

The Public Utility Commission of Texas (commission) adopts amendments to §25.192 relating to Transmission Service Rates, §25.193 relating to Procedures for Modifying Transmission Rates, and §25.204 relating to Summary of Required Filings with changes to the text as published in the October 15, 1999 Texas Register (24 TexReg 8848). The commission also adopts amendments to §25.194 relating to Determining Peak Load and Transmission Adequacy, and §25.198 relating to Initiating Transmission Service without changes to the text as published in the October 15, 1999 Texas Register (24 TexReg 8848). The amendments are necessary to implement Senate Bill 7 (SB 7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543 (Vernon) (to be codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated) requiring the use of postage stamp pricing for transmission service in the Electric Reliability Council of Texas (ERCOT). These amendments were adopted under Project Number 21080.

Public Utility Regulatory Act §35.004(d) effective September 1, 1999, requires the commission to price wholesale transmission services within ERCOT based on the postage stamp method of pricing. Postage stamp pricing sets a transmission-owning utility's transmission rate based on the ERCOT utilities' combined annual costs of transmission divided by the total demand placed on the combined transmission systems of all transmission-owning utilities within ERCOT. Before the new PURA provision, the commission's rules established a facilities charge that was the sum of a distance-sensitive impact charge and a postage-stamp access charge. In these amendments to §§25.192, 25.193, 25.194, 25.198, and 25.204, references to a distance-sensitive method and the

calculation and description of the distance-sensitive component of the transmission pricing are deleted and replaced with language that conforms to the new method prescribed by the legislature. Also, since 1999 is the last year of the transition mechanism (previously adopted to ease the cost impacts on ERCOT utilities), §25.192(a)(3) is deleted. Finally, the commission is retaining the requirement that utilities provide information to the independent system operator (ISO) relating to their loads and resources, so that the ISO may conduct studies to ensure the adequacy of the transmission network. However, because this information will no longer be used to calculate impact charges, §25.194 is renamed Determining Peak Load and Transmission Adequacy.

The commission solicited comments on the proposed amendments and on specific questions concerning the amendments. The City of Denton, City of Garland, and Greenville Electric Utility System (DGG); Public Utilities Board of the City of Brownsville (PUB); South Texas Electric Cooperative (STEC); Lower Colorado River Authority (LCRA); Reliant Energy, Incorporated (Reliant); San Antonio City Public Service Board (CPS); CSW ERCOT Electric Operating Companies (CSW-ERCOT); Brazos Electric Power Cooperative (BEC); TXU Electric Company (TXU); and City of Austin, Austin Energy (COA) provided written comments. These comments are summarized below.

A public hearing on the amendments was held at the commission offices on November 8, 1999. Representatives from DGG, Reliant and TXU attended the hearing and provided comments. To

the extent the oral comments differ from the submitted written comments, such comments are summarized herein.

In the preamble to the proposed rule, the commission posed the following questions:

What legal impediments, if any, would preclude the commission from making this rule retroactive to September 1, 1999, the effective date of PURA 1999?

Reliant and CPS stated that applicable Texas law does establish a legal impediment to a proposed retroactive effect of the new rule to September 1, 1999. For example, in *Southwestern Bell Telephone Company v. Public Utility Commission of Texas, et al.*, 615 S.W.2d 947 (Tex 1981), the Texas Supreme Court held that the Texas constitutional prohibition against retroactive legislation forbids a change in utility rates that "would retroact so as to change the substantial rights and obligations of the implied contract that exists between the utility and its customers." Both parties agreed that the lack of statutory authority to adopt retroactive rules and rate orders preclude the commission from making the new transmission pricing rule retroactive to September 1, 1999. However, Reliant went on to submit that a January 1, 2000, effective date would be consistent with the transition mechanism adopted by the commission.

DGG, PUB, BEC, CSW-ERCOT and LCRA concluded that by making the proposed rule retroactive to September 1, 1999, the commission would merely be making its rules consistent with the Legislature's prior controlling action. Under Texas case law, the commission could

implement 100% postage stamp pricing as of September 1, 1999, without adopting new rules. In a case such as this, where the applicable statute sets out a constitutionally sufficient and definite standard, an administrative agency is not required to first establish detailed rules to carry out its statutory duty. *Jordan v. State Board of Insurance*, 334 S.W.2d 278,280 (Tex. 1960) *citing Southwestern Savings and Loan Association v. Falkner*, 331 S.W.2d 917 (Tex. 1960). However, DGG also noted that making the amended rule effective as of September 1, 1999, would require eliminating the transition mechanism for the last four months of 1999. Continued use of the transition mechanism after September 1, 1999, would be unlawful and contrary to §35.004(d) of the Texas Utilities Code, according to DGG.

TXU noted that the commission has already issued an Order on Rehearing in Docket Number 20381, *Proceeding to Modify ERCOT Transmission Rates for 1999 pursuant to Substantive Rule §23.67*, which implements 100% postage stamp pricing, effective September 1, 1999, for the remainder of 1999. Therefore, having initially implemented the statutory mandate by adjudication, there is simply no need for the commission to attempt to amend its transmission rules retroactively to September 1, 1999 to achieve the same effect. Therefore, a better course of action would be for the amendments to take effect 20 days after filing with the Secretary of the State, as required by §2001.036 of the Government Code, or, if the commission prefers, on a later date specified in the rule (such as January 1, 2000), as permitted by Government Code §2001.036(a)(1). In either case, adjudicative implementation of 100% postage stamp pricing would apply until the rule amendments became effective.

