

PROJECT NO. 33253

RULEMAKING RELATING TO § PUBLIC UTILITY COMMISSION
TRANSMISSION COST-RECOVERY §
FACTOR FOR NON-ERCOT UTILITIES § OF TEXAS

ORDER ADOPTING NEW §25.239
AS APPROVED AT THE DECEMBER 7, 2007, OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.239, relating to Transmission Cost Recovery Factor for Non-ERCOT Utilities with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5594). The rule establishes the mechanism by which an electric utility that operates solely outside of the Electric Reliability Council of Texas (ERCOT) in areas of this state included in the Southwest Power Pool (SPP) or the Western Electricity Coordinating Council (WECC) and that owns or operates transmission facilities can request annual recovery of its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges, as allowed by §36.209 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §53.004 (Vernon 2007) (PURA). PURA §36.209, Recovery by Certain Non-ERCOT Utilities of Certain Transmission Costs, added by HB 989 of the 79th Legislature, Regular Session (2005) permits the commission, after notice and hearing, to allow an electric utility to recover on an annual basis its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility under a tariff approved by a federal regulatory authority, to the extent that the costs have not otherwise been recovered. Further, §36.209 specifies that the commission may allow the electric utility to recover only the costs allocable to retail customers in the state, and may not allow the electric utility to over-recover costs. This rule amendment is adopted under Project Number 33253.

A public hearing on the proposed section was held at commission offices on October 16, 2007. Representatives from the Alliance of Xcel Municipalities and the Cities Advocating Reasonable Deregulation (AXM & CARD), El Paso Electric (EPE), the Office of the Public Utility Counsel (OPC), Pioneer Natural Resources USA, Inc. (Pioneer), Southwestern Electric Power Company (SWEPCO), Texas Industrial Energy Consumers (TIEC), and Xcel Energy Services Inc. on behalf of Southwestern Public Service Company (Xcel) attended the hearing. Representatives from AXM & CARD, Xcel, OPC, Pioneer, and TIEC provided oral comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed new section from AXM & CARD, OPC, TIEC, SWEPCO, and Xcel. The commission received reply comments from AXM & CARD, EPE, OPC, Pioneer, TIEC, SWEPCO, and Xcel.

In addition to the proposed language, the commission requested that parties submit comments on the following questions:

- 1) *Should the commission establish a threshold for the establishment of a transmission cost recovery factor (TCRF)? If so, what should the threshold be?*
- 2) *Should the commission establish a threshold for revision of the transmission cost recovery factor (TCRF) in which the approved transmission charges and transmission invested costs*

must exceed a set amount or have decreased by a set amount in order for the TCRF to be revised? If so, what should that threshold be?

- 3) *Should the rule specify whether increased revenue resulting from load growth should be considered in determining whether the electric utility is recovering its transmission costs? Please explain.*

Question 1

AXM & CARD, OPC, and TIEC recommended that a threshold be set for establishing an initial TCRF. In reply comments, SWEPCO and Xcel disagreed with the recommendation.

AXM & CARD commented that there should be a threshold for the establishment of a TCRF and that PURA makes recovery under §36.209 a matter of discretion, not an entitlement. They stated that a threshold amount would minimize the number of unnecessary proceedings and minimize the opportunity for over-recovery. In reply comments, SWEPCO disagreed and suggested that a threshold would specifically guarantee an under-recovery rather than minimize the chance of an over-recovery, contrary to the statutory directive. Additionally, because the statute limits the utilities eligible for these proceedings, and limits the filings to one every 12 months, the establishment of a threshold as a means of achieving AXM & CARD's stated goal of minimizing the number of proceedings is unwarranted.

AXM & CARD stated that a utility should not be allowed to file an application under the proposed rule for a *de minimus* change in costs and wholesale charges, and suggested a threshold of 10% of the utility's gross transmission plant in service as determined in the utility's most

recent general rate case. AXM & CARD stated that an electric utility should be eligible for rate relief under §36.209 only if the electric utility shows that its “Transmission Invested Costs” and changes in “Approved Transmission Charges” total an amount greater than 10% of the electric utility’s base gross transmission plant in service or 10% of its annual transmission charges as determined in the utility’s most recent base-rate proceeding, provided that its base rates have been set by the commission in a final order issued after December 2005. AXM & CARD offered an alternative if a threshold is not established, that affected customers and/or regulatory authorities be permitted to file an application for a change in a utility's TCRF. This proposal is discussed further in comments on subsection (f).

OPC commented that a threshold be set at a level that exceeds the correlating rate case expenses and reflects a material impact on the utility’s revenues. OPC recommended that a threshold be set at the lesser of 10% of the revenue requirement of its transmission-related plant or four percent of its overall revenue requirement.

TIEC stated that it is appropriate to set a threshold for the establishment of an initial TCRF. TIEC suggested that the utility should demonstrate that changes in transmission charges and transmission investment costs exceed a certain percentage, such as 10%, of its transmission-related base rate costs as determined in its last rate proceeding. Additionally, TIEC recommended that the utility also demonstrate that it is not currently earning its commission-authorized rate of return on common equity (ROE) as reported in its most recent Earnings Monitoring Report filing with the commission. TIEC stated that this would reduce controversy and assist the commission in ensuring that recovery through the TCRF mechanism is justified.

Xcel replied that a 10% threshold is outside the bounds of HB 989 and is inequitable for each non-ERCOT utility because levels of transmission investment will vary from company to company.

SWEPCO and Xcel did not support a threshold requirement and noted that there was not a materiality threshold set forth in the statute. In reply comments, EPE agreed.

SWEPCO commented that a threshold would unnecessarily delay the recovery of necessary transmission infrastructure investments and appears to be contrary to the public benefit language in the proposed rule. SWEPCO stated that the intent of the statute was timely recovery of reasonable and necessary changes in wholesale transmission charges much like what is currently allowed for ERCOT utilities.

Xcel commented that in enacting House Bill 989, the Legislature did not specify a threshold to establish the TCRF. In reply comments, EPE agreed. Xcel did not believe a threshold was required, and listed the following reasons why the commission should not establish a threshold:

- Establishing a threshold requirement would undermine the underlying purpose of HB 989 to encourage timely investment in non-ERCOT transmission infrastructure.
- Establishing a threshold requirement gives a utility an incentive to delay construction or upgrades of transmission facilities until the need justifies an outlay higher than the threshold.

