, and services. PURA § 41.004(1).

<sup>31</sup> Project No. 39797, Order (May 22, 2012).

rulemaking, the Commission initially proposed to apply all of the rules to electric cooperatives, including the interconnection requirements. TEC and other cooperatives identified the jurisdictional problems with that approach.<sup>32</sup> The Commission agreed, ultimately applying only the specific natural gas generation aspects of the rule to electric cooperatives, consistent with PURA.<sup>33</sup> The same reasoning applies today. No legislative changes have been made to the Commission's authority over electric cooperatives with respect to DERs. Accordingly, the Commission should apply only new Subsection (k) of Section 25.211 to electric cooperatives, which is essentially current Subsection (o).

The original basis for 16 TAC §§ 25.211 and 25.212 was the enactment of PURA § 39.101(b)(3) in 1999.<sup>34</sup> That section of PURA has never applied to electric cooperatives.<sup>35</sup> Moreover, PURA § 39.916, pertaining to interconnection of distributed renewable generation, does not apply to electric cooperatives. The term electric cooperative does not appear in Section 39.916, and the section is not included within the list of Chapter 39 sections that apply to electric cooperatives as stated in Section 39.002.<sup>36</sup>

In 2021, the Legislature enacted two new statutes (both at PURA § 35.037) relating to DER in the limited circumstances of intercompany landfill gas-to-electricity use<sup>37</sup> and interconnection of distributed generation facilities for the food supply chain.<sup>38</sup> These statutes cannot be the basis for the discussion draft's proposed application to electric cooperatives. The discussion draft is far broader than would be authorized by these narrowly tailored statutes. Further, the bill analysis for SB 398, related to the interconnection of distributed generation facilities for the food supply chain

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<sup>32</sup> Project No. 39797, Comments of Golden Spread Electric Cooperative, Inc. on Proposal for Publication of Amendments to §§25.211 and 25.217 Regarding Distributed Generation (Jan. 23, 2012); Project No. 39797, Initial Comments of East Texas Electric Cooperative, Inc. (Jan. 23, 2012); Project No. 39797, Comments of South Texas Electric Cooperative, Inc. and its Member Distribution Electric Cooperatives (Jan. 23, 2012); Project No. 39797, TEC's Comments on Proposal for Publication of Amendments to §§25.211 and 25.217 Regarding Distributed Generation (Jan. 23, 2012 and Jan. 24, 2012 (corrected)); Project No. 39797, TEC's Reply Comments on Proposal for Publication of Amendments to §§25.211 and 25.217 Regarding Distributed Generation (Feb. 6, 2012); Project No. 39797, Golden Spread's Reply Comments on Proposal for Publication of Amendments to §§25.211 and 25.217 Regarding Distributed Generation (Feb. 6, 2012); Project No. 39797, Reply Comments of South Texas Electric Cooperative, Inc. and its Distribution Electric Cooperatives (Feb. 6, 2012).

<sup>33</sup> Project No. 39797, Order at 4, 14 (applying only subsection (o) to electric cooperatives).

<sup>34</sup> Project No. 39797, Order at 7; *see also* 16 TAC § 25.211(b).

<sup>35</sup> PURA § 39.101 does not specifically include electric cooperatives, and is not among the list of sections that apply to electric cooperatives in PURA § 39.002.

<sup>36</sup> *See also* PURA § 39.554 (pertaining to interconnection of distributed renewable generation in areas outside of ERCOT, which does not apply to electric cooperatives).

<sup>37</sup> PURA § 35.037 (Acts of May 30, 2021, 87th Leg., R.S., ch. 426 (S.B. 3), § 15 (hereafter, "landfill gas")).

<sup>38</sup> PURA § 35.037 (Acts of May 25, 2021, 87th Leg., R.S., ch. 561 (S.B. 398), § 3 (hereafter, "food supply chain")).

(codified at PURA § 35.037), specifically states that the bill “does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.”<sup>39</sup> Accordingly, the discussion draft appropriately qualifies that Section 35.037 is controlling.<sup>40</sup>

Section 35.037, as it applies to the food supply chain, provides a process for interconnection and operation of distributed generation in certain emergency-type circumstances where the food supply customer’s service may be interrupted.<sup>41</sup> The statute was necessary because a distributed generation owner cannot directly sell the power it generates to a food supply chain customer at retail, as the distributed generation owner is not an electric utility certificated to provide retail electric service under PURA § 37.051(a)-(b). The statute also evidences the Legislature’s intent to maintain the Commission’s limited jurisdiction over an electric cooperative’s interaction with DER. The Legislature outlined an interconnection process for this limited circumstance because the Commission’s DER interconnection rules for distribution facilities do not, and cannot under PURA’s legislative scheme, apply to electric cooperatives, unless the cooperative has adopted customer choice.<sup>42</sup> This limitation is confirmed by the Legislature’s statement that Section 35.037 “only applies in the ERCOT power region in areas where retail customer choice has not been implemented.”<sup>43</sup> That statement was necessary because, in areas where retail customer choice has been implemented, the interconnection process outlined in 16 TAC § 25.211 applies.<sup>44</sup>