STEC argued that laws may not be retroactively applied to deprive or impair vested substantive rights under existing laws. *Holder v. Wood*, 714 S.W.2d 318 (Tex. 1986). However, changes that merely affect remedies or procedures may be applied retroactively. *Bard v. Armistead*, 982 S.W.2d 31 (Tex. App. – Houston (1st Dist.) 1998, pet. denied). STEC went on to state that even though laws may operate retroactively when no impairment of vested rights occurs, the better argument is that vested rights are changed under the proposed rule. Moreover, there is no need to make the current rule retroactive and risk unnecessary litigation. The prior rule's pricing provision became void as of September 1, 1999, because it conflicted with the statute. Since then the commission has remedied the problem by granting the Joint Motion for Rehearing, filed by Brazos and others in Docket Number 20381. STEC concluded that those parties benefiting from the transition mechanism could argue persuasively that the transition mechanism constitutes a vested right not affected by Senate Bill 7 legislation.

The commission is persuaded that the better course of action is to adopt this rule on a prospective basis. As TXU noted in its comments, the commission has implemented postage-stamp pricing effective September 1, 1999 in Docket Number 20381. There is no need to adopt the rule on a retroactive basis, and the rule will be effective on a prospective basis twenty days after the filing of the appropriate documents with the Secretary of State. The commission expects the rule to be effective by January 1, 2000.

Should the load nomination procedures in §25.194 continue to be implemented for the purpose of ensuring system reliability and transmission adequacy?

COA, DGG, BEC, PUB, STEC, LCRA, and TXU concurred that the load nomination procedure (or some other method of gathering information on loads and resources in ERCOT) is necessary. Load and resource nomination would provide the ISO a means to ensure that transmission customers have adequate plans in place to meet their forecasted peaks and determine whether the transmission grid is adequate to support those plans. STEC added that before retail competition is initiated the commission should require that each retail electric provider provide this information to the ISO or to the transmission and distribution provider with which it is interconnected so that the electric utility in turn may provide the information to the ISO. COA noted that in addition to ensuring transmission adequacy, the historical load gathering requirement in §25.194 should continue to be implemented for the purpose of determining the appropriate load ratio share, so that the transmission costs can be allocated on a postage-stamp basis. DGG also pointed out that load/resource pairings are necessary to implement the requirements of §25.200 concerning redispatch.

Reliant argued that elimination of the load nomination procedures in §25.194 would have no adverse impact on system reliability and transmission adequacy. The ERCOT ISO has at its disposal other tools such as base case load flow models which will more than adequately provide the necessary information for the ISO to ensure system reliability and transmission adequacy. CPS added that the ISO should be the final judge as to whether this information is needed in the future. CPS also questioned the accuracy of load nomination in a future retail environment where retail customers may switch suppliers within a year.

CSW-ERCOT concluded that the load nomination procedures of the prior rules should have less significance with the increased responsibility of the ISO for ensuring system reliability and transmission adequacy, and the assurances under proposed rule §25.194(a) that the information needed for planning purposes will be available to the ISO to facilitate that planning.

The commission concurs with the parties that support continued implementation of load and resource nominations. The requirements of §25.194 will provide a means for the ISO to monitor transmission reliability and ensure that peak demands for load entities are adequately met. The commission also agrees that as retail competition develops, the commission and the ISO may institute new procedures to better reflect the changing structure of the industry. Therefore, until the ISO indicates a need for different procedures or methods for data collection related to load and resource nominations, §25.194 is retained.

ERCOT is in the process of developing the infrastructure for retail competition and implementing a single control area for ERCOT, in place of the current system of multiple control areas. In view of the resources being devoted to these matters, should the commission dispense with the requirement in §25.192(g) that control-area utilities compensate for inadvertent energy by monetary payments and that the ERCOT ISO develop a mechanism for such payments?

DGG, COA, STEC, BEC, TXU, LCRA, Reliant, and CPS all concurred that the movement by ERCOT to a single control area in the future will obviate the need to implement a monetary

payment methodology for inadvertent energy. As such, devoting resources to a complex subject matter that is likely to be rendered moot in the near future is unreasonable and not in the public interest. In addition COA stated that in the event the commission dispenses with the requirement of monetary payment for inadvertent energy as detailed in §25.192(g), then §25.204(6) should be deleted for conformity.

CSW-ERCOT supported in-kind (instead of monetary) compensation for inadvertent energy flows between control areas, even in the absence of a single ERCOT-wide control area. Consequently, CSW-ERCOT recommended eliminating the requirement of §25.192(g).

The commission finds the comments in favor of eliminating the requirements of §25.192(g) persuasive. The problem is of a temporary nature, and is currently being addressed in the broader context of industry restructuring. As many parties have indicated, a move to a single control area will obviate the requirements of §25.192(g). Therefore, the commission concludes that it is in the public interest to eliminate the requirements of §25.192(g). The commission also concludes that the filing requirement in §25.204(6) related to filing of tariffs and procedures to implement monetary payment for inadvertent energy is no longer necessary. Accordingly §25.204(6) is deleted.

