

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§25.232. Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991.

- (a) Each electric utility that is subject to the commission's rate setting jurisdiction, pays state franchise taxes, and has not had a rate proceeding under the Public Utility Regulatory Act §36.103 and §36.151, in which the effects of House Bill 11 were considered when setting the rates, shall be subject to this subsection. Except as provided in the following sentence, on or before December 1 of each year, each electric utility subject to this subsection shall file with the commission a tariff sheet, or tariff sheets, applicable to each rate class setting forth an interim House Bill 11 tax adjustment factor. If an electric utility chooses not to request an increase under this subsection or if the electric utility has otherwise limited itself by agreement to recovering tax changes that are the subject of this subsection by a method different from that prescribed in this subsection, the electric utility need not file tariff sheets but shall make an informational filing showing its calculations, including an explanation and all underlying supporting documentation showing the effect of House Bill 11 on its taxes. If the adjustment is a decrease that amounts to less than \$1.00 per customer for electric utilities on an annual basis, the tariff shall not include a factor, but shall state that the reduction will be applied against the adjustment for future years. In all other tariffs, the factors set forth in the tariff sheets shall be calculated as set forth in the following paragraphs. Electric utilities that are required to file tariff sheets shall include an explanation of how the interim factor was calculated and showing all the calculations.
- (b) If the adjustment is a decrease requiring a factor, or the electric utility affirmatively requests that an adjustment be made to its billings to account for the effect of House Bill 11 on its state taxes, the tariff filing will be docketed and will automatically go into effect on January 1 of the year following the filing. If the adjustment is a decrease being carried forward to future years, the filing will be treated as a tariff filing except that it shall take effect on January 1 of the year following the filing. An electric utility may amend a tariff filed under this subsection to make mid-course corrections as necessary. For all amended filings, all tariffs will take effect on the date specified by the electric utility, but in no event earlier than ten days after the filing.
- (c) The interim House Bill 11 tax adjustment factor shall be calculated by allocating the effect on the electric utility's state taxes for the next calendar year of House Bill 11 as provided in subsection (f) of this section. The effect on the electric utility's state taxes for the coming calendar year shall be calculated by subtracting the estimated state taxes attributable to the calendar year if the law prior to House Bill 11 were still in effect, from the estimated state taxes due or attributable to the calendar year under House Bill 11. In calculating the state taxes that would be due during the calendar year if the law prior to House Bill 11 were still in effect, four-twelfths of the franchise tax paid or that would have been paid in the previous year and eight-twelfths of the franchise tax that would have been paid in the calendar year in question will be considered attributable to the calendar year in question. In performing the calculation, the various fees imposed by House Bill 11 will not be considered taxes. In calculating the taxes that are estimated to be paid, changes resulting from audits or amended returns for previous periods that were covered by this rule shall be considered. The state franchise tax imposed by House Bill 11 will be considered to be a franchise tax and not an income tax regardless of the method of calculation.
- (d) If an interim factor goes into effect, it shall be subject to surcharge or refund to the extent it differs from the factor finally set by the commission. If a surcharge or refund is necessary, a credit or surcharge will be made to the existing customers' bills. If the refund or surcharge amount is less than either \$10,000 in total or \$1.00 per customer, calculated by dividing the total refund or surcharge by the total number of customers, the electric utility may make the refund or surcharge by

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§25.232(d) continued

carrying it forward until a year when the cumulative total refund or surcharge is not less than either \$10,000 or \$1.00 per customer. Simple interest will be added to the amount due at the rate set by the commission for overbillings and underbillings starting at the beginning of the month in which the obligation accrued and ending on the last day of the month preceding the refund or surcharge. The month, or months, in which the obligation accrues will be determined by comparing the collections each month under the tariff filed by the electric utility with the amount that should have been collected had the electric utility been able to precisely predict its tax bill and its sales. The number of days in each month shall be considered for purposes of the interest calculation. Interest will be added to decreases that are carried to future years and will be calculated by the same method.

- (e) The electric utility shall file, on or before the first business day after March 1 of the year following the year when a particular factor was in effect, testimony supporting the final adjustment factor that it is requesting to account for the effect of House Bill 11 on its state taxes for that year. The electric utility's filing will include a copy of the Franchise Tax Return filed with the Comptroller's Office and the details of their computation of the tax that would have been due had House Bill 11 not been enacted. The hearing on the merits for purposes of setting the final factor, if necessary, shall be convened no earlier than 45 days after the filing of the electric utility's testimony and shall be strictly limited to issues under this subsection. For purposes of administrative efficiency, the presiding officer assigned to a case may grant an electric utility's request that the final hearing on a particular year's factor be delayed for up to three years; however, if such a request is granted, any interest to be paid by the electric utility shall be at the utility's cost of capital as determined in the electric utility's last rate case. Requests to delay the final hearing on a particular year's factor shall be filed with the testimony supporting the final adjustment factor.
- (f) The billing adjustment should apply over the entire year; however, if the adjustment necessary to account for the effect of House Bill 11 is so small that it would be difficult to apply on a monthly basis, the electric utility may make the billing adjustment during a single month. Cost allocation and rate design are as follows.
 - (1) If the adjustment factor results in a lower cost to the ratepayers, the revenue decrease shall be allocated to the customers on the same basis as the franchise taxes were allocated in the electric utility's last rate case.
 - (2) If the adjustment factor results in a greater cost to the ratepayers, the revenue increase will be allocated to the customers in the same manner as were federal income taxes in the electric utility's last rate case.
 - (3) The factor for each customer within a class will then be calculated based on expected kilowatt-hour (kwh) sales and charged on a per kwh basis, except that the factor for each customer within an industrial class served at transmission-level voltage will be calculated as a percentage of the base revenues (excluding fuel, any applicable power cost recovery factor (PCRF) charges, and add-on revenue taxes) received from that class during the most recent 12-month period.