Additionally, even though it enacted a limited distributed generation interconnection process applicable to electric cooperatives, the Legislature did not require electric cooperatives to use the Commission’s form interconnection agreement. PURA §35.037(h) only requires electric cooperatives and MOUs to use an interconnection agreement that is “substantially similar to the commission’s interconnection agreement form” for wholesale service to distributed generation facilities used for the supply chain.<sup>45</sup> The discussion draft, on the other hand, would require electric

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<sup>39</sup> Senate Research Center, Bill Analysis at 1, Tex. S.B. 398, 87th Leg., R.S. (2021).

<sup>40</sup> Discussion Draft, § 25.211(a) (“This section applies . . . except as provided under Public Utility Regulatory Act (PURA) § 35.037.”).

<sup>41</sup> PURA § 35.037(d) (food supply chain).

<sup>42</sup> PURA § 41.004(4) (Commission has jurisdiction “to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives providing customer choice, as provided in Section 39.203.”).

<sup>43</sup> PURA § 35.037(b) (food supply chain).

<sup>44</sup> PURA § 41.004(4).

<sup>45</sup> Significantly, PURA § 35.037(h) also explicitly authorizes an electric cooperative to recover “from the owner or operator of the distributed generation facility all reasonable costs necessary for and directly attributable to the

cooperatives to use the Commission's exact form in all other scenarios not implicating PURA § 35.037. This result is inconsistent with and unsupported by PURA. Where the Legislature specifically chose not to require use of the Commission's interconnection agreement form in PURA § 35.037, the Commission should not attempt to do so by rule in new Section 25.211. Even if such a requirement to use the Commission's form were expedient for administrative purposes, it would be contrary to PURA and, therefore, invalid.<sup>46</sup>

There is no other provision in PURA pertaining to DER that grants the Commission jurisdiction to apply the current or proposed new 16 TAC §§ 25.211 to electric cooperatives, save for new Subsection (k) of Section 25.211. Applying all of Section 25.211 to electric cooperatives would violate at least the following sections of PURA: 35.036, 41.004, 41.005, 39.002, 39.101, 39.203, and 39.916. Accordingly, the Commission should not adopt the discussion draft as currently written.

**C. The Commission's open access rules for wholesale transmission service and electric cooperative retail tariffs are sufficient.**

Section 39.203 of PURA mentions electric cooperatives and implicates service to DERs, specifically wholesale wheeling service. Section 39.203 further evidences the Commission's limited jurisdiction over electric cooperatives and applies differently depending on whether the electric cooperative has adopted customer choice. Importantly, with respect to access to distribution service, only "an electric cooperative offering customer choice" must provide such service "in accordance with the Commission's rules applicable to terms and conditions for access."<sup>47</sup> Thus, an electric cooperative *not* offering customer choice is not subject to the Commission's rules regarding terms and conditions for access to distribution facilities.

With respect to wholesale transmission service, and cooperatives that have not adopted customer choice, Section 39.203(b) states:

(b) When necessary to serve *a wholesale customer* an electric utility, an electric cooperative *that has not opted for customer choice*, or a municipally owned utility that has not opted for customer choice shall provide *wholesale transmission service at distribution voltage*. A customer of a municipally owned utility that has not opted for customer choice or of an electric cooperative that has not opted for customer

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interconnection of the facility, including the reasonable costs of necessary system upgrades and improvements directly attributable to the distributed generation facility."

<sup>46</sup> *Pub. Util. Comm'n v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001).

<sup>47</sup> PURA § 39.203(a).

choice may not claim the status of a wholesale customer or be designated as a wholesale customer if the customer is being or has been served under a retail rate schedule of the municipally owned utility or electric cooperative.<sup>48</sup>

Therefore, an electric cooperative that has not adopted customer choice is still required to provide wholesale transmission service at distribution voltage to a wholesale customer, which could include a DER. Pursuant to this statutory provision, the Commission adopted 16 TAC § 25.191(d)(2), which requires an electric cooperative to (1) provide wholesale transmission service at distribution voltage “when necessary to serve a wholesale customer,” (2) provide a transmission service customer purchasing electricity at wholesale with access to its distribution facilities (rated at less than 60 kilovolts) on a non-discriminatory basis, and (3) wheel power for a transmission service customer who has a right to provide retail electric service in an area.<sup>49</sup> If an electric cooperative that is a DSP receives a request for wholesale transmission service at distribution voltage, it must file a tariff with the Commission for such service within 30 days of receiving the request.<sup>50</sup>

Thus, today, if a DER seeks to export power from the distribution system to the transmission grid, an electric cooperative will provide that wholesale transmission service pursuant to a cost-based tariff filed with the Commission.<sup>51</sup> This requirement ensures non-discriminatory access to an electric cooperative’s distribution facilities for wholesale purposes.<sup>52</sup> The wholesale transmission service at distribution voltage tariff would not apply to the interconnection and parallel operation of DER owned by retail customers, because such a retail customer may not claim status as a wholesale customer.<sup>53</sup> Electric cooperatives provide service to retail customers that own DER pursuant to tariffs that their boards of directors adopt, consistent with PURA § 41.055. Those

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<sup>48</sup> PURA § 39.203(b) (emphasis added).

<sup>49</sup> 16 TAC § 25.191(d)(2); *see also* 16 TAC § 25.211(b) (“Sales of power by on-site distributed generation and natural gas distributed generation in the interstate wholesale market are subject to §§25.191-25.203 of this title (relating to Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas).”).

<sup>50</sup> 16 TAC § 25.191(d)(2)(C)(ii).

<sup>51</sup> TEC does not repeat here its comments regarding the requirement that electric cooperatives recover their costs for the use of distribution facilities to provide this wholesale service pursuant to PURA § 35.004(c). *See Cost Recovery for Service to Distributed Energy Resources*, Project No. 54224, Comments of Texas Electric Cooperatives, Inc. (Nov. 17, 2022).

<sup>52</sup> PURA § 35.004(a)-(b) (requiring comparable rates and terms for, and nondiscriminatory access to, wholesale transmission service).

<sup>53</sup> PURA § 39.203(b) (“A customer of a municipally owned utility that has not opted for customer choice or of an electric cooperative that has not opted for customer choice may not claim the status of a wholesale customer or be designated as a wholesale customer if the customer is being or has been served under a retail rate schedule of the municipally owned utility or electric cooperative.”).

retail rate tariffs must be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory.<sup>54</sup>

With respect to electric cooperatives, PURA already achieves the Commission's stated goal in the discussion draft of "nondiscriminatory policies for interconnection of a distribution resource to a distribution system."<sup>55</sup> It is neither appropriate nor necessary to incorporate electric cooperatives into new Section 25.211 as contemplated.

**D. Proposed new section 25.211 should be revised to apply only new subsection (k) to electric cooperatives and retain the federal law preemption language.**

TEC recommends the following changes to proposed new Section 25.211(a), regarding applicability, to ensure the rules do not exceed the Commission's statutory authority or conflict with federal law. TEC's proposed changes are reflected in underline below:

(a) **Application.** This section applies to distribution service providers (DSPs), distribution resource providers, and distribution resources interconnected or seeking interconnection with a DSP's distribution system in the state of Texas, except as provided under Public Utility Regulatory Act (PURA) § 35.037 or to the extent preempted by federal law. The only subsection of this section that applies to an electric cooperative that has not adopted customer choice is subsection (k).

## **II. Conclusion**

TEC appreciates the opportunity to provide comments in this project and looks forward to working with Staff and the other stakeholders in this project.

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<sup>54</sup> PURA § 41.061(e).

<sup>55</sup> Discussion Draft at 1.

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Respectfully submitted,



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**PROJECT NO. 54233**

<b>TECHNICAL REQUIREMENTS AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>INTERCONNECTION PROCESS</b>	<b>§</b>	
<b>FOR DISTRIBUTED ENERGY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RESOURCES (DERs)</b>		

**EXECUTIVE SUMMARY OF  
COMMENTS OF TEXAS ELECTRIC COOPERATIVES, INC.**

TEC provides the following executive summary of its position regarding the discussion draft:

- The Commission's jurisdiction over electric cooperatives does not extend to interconnections, operations, and rates for electric cooperative distribution facilities.
- By applying new Section 25.211 to all DSPs, the discussion draft would improperly apply the rule's requirements to the distribution systems of all electric cooperatives in almost every DER scenario, including wholesale service at distribution voltage and retail service or parallel operation involving residential and industrial customers.
- PURA already achieves non-discriminatory policies for interconnection of DER to an electric cooperative's distribution system. The Commission's open access rules for wholesale transmission service ensure DER's have non-discriminatory access to that service at distribution voltage, and electric cooperatives' retail tariffs ensure non-discriminatory access for a retail customer's parallel operation of DER.
- Only certain DER requirements in PURA apply to electric cooperatives, which the current DER rule acknowledges. Proposed new Section 25.211 must be revised consistent with the current rule.
- Revising proposed new Section 25.211 to apply only new Subsection (k) to electric cooperatives would remedy the violations of PURA.
- Retaining the federal preemption language contained in current Section 25.211(a) would ensure the proposed rule does not run afoul of federal law.