OTHER COMMENTS

Loss Calculation: §25.192(e)

CSW argued that the current method of calculation of planned losses has a limiting effect on more distant transactions and, therefore, is inconsistent with the intent of the change to postage stamp pricing. CSW proposed that §25.192(e) should be modified to state that the method which the ISO develops for calculating losses should not be distance-sensitive. Reliant also posed the question of appropriateness of the loss calculation method for commission consideration.

Currently, calculation of losses is being discussed at the ERCOT-ISO which is in the process of proposing and implementing a method based on inputs from market participants. Therefore, the commission disagrees with CSW's suggestion to specify a specific method of calculating losses as this task has been delegated to the ERCOT-ISO. No change in the current calculation method should be made until the ERCOT-wide discussions have concluded.

Transition Mechanism: §25.192(a)(3)

Reliant concurred with the proposed deletion of the provision but only to the extent that the effective date of the rule changes is no earlier than January 1, 2000. DGG expressed concerns over the commission making the rule retroactive to September 1, 1999, while at the same time continuing the transition mechanism. While DGG endorsed a retroactive implementation of the rule, it pointed out that a transition mechanism is not compatible with the expressed language of SB7 and, recommended elimination of the transition mechanism for the balance of 1999.

TXU opposed the deletion of the transition mechanism because the proposed amendments may become effective in 1999, while the transition mechanism is being applied in 1999 under the Order on Rehearing in Docket Number 20381. TXU argued that the deletion of §25.192(a)(3) could cause unnecessary complications.

The commission finds the issue moot, because this rule will be effective on a prospective basis in early January 2000.

Retail Recovery Mechanism: §25.193(a)(4)

Reliant took issue with the proposed elimination of §25.193(a)(4), relating to revision of transmission rates. The commission eliminated this section based on the assumption that a retail recovery mechanism for transmission cost expenditures would be inconsistent with the mandated rate freeze under SB7. Reliant pointed out that the express language in §25.193(a)(4) indicates that the recovery mechanism would start after the rate freeze ends and does not create any inconsistency with the rate freeze requirement of SB7.

The commission concurs with Reliant and has reinstated §25.193(a)(4).

Nomination of Resources: §25.194(e)

CSW argued that a list of loads and designated network resources will be needed for reliability analysis and should continue to be provided. CSW, therefore, recommended that this information requirement should be included in the rule.

The commission disagrees with CSW. Section 25.194(a) provides sufficient authority for the ISO to request any information that it deems necessary to perform transmission planning function, and ensure adequate reliability of the network.

Conversion of Unplanned to Short Term Planned Service: §25.198(c)(7)

COA argued that the 30-day limitation on the ability to convert unplanned service to planned service in §25.198(c)(7) is a holdover from the impact calculation for monthly planned service and should be eliminated. According to COA, unplanned transmission service of any duration should be convertible to short term planned service.

At this point in time the commission is reluctant to make COA's requested change without sufficient factual and technical information from the ISO. However, the commission will review this issue in the broader context of retail competition and could revisit this matter in amending the rules prior to the start of retail competition.

General Comments:

CPS claimed that under a pure postage stamp method, CPS would bear a vast majority of the cost of other transmission-owning utilities. According to CPS this is because under the proposed rule the load-serving entity is allocated a load-ratio share of the total ERCOT transmission cost without specific regard to the costs and benefits of specific wheeling transactions. CPS claimed that such an allocation of costs is not required by the legislative mandate. CPS argued that although the commission is clearly charged under the Texas Legislature's Senate Bill 7 with implementing a "postage stamp" pricing method for ERCOT, the legislation does not specify the basis on which a transmission user or load-serving entity is to pay under this pricing method. Therefore, other pricing methods might be developed that are consistent with §35.004(d) of the Public Utilities Code. These mechanisms may include "license plate" or other alternative methods approved by the FERC.

The legislative mandate is prescriptive on how to determine transmission rates and thus speaks for itself. Moreover, CPS has not shown that a "license plate" or some other approach is compatible with the statute, and would result in less cost-shifting to CPS or other similarly situated entities. The usual understanding of a license plate rate is that a transmission customer would pay a rate based on the transmission costs of the transmission utility to which it is connected, and that the payment of this rate would permit the customer to use the transmission facilities of all of the transmission utilities in the region. The rate would be in the form of the transmission utility's costs divided by a number of megawatts (either the total number of megawatts of load for the entire region or the megawatts of load for that transmission provider). The statute, on the other hand, prescribes a rate that is the sum of the costs of all transmission

providers divided by the total number of megawatts of load for the entire region. Apart from the question of the legality of a license-plate rate for transmission service, policy considerations support the rate adopted in the rule. In its initial adoption of transmission access rules in 1996, the commission concluded that in many respects, the ERCOT transmission system acts as a single network that all of the customers use. With the introduction of wholesale competition, this is true to a greater extent today than in 1996. Where transmission customers use the entire network, they should share in the costs of use and expansion of facilities throughout the network. They do share in such costs under a postage stamp rate, but do not do so with a license plate rate.

Reliant posed the following question for commission consideration:

Having eliminated the distance sensitive component, is it still appropriate to continue to distinguish between different grades of planned service (annual, monthly, weekly, etc.) versus unplanned service?

