

The Public Utility Commission of Texas (commission) proposes to amend §22.246, relating to Administrative Penalties. The proposed amendments: 1) eliminate the 30-day "cure" period provisions for violations of the Public Utility Regulatory Act (PURA) Chapters 17, 55, and 64; 2) clarify that a violator may not opt to pay a penalty without also taking appropriate corrective action; and 3) incorporate the term, "continuing violation," which is defined in the current rule, in conjunction with the term, "violation," wherever it is appropriate throughout the revised rule. Project Number 21420 has been assigned to this proceeding.

The proposed amendments implement provisions of Senate Bill 86 (SB86), §2, Act of May 30, 1999, 76th Legislature, Regular Session, Chapter 1579, 1999 Texas Session Law Service 5421, 5422, (Vernon) (to be codified as an amendment to PURA, Texas Utilities Code Annotated, §15.024(c)); and Senate Bill 560 (SB560), §3, Act of May 30, 1999, 76th Legislature, Regular Session, 1999 Texas Session Law Service 4210, (Vernon) (to be codified as an amendment to PURA, Texas Utilities Code Annotated, §15.024(c)).

Ms. Jo Alene Kirkel, Director, Office of Customer Protection, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Kirkel has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to expedite enforcement actions against violators of PURA Chapters 17, 55, and 64. There will be no net effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Kirkel has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on January 18, 2000, at 9:00 a.m.

Comments on the proposed section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding any costs associated with implementation of the proposed section. The commission will consider any costs as well as all other comments in deciding whether to revise the proposed section or adopt the proposed section as published. All comments should refer to Project Number 21420.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, specifically Senate Bill 86 (SB86), §2, Act of May 30, 1999, 76th Legislature, Regular Session, Chapter 1579, 1999 Texas Session Law Service 5421, 5422, (Vernon) (to be codified as an amendment to PURA, Texas Utilities Code Annotated, §15.024(c)); and Senate Bill 560 (SB560), §3, Act of May 30, 1999, 76th Legislature, Regular Session, 1999 Texas Session Law Service 4210, (Vernon) (to be codified as an amendment to PURA, Texas Utilities Code Annotated, §15.024(c)).

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 15.024, and Chapters 17, 55, and 64.

**§22.246. Administrative Penalties.**

- (a) (No change.)
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1)-(3) (No change.)
- (4) **Continuing violation** — Except for a violation of PURA Chapter 17, 55, or 64, and commission rules or commission orders pursuant to those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.
- (c) (No change.)
- (d) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.
- (e) **Report of violation or continuing violation.** If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

- (1) **Contents of the report ~~of violation~~.** The report ~~of violation~~ shall state the facts on which the determination is based and a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.
  - (2) **Notice of report.** Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice must include:
    - (A) a brief summary of the alleged violation or continuing violation;
    - (B) (No change.)
    - (C) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty;
    - (D) (No change.)
    - (E) a copy of this section, §22.246 of this title, ~~(relating to Administrative Penalties)~~.
- (f) **Options for response to notice of violation or continuing violation.**
- (1) **Opportunity to remedy.**

(A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters.

(B)~~(A)~~ Within 40 days of the date of receipt of a~~the~~ notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.

(C)~~(B)~~ If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no penalty will be assessed against the person who is alleged to have committed the violation.

(D)~~(C)~~ If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.

~~(E)(D)~~ If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.

(2) **Payment of penalty.** Within 30 days after the date the person receives the notice set out in subsection (e)(2) of this section, the person may accept the determination and recommended penalty through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended penalty.

(3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty.

(g) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1)-(2) (No change.)

- (h) **Hearing.** If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1)-(2) (No change.)

- (3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;

(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters; and

(C) the amount of the proposed penalty.

- (4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose a penalty;



(B) (No change.)

(C) determine that no violation [or continuing violation](#) has occurred.

(5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 28TH DAY OF OCTOBER, 1999 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**