- Setting a threshold requirement that would be fair for all of the non-ERCOT utilities would be difficult.
- Setting a threshold requirement is unnecessary because the administrative costs associated with filing a TCRF proceeding, revising the utility's tariffs, and changing the billing systems will effectively deter minor adjustments to transmission cost recovery rates.
- Allowing a utility to add transmission investment on an incremental basis without establishing a threshold allows for rates to increase gradually.
- Requiring a utility to satisfy a threshold and then placing the entire investment amount in rate base could lead to rate shock for retail electric providers and end use customers.
- There is no rational basis to establish a threshold for non-ERCOT utilities when ERCOT utilities do not have that requirement, and the need for new transmission is as acute outside ERCOT as it is in ERCOT.

In reply comments, EPE agreed that administrative costs will act as a deterrent to *de minimus* adjustment filings.

SWEPCO agreed with Xcel that establishing a threshold would “undermine the underlying purpose of HB 989, which is to encourage timely investment in non-ERCOT transmission infrastructure.”

OPC replied that the position of SWEPCO and Xcel on the threshold is illogical and unreasonable, and stated that a threshold is a practical acknowledgement that a change in a

utility's investment costs should be significant before resources are incurred by all parties, and ensures that the utility does not over-recover.

TIEC expressed concern about Xcel's suggestion that establishing a threshold would create an incentive to delay the construction or upgrades of transmission facilities. As regulated monopolies, electric utilities have an obligation to serve their customers and construct needed transmission infrastructure. TIEC commented that establishing a threshold for TCRF recovery does not deny recovery, but ensures that such recovery of costs between rate cases is justified. TIEC also disagreed that the absence of a threshold would result in smaller increases and thus avoid rate shock. A desire to implement rates gradually does not justify allowing a utility to initiate recovery through a TCRF where such recovery is not necessary and will likely be outweighed by the administrative burden of managing and overseeing the TCRF mechanism.

Commission response

At this time, the commission does not find sufficient justification to warrant the establishment of a threshold. The commission expects that the administrative costs of obtaining and administering a TCRF will serve as an adequate deterrent to applications to revise TCRFs for small amounts. Therefore, the commission declines to establish a threshold for setting the TCRF.

Question 2

AXM & CARD and OPC recommended that a threshold be set as a criterion for revising a TCRF.

AXM & CARD commented that there should be a threshold so that the commission and affected persons do not have a hearing over minor changes, and referred to the reasons detailed in their comments in response to question one.

OPC referred to its comments in response to question one.

TIEC commented that if the rule is properly designed, a threshold for revision would not be necessary. By limiting the revenue requirement as defined in the rule, a utility would not be able to seek recovery of costs that have been otherwise recovered. However, if after implementing a TCRF, the utility is found to be earning in excess of its last authorized ROE, then the TCRF should be reduced to eliminate the excess earnings. TIEC stated that it is essential that the utilities use updated billing determinants as provided in the rule, and that a requirement for updated allocation factors should be added to the rule. If a particular class of customers experiences a substantial increase or decrease in growth, out-of-date allocation factors may not accurately reflect these class differences. Without updated allocation factors, some delivery classes may experience either large increases or decreases in transmission cost responsibility in subsequent rate cases because the allocation factors were not changed in the TCRF. TIEC stated further that if the billing determinants are updated, but the allocation factors are not, there will be a mismatch in the rate design and at a minimum, the updated allocation factors should reflect the corresponding changes in the updated billing determinants. TIEC stated that a mechanism to adjust the allocation factors has been used in the SWEPCO Purchased Power and Conservation True-Up Case, and that a similar approach could be developed.

SWEPCO and Xcel commented that the commission should not establish a threshold for revision of a TCRF for the reasons set forth in their response to question one. However, if a threshold is established, Xcel commented that it should be applied symmetrically to decreases as well as increases.

Commission response

At this time, the commission does not find sufficient justification to warrant the establishment of a threshold for amending a TCRF. The commission expects that the administrative costs of amending a TCRF will serve as an adequate deterrent to TCRFs for small amounts. In addition, the rule limits the utility's ability to request amendments to no more than one each calendar year.

Question 3

AXM & CARD, OPC, Pioneer, and TIEC commented that load growth should be considered.

AXM & CARD commented that §36.209 states that the commission may allow an electric utility to recover, on an annual basis, its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility under a tariff approved by a federal regulatory authority “to the extent that the costs or charges have not otherwise been recovered,” and that the commission “may not allow the electric utility to over-recover costs.” AXM & CARD stated that absent recognition of load growth, the utility could easily over-recover, as it could experience growth in sales sufficient to

offset any need for rate relief to recover new investment in transmission facilities. AXM & CARD commented that the commission “must” determine whether the utility is recovering costs through any other means, including reviewing the utility’s sales to determine if the utility is producing sufficient revenue to recover costs incurred to build transmission infrastructure improvements. AXM & CARD stated that without evaluating growth in load and associated revenue, it will be difficult to ensure the utility is not otherwise recovering any incremental increase in costs it may experience as a result of implementing transmission infrastructure improvements. Additionally, increases in cost may be accompanied by an increase in revenue from increased sales, either in terms of greater sales to existing customers, or an increase in the number of customers served, or both. AXM & CARD added that the rule should also include a mandatory true-up provision at least every three years. In oral comments, OPC agreed with AXM & CARD that a true-up is needed for wholesale transmission costs.

In oral and written comments, OPC commented that the rule should consider the load growth component. OPC stated that in a rate case, a utility’s rates are based on recovering its costs based on an assumed level of sales. Because the level of sales is increased by load growth, failing to account for these excess revenues would result in an over-recovery of the utility’s costs. OPC referred to *Entergy Gulf States v. P.U.C.*, 173 S.W.3d 199, 210 (Tex. App. Austin, 2006 pet. denied), and stated that the commission should similarly recognize that revenues arising from a utility’s load growth are available to recover a utility’s new transmission costs. Failure to consider these revenues leads to double recovery of a utility’s costs contrary to §36.209. OPC recommended that the commission provide for the consideration of a utility’s load growth in a TCRF proceeding.

Xcel replied that the proposed rule addresses the load growth issue through the true-up process described in subsection (f). Xcel and SWEPCO argued that the impact of load growth will be taken into consideration when the TCRF is calculated under subsection (d). Xcel added that the use of current billing determinants should adequately account for load growth, and the use of the proposed three-year true-up should assure interested parties that load growth and other components are accurately reflected in the TCRF. Xcel stated that the case that OPC referred to has no bearing on this issue. In that case, the court concluded that load growth might have led to additional revenues beyond those expected when rates were set, because the utility had sold more electricity than anticipated. In contrast, the proposed rule prevents additional revenues attributable to load growth from accruing to the utility's benefit because the true-up mechanism in subsection (f) requires a refund if the TCRF leads to over-recoveries of incremental transmission investment. SWEPCO and Xcel commented that no additional language regarding load growth is necessary. EPE agreed and stated that the use of updated billing determinants sufficiently addresses the issue.

SWEPCO commented that the rule should be patterned as closely as possible on the rules governing Transmission Cost of Service recovery and TCRFs in ERCOT. SWEPCO added that transmission cost is incurred to accommodate generation changes inside and outside a utility's system and not just for load growth on the transmission system. SWEPCO stated that the revenue requirement calculation also allows for adding the FERC-approved incremental transmission charges and administrative fees, which may relate to transmission facilities owned and operated by another transmission service provider.

Xcel commented that load growth is taken into account in the true-up process in proposed subsection (f), and that by comparing actual collections to the intended revenues, any other over-earnings due to load growth will be captured automatically. To be certain that load growth and other components are accurately reflected in the TCRF, Xcel proposed that the commission require electric utilities to update the TCRF at least every three calendar years. OPC, Pioneer, and SWEPCO agreed with the proposed three-year true-up. AXM & CARD also proposed a three-year true-up.

TIEC stated that load growth is an important consideration in determining whether the utility is recovering transmission costs. Every additional kW or kWh sold generates additional base rate revenues. Growth in base revenues will offset some, or possibly all, of the incremental investment, and therefore, a utility's investment in additional transmission does not necessarily mean that a utility's base rates must be increased. TIEC commented that the proposed rule addressed this concern to some extent by dividing the incremental revenue requirement by the current billing determinants. The use of current billing determinants should adequately account for load growth. However, if the customer classes do not grow uniformly, the impact to specific customers will be different. TIEC stated that this is another reason to adjust the allocation factors to parallel the change in billing determinants.

In reply comments, Pioneer agreed that load growth and other factors that affect cost and offsetting revenue should be considered. Without this determination, it is impossible to determine whether the utility is over or under-recovering.

TIEC disagreed that the load growth is taken into account in the true-up process described in proposed subsection (f), and stated that both the billing determinants and the allocation factors must be updated each time a TCRF mechanism is established. TIEC stated that a rate is determined by dividing the costs (numerator) by the billing determinants (denominator), and that the lower the denominator is, the higher the rate will be. Thus, if updated billing determinants are not used, the utilities' requested charges will most likely be overstated. The same logic applies to updating the allocation factors. TIEC commented that the use of out-of-date allocation factors may not reflect the variances in growth by customer classes, and updating billing determinants without also updating allocation factors will lead to an imbalanced rate design.

In reply comments and oral comments, OPC disagreed with Xcel and SWEPCO that the true-up would address the issue of load growth. OPC stated that the utilities failed to distinguish between revenue requirement and rate design issues. The most recent billing data needs to be used both in the revenue requirement and rate design phases of a TCRF application. OPC stated that SWEPCO's position would simply divide an excessive revenue requirement with the most recent billing determinants, and that the excessive revenue requirement would still exist. The true-up would focus on whether the revenues obtained by the TCRF exceed the revenue requirement established by the commission, and would not address the excessiveness that the revenue requirement caused by failing to consider load growth. Additionally, the true-up could result in a refund, but would not necessarily result in an adjustment going forward.

Commission response

The commission finds that the proposed calculation properly accounts for load growth for the purpose of the TCRF. The commission concludes that it is not necessary or appropriate to require that the calculation of the TCRF account for growth in overall revenue as a means to reduce the amount of transmission costs eligible for recovery through the TCRF. To do so would undermine the underlying purpose of HB 989 to encourage timely investment in non-ERCOT transmission infrastructure. In addition, such an approach would not recognize that non-transmission costs could be growing faster than the increased revenues. Increases in load, revenue, and non-transmission costs should be addressed through a general rate case.

Subsection (b)(1)

TIEC stated that the definition of approved transmission charges includes the recovery of administrative fees. TIEC observed that it is not appropriate to allow the recovery of all administrative fees through the TCRF because not all administrative fees are entirely transmission-related. At least some portions of administrative fees are attributable to generation. Regional Transmission Operator (RTO) functions include generation-related functions such as scheduling and settlement. TIEC added that ERCOT utilities are not allowed to recover the ERCOT administrative fee through the TCRF mechanism. OPC agreed. SWEPCO agreed that only transmission-related administrative fees should be recovered through the TCRF.

Commission response

The commission agrees that the TCRF should recover only transmission-related fees and clarifies the definition as it pertains to administrative fees accordingly.

Subsection (b)(2)

AXM & CARD urged the commission to modify the definition of transmission invested costs to specify a minimum voltage level transmission facility, and stated that utilities in ERCOT use 60 kilovolts (kV) and above, to classify facilities as transmission facilities. Xcel agreed. SWEPCO suggested that the RTO's definition of transmission facilities should be used.

Commission response

The commission notes that “transmission line” and “transmission system” are currently defined in PUC SUBST. R. §25.5, relating to Definitions, which applies to this rule. Both definitions refer to lines or facilities operated at 60 kV or above. Therefore, the rule establishes a clear definition of transmission facilities. While this definition may differ from the RTOs' definitions of transmission facilities, the commission concludes that a simple definition based on the voltage of the facilities is appropriate, for the purpose of the TCRF proceeding. Accordingly, a change to this rule is unnecessary.

AXM & CARD stated that the formula for determining the revenue requirement should be based on the utility's total *net* transmission plant, not just the increase in plant for new facilities. Otherwise, the utility would likely over-recover its costs as depreciation and retirement related to existing transmission facilities could more than offset the increased net investment in new

facilities. AXM & CARD commented that the revenue requirement should reflect the reduction in costs that accompanies a plant that has been retired, as well as ongoing depreciation. They stated that because the statute prohibits over-recovery, the commission must take this into account regardless of whether it is in the formula or not. Additionally, AXM & CARD stated that utilities within SPP receive transmission revenues from SPP, which should be included in the calculation of revenue requirement as transmission-related miscellaneous revenue credits. AXM & CARD further stated that the revenue requirement formula should recognize a utility's load growth to safeguard against over-recovery by the utility.

OPC commented that the rule should address the rate impact of the retirement of facilities that decrease a utility's costs, and stated that the current rates may be otherwise recovering the utility's improvement costs. Therefore, OPC recommended the proposed rule provide for transmission cost offsets caused by plant retirements.

Commission response

The commission agrees with AXM & CARD and OPC that the reduction in invested capital because of retirement and depreciation of facilities should be accounted for, and amends the definition of Transmission Invested Costs accordingly. The issues of load growth and other revenues are addressed above.

AXM & CARD requested that the rule specify the Federal Energy Regulatory Commission (FERC) transmission plant accounts that may be included in a TCRF. AXM & CARD further commented that the rule should limit recovery to those costs "that are appropriately allocated to

Texas retail customers,” consistent with the statute, which specifies “[t]he commission may allow the electric utility to **recover only the costs allocable to retail customers in the state...**” in §36.209(b). Xcel agreed that the appropriate FERC accounts should be specified. SWEPCO suggested that the appropriate FERC accounts are 350-359.

Commission response

The commission agrees and amends the definition accordingly. Proposed subsection (e) limited recovery to amounts that are appropriately allocated to Texas retail customers; no change is necessary to address this issue.

Subsection (d)

AXM & CARD commented that the class allocator used in the TCRF formula should not be more than five years old, or it could become out of sync with the customer classes’ cost responsibilities. They recommended that the utility be required to file new or revised allocation factors if the class allocator is more than five years old. TIEC commented that the class allocator should be updated each time a utility seeks to revise its TCRF based on class information for the previous calendar year. OPC replied that it was not adverse to the comments of AXM & CARD and TIEC regarding updating the class allocation factors.

In reply comments, SWEPCO and Xcel disagreed with TIEC. SWEPCO stated that class allocation has traditionally been a hotly contested issue in rate proceedings. Updating such allocators in an administrative proceeding would be problematic. SWEPCO stated that the class allocators are not updated under the ERCOT transmission cost recovery mechanisms, and

maintained that the allocation factors from the most recent rate case be utilized in the TCRF calculation. Xcel also commented that allocation factors will not change very much from year to year, and re-litigating those allocation factors in every TCRF proceeding would defeat the efficiency that §36.209 was designed to promote.

Commission response

The commission finds that amending class allocation factors is typically a highly contested issue and that for the purpose of this proceeding, the existing class allocation factors should be sufficient to produce a fair allocation of costs, while permitting the cases to be resolved in a reasonable timeframe. Therefore, the commission declines to amend the rule as requested.

Subsection (e)

OPC stated that the proposed rule does not consider when a utility may be earning revenues in excess of its earnings requirement established under the utility's last base rate case. The increased revenues could result in the utility over-earning under its current rates. OPC stated that setting a TCRF without considering such excess revenues would result in allowing the utility to double recover its costs, which would be contrary to §36.209. OPC recommended that the commission include language in the proposed rule prohibiting a utility from increasing its TCRF when its revenues exceed its revenue requirement. EPE disagreed and stated that the commission already has proceedings for reviewing and evaluating required annual earnings reports. EPE stated that the over-recovery language in §36.209 is not targeted to over-recovery of costs other than transmission costs.

Xcel disagreed with OPC's proposal, and commented that to the extent OPC refers to TCRF revenues only, the true-up in proposed subsection (f) will prevent an over-recovery. Therefore, OPC's concern is unwarranted. However, if OPC is referring to the utility's overall revenues and revenue requirements, the proposed language should be rejected. Xcel stated that there is no such requirement for ERCOT utilities, that it is impractical and illogical and that it is rare for a utility to earn exactly its authorized rate of return. Therefore, a utility will almost always be over-earning or under-earning by some amount. There is nothing in §36.209 or its legislative history to suggest that the non-ERCOT TCRF should be limited to those utilities that can show they are under-earning. Xcel also stated that it is unnecessary because the commission reviews the utilities' Earnings Monitoring Reports and calls utilities in for rate cases if the reports indicate over-earning.

Commission response

Like the commission's findings above concerning load growth, the commission finds that the appropriate method to address over-earnings in the context of the utility's overall revenue requirement is for commission staff to monitor the Earnings Monitoring Reports and to initiate a rate review of the company if appropriate.

SWEPCO stated that each of the non-ERCOT utilities is differently situated with respect to the reliability council within which it operates and its transmission cost structure; therefore, the use of a single TCRF-RR is complicated. SWEPCO used the example that while all of SWEPCO's transmission service is taken and charged under the SPP Open Access Transmission Tariff

(OATT), only a portion of Southwestern Public Service's transmission may fall under the SPP OATT. Additionally, the SPP and WECC utilize different methodologies for the allocation of costs related to transmission improvement costs to each member. However, SWEPCO stated that the proposed calculation would enable recovery of its transmission-related charges and investments. Because all of SWEPCO's transmission service is taken and charged under the terms of the SPP OATT, SWEPCO plans to make use of this calculation by submitting a value of zero in the 'revreqt' portion of the formula. SWEPCO's retail customers would only be allocated their jurisdictional share of any FERC-approved transmission-related costs charged to SWEPCO by the SPP.

TIEC expressed concern that SWEPCO would essentially recover all of its transmission investment through the "Approved Transmission Charges" portion of the formula. TIEC stated that the commission must fulfill its obligation to ensure that SWEPCO's costs and charges are reasonable and necessary and have not been otherwise recovered, and the rule language should be written in a way that follows the statute and ensures that improper costs are not recovered from ratepayers.

SWEPCO stated that PURA directs that the utility be allowed recovery of transmission charges under a tariff approved by a federal regulatory authority. Consequently, SWEPCO argued that there is no need for a true-up in which costs will be reviewed for reasonableness and necessity because that has already occurred. In reply comments, EPE agreed and stated that any determination by the commission that costs approved under a FERC-approved RTO tariff are not reasonable and necessary is contrary to the filed rate doctrine, and there would be no basis for

subsequently ordering a refund of such costs. Further, EPE stated its position that the PUC should not attempt to “double true-up” the revenues recovered under the TCRF. It is sufficient that when the plant additions are reviewed by the commission, if additions are determined not to be reasonable and necessary, revenues received due to those additions being used in the TCRF formula would need to be refunded. EPE stated that this approach, combined with the annual earnings monitoring process, adequately addresses the statutory prohibition on over-recovery in a manner more consistent with traditional rate-making principles. No additional layer of matching of actual revenues to the projected revenues used in the TCRF formula is required by the statute.

AXM & CARD disagreed, because §36.209 prohibits the commission from allowing a utility to over-recover either costs or charges it may pay under a federally-approved wholesale tariff for transmission service. Additionally, according to AXM & CARD, it is unclear whether the charges included in the SPP OATT have been reviewed for “reasonableness and necessity.” AXM & CARD urged the commission to retain the provision that applies a true-up requirement to charges paid under a wholesale tariff, particularly where it cannot be shown that costs included in such a tariff were not subject to a thorough review.

Commission response

The commission’s proposed rule has been drafted in accordance with the statute. The calculation appropriately recovers tariffed transmission costs. The commission concludes that the true-up is not contrary to the filed rate doctrine. The purpose of the true-up is to ensure that Texas retail customers are not over-charged for transmission costs incurred by

a utility. The filed rate doctrine may affect the commission's authority to deny recovery of costs that a utility has incurred under a tariff approved by the FERC, but it does not affect the procedures that the commission adopts for the review of those costs or its authority to preclude a utility from recovering from Texas retail customers more than their share of the costs the utility has incurred under the FERC tariff.

TIEC stated that, consistent with the requirement that recovery of costs be limited to those that are appropriately allocated to Texas retail customers, the ALLOC component of the revenue requirement should be updated each time a utility seeks to revise its TCRF based on jurisdictional retail allocation information for the previous calendar year. SWEPCO replied that in ERCOT, the only time the allocation table is updated is during a general rate review when the transmission allocators are updated. Therefore, each time the TCRF filing is made, the allocation table remains the same and only the billing units are updated during the TCRF filing. SWEPCO requested the commission apply the same practice to non-ERCOT TCRF filings.

Commission response

The commission finds that amending jurisdictional allocation factors is typically a highly contested issue and that for the purpose of this proceeding the existing jurisdictional allocation factors should be sufficient to produce a fair allocation of costs. Therefore, the commission declines to amend the rule as requested.

Xcel commented that in the proposed TCRF revenue requirement formula, a 10% cost of equity is used if more than three years have elapsed since the utility's last base rate case. Xcel

suggested that 10.5% is more in line with the financial demands associated with investment in new transmission infrastructure, including the need to maintain a strong credit rating during a period of capital investment, which is necessary to effectively finance the investment. Xcel stated that the credit rating is influenced by the ROE. Additionally, a slightly higher cost of equity reflects the need to provide returns that are sufficient to meet the commission's policy goal of encouraging greater investment in transmission, while recognizing the challenges of a competitive environment for new capital dollars to invest in the transmission sector. Xcel acknowledged that the proposed rulemaking facilitates more timely cost recovery, but stated that there is still an inherent lag in recovery that suppresses the ultimate return. Xcel stated that setting a slightly higher permitted rate of return facilitates a more reasonable level of actual recovery. Xcel based its value of 10.5% on its assessment that the median ROE authorized by the commission has been around 10.9% in recent delivery-type proceedings in Texas.

TIEC, AXM & CARD, and OPC requested that the commission reject Xcel's suggestion. OPC stated that Xcel's argument is not supported with an appropriate comparison, as it relies on delivery-type proceedings for different utility structures. TIEC stated that Xcel provides no citation for the claim that the commission-authorized Texas median ROE is 10.9%, which is higher than what other reports would show, and higher than contemplated in recent commission proceedings. TIEC stated that the development of a TCRF mechanism would lower utilities' risk by reducing regulatory lag, which should translate into a lower ROE. TIEC commented that setting a 10% proxy is more than reasonable. TIEC suggested that because the rule will likely be in place for some time, it is sensible to establish a conservative ROE, perhaps even lower than 10%. TIEC noted that the 10% ROE is only a proxy if a utility has not had a rate case within

three years. AXM & CARD stated that a company's ability to attract capital is not evaluated by the capital markets on an asset-by-asset basis, but rather, on the level of risk a company faces in being able to recover the investment over a reasonable period. AXM & CARD commented that 10% is consistent with what the commission has been approving in recent cases, and that in light of recent actions by the Federal Reserve Board, the cost of capital should be decreasing, not increasing. Additionally, SPS is a wholly-owned subsidiary of Xcel Energy, and Xcel's cost of equity is influenced more by overall operations than by SPS's investment in transmission facilities. AXM & CARD added that if investment in transmission lines is what the market is demanding, then there is even less risk associated with that type of investment because the likelihood of a disallowance from rate base of transmission assets is even more remote. AXM & CARD concluded that there is no basis for a premium ROE for transmission investments.

Commission response

For the reasons cited by TIEC, AXM & CARD, and OPC, the commission concludes that a 10% cost of equity is appropriate. This rate is reasonable given that the TCRF mechanism reduces regulatory lag and provides more timely recovery of costs. Moreover, the 10% figure is used as a proxy rate only in situations where the utility has not had a rate case within three years. With respect to Xcel's assertion that the median ROE authorized by the commission in recent delivery-type proceedings has been "around 10.90%," the commission, since the unbundled cost-of-service cases in 2000, has in fact specifically determined an ROE in only one investor-owned rate proceeding—Docket No. 33734. In that proceeding, the commission authorized an ROE of 9.96%, a rate that is consistent with the 10% figure included in the rule. Accordingly, no change to the rule has been made.

Subsection (f)

AXM & CARD and TIEC recommended that a utility's TCRF should be rolled into base rates in the utility's next general rate case. OPC recommended that the TCRF be an interim measure between rate cases. SWEPCO and Xcel did not object. SWEPCO suggested that the rule allow for updates, specifically in the SPP OATT, to be included in base rates up to the time that the compliance rates are approved in a rate case, instead of the filing date of the rate case. This would allow for all transmission costs in base rates, leaving zero in the TCRF, and providing for a seamless transfer of costs from the TCRF to base rates.

Commission response

The commission agrees with parties that the TCRF should be an interim measure between rate cases and amends the rule accordingly. How charges under an OATT are updated in a general rate case is an issue that is beyond the scope of this rule.

AXM & CARD requested that the provision of the rule permitting commission staff to file an application to amend a utility's TCRF be expanded to include affected customers and any regulatory authority. Such an expansion would provide for checks and balances against over-recovery by the commission. OPC and Pioneer agreed. OPC requested that it be specifically added to the list of those who can request a change. SWEPCO urged the commission to reject this proposal and noted that this process is not allowed for the in TCRF proceedings for ERCOT utilities. Further, the commission has available to it the Earnings Monitoring Reports, which can be reviewed to determine if the utility is over-earning, and the commission has traditional

remedies available to it in the event it determines that over-earnings have occurred. SWEPCO added that this proposal is contrary to AXM & CARD's stated goal to minimize the number of proceedings. Xcel also disagreed and stated that the commission staff has the right and duty to monitor the TCRF, and commission staff will apply to reduce the TCRF when it is too high. Further, should commission staff fail to do so, the true-up provision in proposed subsection (f) will protect customers from over-recovery. In the public hearing, AXM & CARD stated that the true-up in subsection (f) was not sufficient because commission staff may have other priorities.

Commission response

The commission finds that the provisions allowing commission staff to file an application to amend the TCRF, the true-up provisions included in the rule, and the commission staff's monitoring of Earnings Monitoring Reports are the appropriate mechanisms for addressing potential over-recovery. Allowing customers to initiate reviews of the TCRF would create additional uncertainty about the recovery of transmission costs by affected utilities, which is inconsistent with the broad purpose of the rule. Therefore, the commission declines to amend the rule to allow customers to petition for a revision to the TCRF.

Xcel requested that, regardless of who has the right to apply to adjust the TCRF, the rule clarify that another party's application to adjust the TCRF does not prevent a utility from bringing its own application to adjust the TCRF the same calendar year. Xcel noted that the statutory language specifies only that the electric utility may not apply to amend the TCRF more frequently than once a year, not that the TCRF may only be amended once a year. Xcel stated

that there could be regulatory lag if this is not allowed, and provided the example that if commission staff successfully applied to reduce the TCRF in February of one year, and the utility placed a large new transmission facility in service in June of that year, the utility would not be able to apply for an adjustment until January of the next year.

Commission response

The proposed rule provided that the utility may file for a TCRF revision once a year, irrespective of whether the commission staff files for an amendment to the TCRF. Therefore, no change is necessary.

OPC commented that the rule provides for a refund if the commission finds an over-recovery under a utility's TCRF, but does not require a utility to file to amend its TCRF when the utility is over-recovering. OPC recommended that a utility be required to file to adjust its current TCRF if its current TCRF is over-recovering under the TCRF. Pioneer agreed.

Commission response

The commission finds that the rule provisions regarding the commission staff petition, refund, and proposed three-year true-up are sufficient mechanisms to address potential over-recovery and declines to amend the rule as requested by OPC.

Xcel stated that the ERCOT TCRF has no true-up mechanism to calculate over- and under-recoveries, and the commission specifically rejected such a mechanism when it was proposed. Xcel and SWEPCO submitted that it was inequitable to require a utility to refund an over-

recovery of transmission investment but not to allow the utility to be made whole for an under-recovery under the TCRF. Xcel recognized that §36.209 prohibits over-recovery, but stated that PURA also allows a utility to recover its reasonable and necessary operating expenses which include transmission investment costs. Xcel commented that there is no logical reason to force a utility to file a base rate case to make up for prior under-recoveries of transmission investment.

SWEPCO argued that TCRF rates are not interim rates, so there should not be a true-up to the requested revenue requirement, and revenues requested under this TCRF should be given the same treatment as the ERCOT TCRF. Whether the final rates recover the costs they were designed to recover is part of the regulatory risk that a utility bears. EPE replied that if the commission imposes the additional layer of revenue matching discussed previously in comments, it should allow for true-up of under-recoveries as well as over-recoveries. OPC disagreed and stated that the commission's proposed true-up provision correctly implements §36.209(b).

Commission response

The statutory language regarding the recovery of non-ERCOT transmission infrastructure improvement costs explicitly prohibits over-recoveries, but does not explicitly require a provision for under-recoveries. Therefore, the commission finds it necessary for the rule to require a refund of such over-recoveries. There is no equivalent provision in the statute pertaining to the recovery of ERCOT transmission costs, so the analogy to ERCOT TCRFs is not entirely on point.

SWEPSCO requested that the rule include an administrative schedule to provide all interested parties some certainty and clarity as to the process by which each of the different methodologies will be approved, and suggested language that would result in an order within 45 days, or an interim rate following the 45 days if an order is not issued.

Xcel commented that a more specific procedural process would be beneficial. Xcel believed that the purpose of having a TCRF is to allow transmission rates to reflect incremental transmission investment without the necessity for a lengthy and complicated base rate proceeding. An abbreviated schedule giving the utilities the opportunity to begin recovering transmission investment within 90 days after the application is filed will encourage new transmission investment. Xcel commented that the scope of the hearing should be limited to the application of the formula in the rule, the extent of any prior over-recovery or under-recovery, and the terms on which the previous over-recovery or under-recovery will be returned to, or recovered from, ratepayers. Xcel stated that it is unnecessary to delve into the prudence of a project or the reasonableness of the costs expended in the project because it will be litigated in the utility's next base rate case, and the utilities will file periodic monitoring reports on revenues from the TCRF. SWEPSCO had no objection to the use of Xcel's proposed schedule.

EPE agreed with Xcel's recommendation regarding the scope of the proceeding, and stated that the approach would be consistent with the purpose of the statute by tending to encourage the transmission investment by simplifying the TCRF proceeding without depriving the commission, commission staff, or other parties the eventual opportunity to review the reasonableness and

necessity of the transmission costs at issue. EPE supported both the 45- and 90-day proceeding provisions.

AXM & CARD, OPC, Pioneer, and TIEC disagreed with the procedural schedules proposed by SWEPCO and Xcel. AXM & CARD stated that §36.209 does not limit the time the commission has to conduct a proceeding. The legislative history of the bills that ultimately resulted in §36.209 belie the notion that a “quick” proceeding was contemplated. The initial bill related to recovery of transmission costs, and called for an expedited mechanism without a hearing. That version was not adopted. However, if a timeframe is given, AXM & CARD suggested a time period of 135 days from beginning to end, with a provision for expedited discovery and a requirement that the utility fold its TCRF into its base rates at least every three years in a general rate case. AXM & CARD further disagreed with the scope limit proposed by Xcel, because it would violate the requirement that the commission not allow a utility to over-recover its costs. Looking at only parts of the utility’s rates could lead to over-recoveries; therefore, the scope should be sufficiently broad to allow review of all transmission related costs and all revenue sources. Further, AXM & CARD stated that the schedule proposed by SWEPCO is unworkable, as both a seven-day timeframe to approve a schedule is insufficient, and a 45-day approval period, even interim, is insufficient to conduct any review. AXM & CARD submitted that the commission should address scheduling issues on a case-by-case basis. Additionally, an interim approval should not be the default mode.

OPC did not object to a procedural schedule, but stated that 90 days would be insufficient for parties to review and meaningfully participate in the proceeding. OPC stated that the application

will probably be as extensive as a fuel reconciliation proceeding whose jurisdictional time limit has been set by the commission at a year. OPC recommended a one-year schedule.

Pioneer stated that a 45-day schedule is too short to allow affected parties to meaningfully evaluate the application, lodge a protest, or propose changes. Pioneer suggested a minimum 90-day schedule, and stated that the rule should give the examiner the discretion to extend the schedule. Pioneer stated that if an order cannot be issued within 90 days, interim implementation on the 90th day, similar to SWEPCO's 45-day proposal, would be reasonable. In the public hearing, Pioneer requested that the commission ensure that customers have the opportunity to participate in this proceeding. In the public hearing, Xcel suggested that 90 days was sufficient time for a hearing, and that the commission may consider requiring testimony up front so that discovery can begin immediately.

TIEC disagreed with the procedural schedules recommended by Xcel and SWEPCO because they provide too little time to adequately review the costs and charges submitted for recovery by the utility to ensure compliance with the statutory mandate. TIEC noted that the process suggested by Xcel appeared to be based on the commission's procedure for processing fuel factor adjustment cases set forth in P.U.C. SUBST. R. §25.237, relating to Fuel Factors, and observed that this is based on a different statutory framework which does not require a hearing. TIEC stated that the flexible structure allowed by §36.203, which limits the commission's review to approving, disapproving, or modifying the adjustment to the fuel factor, is not comparable to §36.209, permitting the commission to allow recovery of costs and charges only after notice and hearing and only if they have not been otherwise recovered. TIEC commented

that adopting Xcel's proposal could result in double recovery since the commission would be unable to determine whether they have been recovered, and that a later true-up would not alter this.

Commission response

The commission finds that the establishment of a procedural schedule is not warranted at this time. Each utility will have different levels of costs that will need to be reviewed in the initial TCRF filings and the procedural schedule should be set to reflect the amount of time needed for an appropriate review. In addition, because of the requirements for notice and hearing before commission approval of the recovery of reasonable and necessary transmission expenditures, the commission interprets §36.209 to require a determination of the reasonableness and necessity of the transmission expenditure, before they are recovered through the TCRF. As a result, a non-ERCOT TCRF proceeding is not analogous to a fuel factor proceeding in which issues of reasonableness and necessity of expenditures are deferred until a subsequent fuel reconciliation proceeding.

AXM & CARD stated that this section, as proposed, states that the utility may file an annual TCRF case, and that to minimize the chance that a utility will over-recover its cost, it should be required to submit a "true-up" filing no later than every three years since its last application for approval of a TCRF.

Xcel recommended that the true-up provision previously discussed in comments in response to question three be placed in subsection (f) and recommended language for its suggestion.

Commission response

The commission agrees with both of these comments and amends subsection (f) accordingly.

Subsection (g)

AXM & CARD stated that the proposed rule provision providing that the commission “may” develop forms for a TCRF application and monitoring revenues from a TCRF should be modified, and that forms should be mandatory. AXM & CARD commented that the use of a standard form would expedite the production of data in support of the utility’s application for implementation or amendment of a TCRF, which in turn would assist in expediting the review process for such applications. They suggested that the commission develop forms for monitoring revenues from a TCRF and require the utility to make annual filings that show whether it is over-recovering or under-recovering. In response to the request for reports for monitoring revenues, SWEPCO stated that in ERCOT, a TCRF report is filed that shows the estimated cost, the actual cost, and the actual revenue, but there is no “true-up” provision. If a non-ERCOT utility is required to revise the TCRF for over-recovery, the utility should also be allowed to file a revised TCRF if the reports demonstrate an under-recovery. Xcel agreed. SWEPCO requested that the non-ERCOT utilities be treated the same as the ERCOT utilities unless the utility is allowed to revise the TCRF for under-recovery as well.

In written reply comments and oral comments, Pioneer supported the development of forms for filing applications and reporting forms for monitoring changes in revenues. Pioneer stated that

because the procedural schedule will be brisk, it is crucial that the filing package include adequate data to enable the commission and affected parties to evaluate the filing, and adequate reporting and monitoring forms will enable the commission and affected customers to evaluate whether the TCRF continues to reflect costs or whether it should be revised.

Xcel commented that the rule properly allows an electric utility to file an initial application to implement a TCRF and use any commission-prescribed forms for subsequent filings.

Commission response

The commission finds that it is most appropriate to allow the commission the discretion to develop forms as it deems necessary. The commission declines to require the utilities to wait until forms are developed to apply for a TCRF.

General Comments

In written comments, AXM & CARD urged the commission not to adopt any rule that allows for implementation of §36.209 by way of a TCRF. They stated that the use of a factor mechanism could easily permit an eligible utility to over-recover its transmission infrastructure improvement costs and changes in wholesale transmission charges, thereby negating the critical safeguard that a utility not be allowed to over-recover its costs. However, if the commission's intent is to implement §36.209 through a TCRF mechanism, AXM & CARD urged the commission to do so only if it adopted the recommendations of AXM & CARD regarding the TCRF true-up at least every three years; the calculation of the revenue requirement based on the utility's total net transmission plant; the rolling of the TCRF into base rates in a general rate case; and that, to the

extent there is no true-up provision in the Transmission Cost Recovery Rule, the rule take into account all increases in revenue resulting from load growth.

Xcel disagreed with AXM & CARD that the commission should examine all of a utility's changes in costs and revenues before allowing an adjustment to the TCRF, instead of only transmission costs and revenues. Xcel stated that §36.209 was enacted to avoid the necessity for a full-blown examination of all costs and revenues, that AXM & CARD disagree with the statute and they are asking the commission to nullify it through this rulemaking. Xcel requested the commission decline to make this change.

In reply comments, Xcel stated that the goal of HB 989 is to provide electric utilities outside ERCOT the same opportunity to recover costs associated with new transmission investment as electric utilities in ERCOT. Xcel stated that the initial comments of AXM & CARD, OPC, and TIEC suggested so many layers of prescriptive requirements that the concept of timely recovery becomes almost meaningless. Xcel commented that the three year true-up, which it proposed in its comments, along with the stringent oversight that commission staff has built into the proposed rule, should alleviate the concerns of the parties regarding over-recovery of the TCRF.

In reply comments, TIEC stated that §36.209, which addresses recovery for non-ERCOT utilities, sets forth a much different regulatory framework than §35.004(d), which addresses recovery for ERCOT utilities, and that the two have little in common other than allowing for periodic recovery of transmission expenditures outside of a rate case. The TCRF method, TIEC stated, must be based on the explicit statutory directives, not simply modeled after the ERCOT

method. AXM & CARD also commented that the ERCOT and non-ERCOT recovery provisions have little in common. They commented that non-ERCOT utilities, unlike ERCOT utilities, have control of their transmission, and that ERCOT utilities must accommodate the introduction of new generation by deregulated generators as the needs of the deregulated generation market dictate. AXM & CARD stated that Xcel and SWEPCO gave no basis for comparing the two provisions.

AXM & CARD commented in the public hearing that considering the legislative history was very important in adopting the rule, and stated that this history does not suggest that the proceeding for transmission cost recovery should necessarily be quick. AXM & CARD stated that HB 989, as originally filed, included language allowing recovery for transmission infrastructure improvement costs through an automatic pass-through. The original bill also directed the commission to establish a rule to allow non-ERCOT utilities to recover transmission infrastructure improvement costs through a rate rider mechanism, and indicated that a proceeding under which a rider would be established would not be a rate proceeding. According to AXM & CARD, in the committee substitute, the language regarding the proceeding not being a rate proceeding was eliminated, the requirement for a rule was eliminated, and language was added prohibiting over-recovery by the utility. During the vote on the house floor there were additional changes, including limiting the bill's application to SPP utilities, adding the requirement for notice and hearing, adding the language with the requirement for expenditures to be reasonable and necessary, and deleting the requirement for a rate rider. When the bill was considered by the Senate, the WECC was added, meaning that the bill applied to a utility outside of the SPP, and the language allowing an automatic pass-through was eliminated. AXM &

CARD stated that if the legislature wanted to make this recovery an automatic pass-through it would have done so. However, notice and a hearing are required. AXM & CARD emphasized that these utilities are not in ERCOT, and that they are bundled utilities who have control over installation of generation. AXM & CARD stated that legislative history indicates the commission needs to review the costs and expenses to see whether anything should be recovered.

Xcel responded to others' oral comments. Xcel stated that because this rule requires commission approval of the TCRF, it does not provide for an automatic pass-through. Xcel did not dispute that this is a rate proceeding, that there should be no over-recovery, or that costs should be reasonable and necessary. Xcel stated its belief that ERCOT utilities also should not be permitted to over-recover, and therefore, non-ERCOT utilities should not be differentiated in that regard. Xcel stated that its comments were not inconsistent with the legislative history. Xcel disagreed that non-ERCOT utilities have control over who builds generation, and Xcel was concerned with TIEC's reply comment that Xcel in its initial comments made a veiled threat that it would not build transmission facilities. Xcel noted that they will have to commit to other generation that they do not have control over, such as wind farms. Xcel stated that sometimes they have to make a business decision of which transmission to build, and that if reliability is not an issue and the project is not needed to connect a generator, they may delay a transmission project for a year for cost recovery reasons.

In oral comments, TIEC responded to Xcel that the commission should not be concerned about imposing a threshold because of the illusion that transmission investment will not be made in a timely manner. TIEC stressed that it is important to justify the need for recovery.

Commission response

The general comments above have been considered in the commission's responses to each of the specific comments and corresponding revisions to the rule.

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

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007), 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, §36.209, which grants the commission the authority to allow certain electric utilities that operate solely outside of ERCOT, to recover on an annual basis reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the extent that the costs or charges have not otherwise been recovered.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 36.209.

§25.239. Transmission Cost Recovery Factor for Certain Electric Utilities.

- (a) **Application.** The provisions of this section apply to an electric utility that operates solely outside of the Electric Reliability Council of Texas in areas of Texas included in the Southwest Power Pool or the Western Electricity Coordinating Council and that owns or operates transmission facilities.
- (b) **Definitions.**
- (1) **Approved transmission charges (ATC)** — Wholesale transmission charges approved by a federal regulatory authority that are not being recovered through the electric utility's other retail or wholesale rates and that are appropriately allocated to Texas retail customers. The charges may relate to the use of transmission facilities owned and operated by another transmission service provider or regional transmission organization, including transmission-related administrative fees but not including dispatch fees, congestion charges, costs incurred to hedge congestion charges, or ancillary service charges.
 - (2) **Transmission invested costs (TIC)** — The net change in the electric utility's transmission investment costs including additions, upgrades, and retirements as booked in FERC accounts 350-359, and accumulated depreciation.
- (c) **Recovery authorized.** The commission, after notice and hearing, may allow an electric utility to recover its reasonable and necessary costs for transmission infrastructure improvement and changes in wholesale transmission charges to the electric utility under a

tariff approved by a federal regulatory authority to the extent that the costs or charges have not otherwise been recovered and are incurred after December 31, 2005. Any such recovery shall be made through the use of a transmission cost recovery factor (TCRF) approved by an order of the commission. The TCRF shall be calculated pursuant to subsection (d) of this section. If a utility has not had a base rate case with a final order issued after December 2005, the utility shall not be eligible for recovery under this provision without first obtaining a final order in a base rate case.

- (d) **Transmission cost recovery factor (TCRF).** The TCRF shall be determined by the following formula:

$\text{TCRF} = \frac{\text{RR} * \text{ClassALLOC}}{\text{BD}}$	
Where:	TCRF = transmission cost recovery factor in dollars per unit, for billing each customer class.
	RR = transmission cost recovery factor revenue requirement, calculated pursuant to subsection (e) of this section.
	ClassALLOC = the customer class allocation factor used to allocate the transmission revenue requirement in the utility's most recent base rate case.
	BD = each customer class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the previous calendar year.

- (e) **Transmission cost recovery factor revenue requirement (RR).** For an electric utility subject to this section, the transmission cost recovery factor revenue requirement (RR) shall be calculated by using the following formula:

RR = [revreqt + ATC]*ALLOC	
Where:	Revreqt = the sum of the return on TIC, net of accumulated depreciation and associated accumulated deferred income taxes, plus investment-related expenses such as income taxes, other associated taxes, depreciation, and transmission-related miscellaneous revenue credits, but not including operation and maintenance expenses or administrative expenses. The return on TIC shall be calculated by multiplying the TIC by the utility’s weighted-average cost of capital (WACC) as established for the utility in a final commission order in a base rate case, provided that the order was filed within three years prior to the initiation of the TCRF docket. Otherwise, a proxy WACC shall be used, with a cost of equity of 10%; and the capital structure and cost of debt as reported in the utility’s most recent Earnings Monitoring Report filed pursuant to §25.73 of this title (relating to Financial and Operating Reports), adjusted for known and measurable changes.
	Transmission Invested Costs (TIC) is defined in subsection (b)(2) of this section.
	Approved Transmission Charges (ATC) is defined in subsection (b)(1) of this section.
	ALLOC = the utility’s Texas retail allocation of transmission revenue requirements, as established in the utility’s most recent base rate case.

- (f) **Setting and amending the TCRF.** An electric utility that is subject to this section may file an application to set or amend a TCRF. The commission staff may also file an application to amend a TCRF. An electric utility may not apply to amend its TCRF more frequently than once each calendar year, but a TCRF shall be reviewed or amended at least once every three years. Upon completion of a base rate case for a utility, the TCRF shall be set to zero. In a docket in which the TCRF is reviewed or amended, the commission may order the refund of any previous over-recovery, but the commission shall not order the surcharge of any under-recovery. An over-recovery shall be considered to have occurred if the revenues from the TCRF were greater than the costs that the TCRF was intended to recover.

- (g) **TCRF forms.** The commission may develop forms for TCRF applications and for monitoring the revenues from a TCRF. If the commission develops and approves such

forms, an electric utility shall use the forms as required by the instructions accompanying the form.

This agency hereby certifies that the adoption has 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 new §25.239, relating to Transmission Cost Recovery Factor for Certain Electric Utilities is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 2007.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER