

**PROJECT NO. 41622**

<b>RULEMAKING TO PROPOSE NEW</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUBSTANTIVE RULE 25.245,</b>	<b>§</b>	
<b>RELATING TO RECOVERY OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>EXPENSES FOR RATEMAKING</b>	<b>§</b>	
<b>PROCEEDINGS</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §25.245  
AS APPROVED AT THE JANUARY 23, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.245, relating to Rate-Case Expenses. The proposed rule establishes criteria for review of utilities' and municipalities' requests for recovery of or reimbursement for rate-case expenses. Project Number 41622 is assigned to this proceeding.

Anna Givens, Senior Regulatory Accountant in the Rate Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule amendment.

Ms. Givens has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the efficient review of requests for recovery or reimbursement for rate-case expenses and the reduction of such expenses. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Givens has also determined that for each year of the first five years the proposed rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 41622.

The commission also solicits specific comments regarding the following questions:

- (1) Should the proposed rule, if adopted, explicitly allow for allocation of rate-case expenses to a utility's shareholders?
- (2) Should rate-case expenses incurred for purposes of reducing a utility's commission-authorized Texas-jurisdictional retail revenue requirement be allocated to and collected from ratepayers in a manner different from the allocation and collection of rate-case expenses incurred for the purpose of shifting costs among Texas-jurisdictional retail customer groups? If so, how should the commission determine the amount and recovery method of the costs associated with these categories of expenses?
- (3) Should the commission require that rate-case expenses be evaluated in the proceeding in which they are incurred unless the commission authorizes their consideration in a future proceeding?
- (4) Is it appropriate for intervening municipalities to be subject to P.U.C. SUBST. R. §25.245(d)(3)(B) as proposed?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2013) (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 §33.023 which requires the commission to order the reimbursement of a municipality's reasonable rate-case expenses, and PURA §36.061 which grants the commission the authority to allow a utility to recover its reasonable rate-case expenses.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 33,023, 36.061.

**§25.245. Rate-Case Expenses.**

- (a) **Application.** This section applies to municipalities and utilities requesting recovery of or reimbursement for rate-case expenses pursuant to Public Utility Regulatory Act (PURA) §33.023 or §36.061(b)(2).
- (b) **Requirements for claiming recovery of or reimbursement for rate-case expenses.** In any rate proceeding, a utility or municipality requesting recovery of or reimbursement for its rate-case expenses pursuant to PURA §33.023 or §36.061(b)(2) shall have the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. In order to establish its rate-case expenses, each utility or municipality shall detail and itemize all rate-case expenses and shall provide evidence, verified by testimony or affidavit, showing the reasonableness of the cost of all professional services, including but not limited to:
- (1) time and labor required;
  - (2) nature and complexities of the case;
  - (3) amount of money or value of property or interest at stake;
  - (4) extent of responsibilities the attorney or professional assumes; and
  - (5) benefits to the client from the services.
- (c) **Criteria for review.** In determining the reasonableness of the rate-case expenses, the presiding officer shall consider all relevant factors, including but not limited to those set out previously, and shall also consider:

- (1) whether the rates paid to, tasks performed by, and time spent on each task by an entity were extreme or excessive;
  - (2) whether there was duplication of services or testimony;
  - (3) the novelty of the issues addressed, including, but not limited to,
    - (A) whether a legal or factual contention advanced in a rate proceeding is warranted by existing law or policy or by a nonfrivolous argument for the extension, modification, or reversal of existing law or policy or the establishment of a new law or policy; or
    - (B) whether an entity's proposal on any issue is contrary to clearly established commission precedent, so long as that precedent is no longer subject to any appeal;
  - (4) the amount of discovery;
  - (5) the occurrence of a hearing; and
  - (6) the size of the utility and number of customers served.
- (d) **Methodologies for calculating rate-case expenses.** When considering a utility's or municipality's request for recovery of its rate-case expenses pursuant to PURA §33.023 or §36.061(b)(2), if the evidence presented pursuant to subsection (b) of this section does not enable the presiding officer to determine the amount of expenses to be disallowed with reasonable certainty and specificity then the presiding officer may deny recovery of a proportion of a utility's or municipality's requested rate-case expenses equal to any or a combination of the following:

- (1) **The 50/50 Method.** For utilities, 50% of the utility's total requested expenses, in recognition that the utility's shareholders, who reap benefits from a rate increase, should also share in the cost of obtaining that rate increase.
- (2) **The Results Oriented Method.**
  - (A) For utilities, the ratio of the amount of the increase in revenue requirement requested by the utility that was denied to the total amount of the increase in revenue requirement requested in a proceeding by the utility.
  - (B) For municipalities, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality to the total amount of the increase in revenue requirement challenged by the municipality.
- (3) **The Issue Specific Method.**
  - (A) For utilities, the ratio of the amount of the increase in revenue requirement requested by a utility related to any unsuccessfully litigated issue(s) to the total revenue requirement increase requested by the utility.
  - (B) For municipalities, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality relating to any unsuccessfully litigated issue(s) by the municipality to the total amount of the increase in revenue requirement challenged by the municipality.
- (4) **The 51% Allowance Method.** For utilities, all of a utility's requested rate-case expenses incurred in a proceeding in which the increase in the utility's approved

revenue requirement after a contested hearing is less than 51% of the total amount of the increase in revenue requirement requested by the utility.

- (5) The result of the use of any other appropriate methodology.

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

**ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF JANUARY 2014 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**