The commission will consider this issue in a future rulemaking. However, in order to make an informed decision, more information from ISO and all market players will be required. The commission believes this issue can be best addressed in the context of transmission rules for retail competition.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This new rule is adopted 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; and specifically, PURA §35.004(d) which requires the commission to price wholesale transmission services within ERCOT based on the postage stamp method of pricing.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §35.004.

§25.192. Transmission Service Rates.

- (a) **Charges for transmission service.** Transmission service customers shall incur access charges, loss compensation charges, and an independent system operator (ISO) fee for all planned transmission service. Transmission service customers shall incur loss compensation charges and an ISO fee for unplanned transmission service. Access charges shall be determined in transmission ratemaking proceedings conducted periodically, at such intervals as the commission determines are appropriate.
- (1) The costs included in the access charge will be the annual cost of transmission service for each transmission service provider in the Electric Reliability Council of Texas (ERCOT). A transmission service customer taking planned transmission service will pay a share of these costs, based on its share of the total load in ERCOT.
- (A) For each transmission service provider, an access rate will be calculated by dividing the transmission service provider's annual transmission cost of service by the total ERCOT load, as calculated in accordance with this section.
- (B) Each transmission service customer taking annual planned transmission service will pay an access charge to transmission service providers, calculated by multiplying the applicable access rate by the transmission service customer's peak load, as calculated in accordance with this section.

- (2) The commission may adjust the access charges under this section to account for any transmission revenues that an electric utility receives under an existing transmission contract.
 - (3) The access charge for the short-term planned service described in §25.198 of this title (relating to Initiating Transmission Service) will be the prorated annual cost of transmission service for each transmission service provider and will be charged on the basis of the megawatts of transmission service that are reserved. A transmission service customer will be obligated to pay all transmission service providers for this service upon making a request, whether the customer uses the service or not. Transmission service providers shall file tariffs for this service for commission approval.
- (b) **Transmission cost of service.** The annual transmission cost of service for each transmission service provider shall be based on the annual expenses in Federal Energy Regulatory Commission (FERC) expense accounts 560-573 (or accounts with similar contents) plus the depreciation, federal income tax, and other associated taxes, and the commission-allowed rate of return based on FERC plant accounts 350-359 (or accounts with similar contents), less accumulated depreciation and accumulated deferred federal income taxes.
- (1) The following facilities are deemed to be transmission facilities:
 - (A) power lines, substations, and associated facilities, operated at 60 kilovolts or above, including radial lines operated at or above 60 kilovolts, except

- the step-up transformers and a protective device associated with the interconnection from a generating station to the transmission network;
- (B) substation facilities on the high side of the transformer, in a substation where power is transformed from a voltage higher than 60 kilovolts to a voltage lower than 60 kilovolts;
 - (C) the portion of the direct-current (DC) interconnections with the Southwest Power Pool that are owned by a transmission service provider in ERCOT; and
 - (D) capacitors that are operated at a voltage of 60 kilovolts or below, if they are located in a distribution substation, the load at the substation has a power factor in excess of 0.95 without the capacitors, and the capacitors are controlled by an operator or automatically switched in response to transmission voltage.
- (2) In determining the annual transmission cost of service under this subsection, the following expenses shall not be included:
- (A) expenses of an electric utility that are otherwise included in its annual transmission cost for service under any existing transmission contract (including the value of goods and services exchanged for transmission service);
 - (B) transmission expenses paid to another electric utility in accordance with this section; and
 - (C) expenses for transmission service outside of ERCOT.

- (3) For municipal utilities, river authorities, and electric cooperatives, the commission may permit the use of reasonable alternative methods of determining the annual cost of transmission service, including the cash flow method, consistent with the rate actions of the rate-setting authority for a municipal utility, and an alternative method for determining the utility's return, as permitted in paragraph (4) of this subsection.
 - (4) For municipal utilities, river authorities, and electric cooperatives, the return may be determined based on the electric utility's actual debt service and a reasonable coverage ratio. In determining a reasonable coverage ratio, the commission will consider the coverage ratios required in the electric utility's bond indentures or ordinances and the most recent rate action of the rate-setting authority for the electric utility.
 - (5) The commission may adopt rate-filing requirements that provide additional details concerning the costs that may be included in the annual transmission cost and how such costs should be reported in a proceeding to establish transmission rates.
- (c) **Billing units.** As used in this section, a transmission service customer's system demand is the average of the demand of the transmission service customer's retail and wholesale customers for hours that are coincident with the most recent ERCOT system coincident peak demand. In determining a transmission service customer's demand and ERCOT system coincident peak demand, the actual demand on electric utility systems shall be considered, and the ERCOT system coincident peak demand shall be an average of the

highest aggregate demand in each of the months of June, July, August, and September of the relevant period. Actual electric utility demand shall be calculated based on the electric utility's net hourly generation, plus wholesale purchases, minus wholesale sales. Peak demand may be adjusted for known and measurable changes to wholesale customer loads and resources, when such changes can be identified and quantified with reasonable certainty.

- (d) **Transmission revenue.** The access charges prescribed in subsection (a) of this section are intended to provide each transmission service provider an opportunity to recover its transmission cost of service. Revenue from the transmission of electric energy out of ERCOT over the DC ties that is not recovered through rates for annual planned transmission service and revenue from monthly, weekly, and daily planned transmission service shall be credited to all transmission service customers as a reduction in the transmission cost of service for transmission service providers that receive the revenue.
- (e) **Compensation for losses.** A transmission service customer that uses transmission service to transmit power to its loads shall compensate affected control-area utilities for energy losses resulting from such transmission service. Losses shall be calculated by the independent system operator under a method approved by the commission. The method of compensation for losses shall provide reasonably accurate compensation for the cost of supplying losses incurred under different system conditions.

- (f) **Independent system operator charges.** Transmission service customers shall incur an ISO fee for planned transmission service and unplanned transmission service, payable to the independent system operator. Changes in the fee are subject to approval by the commission.
- (g) **Transmission rates for exports from ERCOT.** Access charges, ISO charges, and loss compensation for exports of power from ERCOT will be assessed to transmission service customers for that portion of transmission that is within the boundaries of ERCOT, in accordance with this section.
- (1) For the purposes of facilitating these transactions, the annual access charge shall be prorated on a monthly, weekly, daily and hourly basis.
 - (2) Transmission service customers exporting power from ERCOT on an unplanned basis will be assessed an access charge based on the duration of the transaction, and will be charged only for the transmission service actually used. Transmission service customers exporting power from ERCOT on a planned basis will be assessed an access charge based on duration of the service requested.
 - (3) The monthly on-peak access fee will be one-fourth the annual rate, and the monthly off-peak access fee will be one-twelfth the annual rate. The peak period used to determine the applicable transmission rate for such transactions shall be the months of June, July, August, and September.

§25.193. Procedures for Modifying Transmission Rates.

- (a) **Revision of transmission rates.** Each provider of transmission and ancillary service in the Electric Reliability Council of Texas shall periodically revise its transmission and ancillary service rates to reflect changes in the cost of providing such services. Any request for a change in transmission rates shall comply with the filing requirements established by the commission under §25.192 of this title (relating to Transmission Service Rates).
- (1) Each transmission service provider in ERCOT may on an annual basis update its transmission rates to reflect changes in its invested capital. If the transmission service provider elects to update its transmission rates, the new rates shall reflect the addition and retirement of transmission facilities and additional depreciation on such facilities and changes in loads.
 - (2) An update of transmission rates under paragraph (1) of this subsection shall be subject to reconciliation at the next complete review of the electric utility's transmission cost of service. The commission shall review whether the cost of transmission plant additions are reasonable and necessary at the next complete review of the electric utility's transmission cost of service. Any over-recovery of costs, as a result of the update, is subject to refund.
 - (3) The commission may prescribe a schedule for providers of transmission and ancillary services to file proceedings to revise the rates for such services.

- (4) Mechanisms will be established for a utility that serves retail load to expeditiously pass through to retail customers changes in wholesale transmission charges. These mechanisms will be implemented only following a review of the utility's transmission cost of service after the effective date of this section, if it is a transmission service provider, and consistent with any rate freeze or statutory provisions applicable to the utility.
 - (5) Transmission service providers shall file reports that will permit the commission to monitor their transmission costs and revenues, in accordance with filing requirements and a schedule prescribed by the commission.
- (b) **Commission order.** The access rates and charges calculated in accordance with Division 1 of this subchapter (relating to Transmission and Distribution), of this title will be converted to monthly amounts, and such monthly charges will be paid to the transmission service providers. Disputes concerning the charges for transmission service may be resolved by the commission.

§25.194. Determining Peak Load and Transmission Adequacy.

- (a) **Information relating to peak load and transmission adequacy.** Each electric utility in the Electric Reliability Council of Texas (ERCOT) shall on an annual basis provide to the independent system operator historical information concerning peak loads and the load and resource information necessary for the ISO to determine the adequacy of transmission facilities and perform its transmission planning functions.

- (1) The independent system operator shall establish a working group, with equal participation from all market participants that are eligible for participation in the governance of the independent system operator and shall appoint a chair of the working group. This working group shall review the peak load information and the underlying data to reconcile the peak load information. The independent system operator shall include in the working group any transmission service provider or eligible transmission service customer that requests to participate.
 - (2) The chair of the working group shall report in writing to the independent system operator either the working group's unanimous acceptance of the data, or the objections raised to the data by any transmission service provider or eligible transmission service customer. Disputes over the data will be resolved in accordance with the procedures for alternative dispute resolution prescribed in §25.203 of this title (relating to Alternative Dispute Resolution).
- (b) **Peak load.** The working group established under this section shall determine the prior year's peak load for ERCOT and for each transmission service customer, in accordance with §25.192 of this title. Peak load will be determined in a consistent manner, to the greatest extent possible, from one transmission service customer to another.

§25.198. Initiating Transmission Service.

- (a) **Initiating service.** Where a transmission service customer uses the transmission facilities in the Electric Reliability Council of Texas (ERCOT), whether its own facilities or those of another transmission service provider, in serving its native load or in making sales of energy to a third party, it shall apply for transmission service pursuant to this section. Transmission service customers and transmission service providers shall provide the information that is required under this section to the independent system operator.
- (b) **Conditions precedent for receiving service.** Subject to the terms and conditions of this section, the transmission service provider will provide transmission service to any eligible transmission service customer, provided that:
- (1) the eligible transmission service customer has completed an application for service under subsection (c), (d), or (e) of this section;
 - (2) the eligible transmission service customer and the transmission service provider have completed the technical arrangements set forth in subsection (g) of this section;
 - (3) if the eligible transmission customer operates electrical facilities that are interconnected to the facilities of a transmission service provider, it has executed an interconnection agreement for service under this section or requested in writing that the transmission service provider file a proposed unexecuted agreement with the commission;

- (4) the eligible transmission service customer has arranged for ancillary services necessary for the transaction; and
 - (5) if the eligible transmission service customer is responsible for serving wholesale load, it shall maintain a power factor of 95% or greater at each point of interconnection.
- (c) **Application procedures for annual planned transmission service.** An eligible transmission service customer requesting annual planned transmission service under this section must submit an application for service to the independent system operator, no later than October 1 in the year preceding the year in which service is to commence. The purpose of this application is to identify deficiencies in the ERCOT transmission system so that plans may be formulated by the independent system operator and transmission service providers to correct these deficiencies. A completed application shall provide information required in paragraph (1) of this subsection.
- (1) The following information shall be provided in connection with an application for service under this section:
 - (A) the identity, address, e-mail address, telephone number and facsimile number of the party requesting service and the name of a contact person to deal with matters relating to the application;
 - (B) a statement that the party requesting service is, or will be upon commencement of service, an eligible transmission service customer under Division 1 of this subchapter (relating to Transmission and Distribution);

- (C) a description of the load to be served (including a five-year forecast of summer and winter peak load and resource requirements beginning with the first year after the service is scheduled to commence, in the format prescribed by the independent system operator);
- (D) a description of planned resources (current and five-year projection), which shall include, for each resource:
 - (i) location, unit size and amount of capacity from a unit to be designated as a resource,
 - (ii) reactive power capability (both leading and lagging) of all generators,
 - (iii) operating restrictions, including:
 - (I) any periods of restricted operations during the year;
 - (II) minimum loading level of unit,
 - (III) normal operating level of unit, and
 - (IV) any must-run unit designations required for system reliability or contract reasons,
 - (iv) a description of purchased power designated as a resource, including source of supply, control area location, transmission arrangements and, if applicable, delivery points into ERCOT,
 - (v) to the extent arrangements have been made for ancillary services, the identity of the providers of ancillary services,

- (vi) the service commencement date of the requested transmission service and service termination date or duration of service,
 - (vii) where the transmission service customer serving the load does not own the resource, a copy of the contract between the transmission service customer and the owner of the resource, which may be redacted to remove market-sensitive information not needed in assessing the request for service, and
 - (viii) any other information designated by the independent system operator as reasonably necessary to evaluate the ability of the interconnected ERCOT transmission systems to reliably accommodate the requested service.
- (2) The independent system operator shall provide to affected transmission service providers the information needed for them to evaluate the request.
- (3) The independent system operator must acknowledge the request within ten days of receipt. The acknowledgment must include a date by which a response will be sent to the eligible transmission service customer and a statement of any fees associated with responding to the request (e.g., system studies).
- (4) If an application fails to meet the requirements of this subsection, the independent system operator shall notify the eligible transmission service customer requesting service within 15 days of receipt and specify the reasons for such failure.
- Wherever possible, the independent system operator will attempt to remedy

deficiencies in the application through informal communications with an eligible transmission service customer.

- (5) If a system security study is required, upon approval of the requesting transmission service customer, the independent system operator will initiate such a study. If this study concludes that the transmission system is adequate to accommodate the request for service, either in whole or in part, or that no costs are likely to be incurred for new transmission facilities or upgrades, the transmission service will be initiated or tendered, within 15 days of completion of the system security study.
- (6) If the independent system operator determines as a result of the system security study that additions or upgrades to the transmission system are needed to supply the transmission service customer's forecasted transmission requirements, the transmission service provider will, upon the approval of the requesting transmission service customer, initiate a facilities study. When completed, a facilities study will include an estimate of the cost of any required facilities or upgrades and the time required to complete such construction and initiate the requested service.
- (7) Unplanned transmission service transactions of a duration of 30 days may be converted to planned transmission service transactions upon approval of an application submitted pursuant to subsection (d) of this section. The participants to such a transaction are responsible for the costs of feasibility analysis.

- (d) **Application procedures for other planned transmission service.** An eligible transmission service customer may request monthly, weekly, or daily planned transmission service in connection with a change in its designated planned resources or other transmission needs. The independent system operator may establish hourly planned transmission service, if it deems that it is feasible.
- (1) The independent system operator shall determine maximum and minimum lead times for submitting requests for planned transmission service other than annual planned transmission service.
 - (2) The application must provide information similar to that required for annual planned transmission service for the period that the planned transmission service is to be effective.
 - (3) When the independent system operator determines that the service can be provided and a system security study is not required it will notify the requesting transmission service customer and tender transmission service.
 - (4) The independent system operator shall develop charges for planned transmission service under this subsection, in accordance with §25.192 of this title (relating to Transmission Service Rates). The transmission charges shall be subject to commission approval.
- (e) **Application for unplanned transmission service.** Eligible transmission service customers wishing to use the ERCOT transmission system for unplanned transmission service must submit a request for service to the independent system operator. The

duration for unplanned transactions is from one hour to 30 days. In no case shall unplanned transactions be accepted for consideration more than 30 days in advance of the actual commencement of service.

- (1) Requests for service must be submitted with at least the lead times prescribed in subparagraphs (A)-(D) of this paragraph:
 - (A) for hourly transactions, at least 20 minutes in advance,
 - (B) for daily transactions, no later than 2:00 p.m. the day before the transaction is to commence,
 - (C) for weekly transactions, at least two days in advance, and
 - (D) for monthly transactions, at least four days in advance.
- (2) A response to a request for service will be made by the independent system operator as soon as practical after the request is made. Unless the parties agree to a different time frame, responses to requests for unplanned transmission service shall be provided no later than the times prescribed in subparagraphs (A)-(D) of this paragraph:
 - (A) for hourly transactions, within 10 minutes of the request for service,
 - (B) for daily transactions, within four hours of the request for service,
 - (C) for weekly transactions, within 24 hours of the request for service, and
 - (D) for monthly transactions, within two days of the request for service.
- (3) A request for a transaction will be analyzed first for the next hour and allowed to start if no violations of the transmission operating criteria are anticipated.

- (4) The following information shall be provided in connection with an application for unplanned transmission service:
- (A) the identity, address, telephone number and facsimile number of the party requesting service and contact person to deal with questions concerning the application for service;
 - (B) a statement that the party requesting service is, or will be upon commencement of service, an eligible transmission service customer under this section;
 - (C) a description of the load to be served and the resources serving the load, which shall include, for each resource:
 - (i) location, unit size and amount of capacity from that unit to be designated as resource,
 - (ii) reactive power capability (both leading and lagging) of all generators,
 - (iii) operating restrictions, including minimum loading level of unit, and normal operating level of unit,
 - (iv) a description of purchased power designated as a resource including source of supply, control area location, and, if applicable, delivery points into ERCOT,
 - (v) to the extent arrangements have been made for ancillary services, the identity of the providers of ancillary services,
 - (vi) when service is to begin and the anticipated duration, and

- (vii) if the unplanned transmission service will result in the transmission service customer's using different resources than its planned resources, a statement of the effect of the unplanned transmission service on the use of the planned resources.
- (5) The independent system operator will make every reasonable attempt to begin the transactions as soon as possible to conform to the requested commencement time. Operating restrictions, anticipated redispatch needs, the potential for curtailment, and other related information, if known, will be communicated to the requester to see if the transactions are still feasible for the eligible transmission service customer given the known restrictions.
- (6) The independent system operator, at its discretion, may take requests outside the timeframes prescribed in paragraph (1) of this subsection, if practical given the current or expected operating conditions on the transmission service providers' systems. The independent system operator may set longer notification and response times than those prescribed in paragraphs (1) and (2) of this subsection, during a system emergency, and shall periodically review the notification and response times and may propose to the commission revisions to those times. The independent system operator may put such revisions into effect, pending action by the commission on its proposal.
- (f) **System security study.** When a transmission service customer applies for planned transmission service for a new resource under this section, the independent system

operator shall notify affected transmission service providers of the application and request comments from them concerning the scope of any security study. The transmission service customer and the independent system operator shall execute a joint study agreement for performing a system security study to determine the feasibility of integrating such new resource into the transmission service providers' transmission system, and whether any upgrades of facilities providing transmission or ancillary services are needed. The independent system operator will perform the security study.

- (1) In performing the system security study, the independent system operator shall apply the same methods and criteria that the transmission service providers employ in integrating new resources or new loads.
- (2) The independent system operator shall complete the system security study and provide the results to the transmission service customer within 60 days after the receipt of the executed study agreement and receipt from the transmission service customer of all the data necessary to complete the study. In the event the independent system operator is unable to complete the study within the 60 day period, it will provide the transmission service customer a written explanation of when the study will be completed and the reasons for the delay.
- (3) The requesting transmission service customer shall be responsible for the cost of the system security study and shall be provided with the results thereof, including relevant workpapers.
- (4) The independent system operator will use a methodology consistent with good utility practice to conduct a system security study and shall coordinate with

affected transmission service providers as needed in determining the most efficient means for all electric utilities in ERCOT to assure feasibility of transmission service.

- (g) **Facilities study.** Based on the results of the system security study, the transmission service provider shall perform, pursuant to an executed facilities study agreement with the transmission service customer, a facilities study addressing the detailed engineering, design and cost of transmission or ancillary services facilities required to provide the requested transmission service.
- (1) The facilities study will be completed as soon as reasonably practicable. If the transmission service provider may charge a contribution in aid of construction under §25.195 of this title (relating to Terms and Conditions for Transmission Service), the transmission service provider shall notify the transmission service customer whether it considers that a contribution in aid of construction is appropriate and the amount of the contribution. The transmission service provider shall base its request on the information in the system security study and the facilities study and the rules in §25.195 of this title.
 - (2) The transmission service customer shall be responsible for the reasonable cost of the facilities study pursuant to the terms of the facilities study agreement and shall be provided with the results of the facility study, including relevant workpapers.
 - (3) The transmission service provider shall be responsible for the costs of any facilities study undertaken to determine the engineering, design and cost of

facilities associated with the transmission service provider's addition of new resources used to serve the transmission service provider's load. Such costs will be separately booked by the transmission service provider.

- (h) **Technical arrangements to be completed prior to commencement of service.** Service under this section shall not commence until the installation has been completed of all equipment specified under the interconnection agreement, consistent with guidelines adopted by the national reliability organization and the independent system operator, except that the transmission service provider shall provide the requested transmission service, to the extent that such service does not impair the reliability of other transmission service. The transmission service provider shall exercise reasonable efforts, in coordination with the transmission service customer, to complete such arrangements as soon as practical prior to the service commencement date.
- (i) **Transmission service customer facilities.** The provision of transmission service shall be conditioned upon the transmission service customer's constructing, maintaining and operating the facilities on its side of each point of interconnection that are necessary to reliably interconnect and deliver power from a resource to the transmission system and from the transmission system to the transmission service customer's loads.
- (j) **Transmission arrangements for resources located outside of ERCOT.** It shall be the transmission service customer's responsibility to make any transmission arrangements

necessary for delivery of capacity and energy produced from a resource outside of ERCOT to the interconnection with the Southwest Power Pool. The independent system operator and transmission service provider shall undertake reasonable efforts to assist the transmission service customer in coordinating and scheduling arrangements with connecting systems within ERCOT.

- (k) **Changes in service requests.** A transmission service customer's decision to cancel or delay the addition of a new planned resource shall not relieve the transmission service customer of the obligation to pay a contribution in aid of construction to cover the costs of transmission facilities constructed by a transmission service provider, under the rules in §25.195 of this title. Upon receipt of a transmission service customer's written notice of such a cancellation or delay, a transmission service provider will use the same reasonable efforts to mitigate the costs and charges owed by the transmission service customer to the transmission service provider as it would to reduce its own costs and charges.
- (l) **Annual load and resource information updates.** A transmission service customer shall provide the independent system operator with annual updates of load and resource forecasts consistent with those included in its application for transmission service by October first of each year. The transmission service customer also shall provide the independent system operator with timely written notice of material changes in any other information provided in its application relating to the transmission service customer's

planned load, resources, its transmission system or other aspects of its facilities or operations affecting the transmission service provider's ability to provide reliable service under Division 1 of this subchapter.

- (m) **Termination of planned transmission service.** A transmission service customer may terminate planned transmission service after providing the transmission service provider with written notice of the transmission service customer's intention to terminate. A transmission service customer's provision of notice to terminate service under this section shall not relieve the transmission service customer of its obligation to pay transmission service providers any rates, charges, or fees, including contributions in aid of construction, for service previously provided under the applicable interconnection service agreement, and which are owed to transmission service providers as of the date of termination.

§25.204. Summary of Required Filings.

Summary of required filings. This section summarizes the filings and matters requiring commission approval that are adopted in Division 1 of this Subchapter (relating to Transmission and Distribution). The applicability and deadline for each filing are detailed in the relevant sections of Division 1 of this subchapter:

- (1) Tariffs for wholesale transmission service, in accordance with §25.191(e) of this title (relating to Transmission Service Requirements);

- (2) Access charges for transmission service, in accordance with §25.192(a) of this title (relating to Transmission Service Rates);
- (3) Tariffs for short-term planned transmission service, in accordance with §25.192(b) of this title;
- (4) Methods for determining transmission losses, in accordance with §25.192(e) of this title;
- (5) Changes in the independent system operator fee, in accordance with §25.192(f) of this title;
- (6) Updates of transmission rates to reflect changes in invested capital, in accordance with §25.193(a) of this title (relating to Procedures for Modifying Transmission Rates);
- (7) Earnings monitoring reports for transmission costs and revenues, in accordance with §25.193(a) of this title;
- (8) Information concerning peak loads and load and resource information in accordance with §25.194(a) of this title (relating to Determining Peak Loads and Transmission Adequacy);
- (9) Filing of new agreements, including interconnection agreements, governing the sale or purchase of generation, transmission, or ancillary services at wholesale, in accordance with §25.195(g) of this title (relating to Terms and Conditions for Transmission Service);
- (10) Description of separation of functions, in accordance with §25.196(b) of this title (relating to Functional Unbundling);

- (11) Proposed transmission planning guidelines and procedures, in accordance with §25.197(f) of this title (relating to ERCOT Independent System Operator);
- (12) Periodic reports by the independent system operator on the reliability of the transmission network and recommended transmission projects, in accordance with §25.197(i) of this title;
- (13) Methodologies for determining redispatch costs, in accordance with §25.200(c) of this title (relating to Load Shedding, Curtailment, and Redispatch); and
- (14) Tariff for ancillary services, in accordance with §25.201(c) and (d) of this title (relating to Ancillary Services).

This agency hereby certifies that the rules, as adopted, have 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 §25.192 relating to Transmission Service Rates, §25.193 relating to Procedures for Modifying Transmission Rates, and §25.204 relating to Summary of Required Filings with changes to the text as proposed; and §25.194 relating to Determining Peak Load and Transmission Adequacy and §25.198 relating to Initiating Transmission Service without changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 6th DAY OF DECEMBER 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman