

CHAPTER 25. SUBSTANTIVE RULES RELATING TO ELECTRIC SERVICE PROVIDERS.

Subchapter O. UNBUNDLING AND MARKET POWER.

DIVISION 1. UNBUNDLING.

§25.345. Recovery of Stranded Costs Through Competition Transition Charge (CTC).

- (a) **Purpose.** The purpose of this section is to establish the rules, regulations and procedures by which affected utilities will comply with Public Utility Regulatory Act (PURA), Chapter 39, Subchapter F relating to Recovery of Stranded Costs Through Competition Transition Charge, PURA §39.201, relating to Cost of Service Tariffs and Charges, and PURA, Chapter 39, Subchapter G relating to Securitization in order to establish a competition transition charge (CTC) as a non-bypassable charge.
- (b) **Application.** This section shall apply to all electric utilities as defined in PURA §31.002 which have stranded costs as described in PURA §39.251.
- (c) **Definitions.** As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:
- (1) **New on-site generation** — Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:
- (A) A fully operational facility, or
- (B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.
- (2) **Eligible generation** — Any electric generation facility that falls into one or more of the following categories:
- (A) A fully operational qualifying facility that lawfully served a retail customer's load before September 1, 2001, and for which substantially complete filings were made on or before December 31, 1999, for all necessary site-specific environmental permits under the rules of the TNRCC in effect at the time of filing, so long as such facility serves the same end-user it was serving on September 1, 2001.
- (B) An on-site power production facility with a rated capacity of ten megawatts or less;
- (C) Any generation facility that lawfully served a retail customer's actual load which is capable of lawfully delivering power to the site without use of utility distribution or transmission facilities and which is not new on-site generation including but not limited to facilities described in subparagraphs (A) and (B) of this paragraph, so long as the facility continues to serve the same end-user or users it was serving on December 31, 1999 if it was fully operational at that time or the end-user or users who first took power from the facility when it became operational if it become operational after December 31, 1999.
- (d) **Right to recover stranded costs.** An electric utility is allowed to recover all of its net, verifiable, nonmitigable stranded costs incurred in purchasing power and providing electric generation service. Recovery of retail stranded costs by an electric utility shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999. A retail customer may not avoid stranded cost recovery charges by switching to on-site generation except as provided by subsection (i) of this section. In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric utility, electric cooperative, or municipally owned utility after May 1, 1999.

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- (e) **Recovery of stranded cost from wholesale customers.** Nothing in this section shall alter the rights of utilities to recover wholesale stranded costs from wholesale customers. If the utility decides not to recover some or all stranded costs from its wholesale customers, it shall not recover these costs from retail customers through non-bypassable charges or otherwise.
- (f) **Quantification of stranded costs.** An electric utility seeking to recover its stranded costs shall submit the necessary information in compliance with the unbundled cost of service rate filing package (UCOS-RFP) approved by the commission.
- (g) **Recovery of stranded costs through securitization.** An electric utility that seeks to recover regulatory assets and stranded costs through securitization financing pursuant to PURA, Chapter 39, Subchapter G shall request a separate competition transition charge for that purpose.
 - (1) An electric utility that seeks to securitize its regulatory assets or stranded costs pursuant to PURA §39.201(i)(1) shall file an application using the commission-approved form.
 - (2) An electric utility may seek to securitize its regulatory assets under PURA §39.201(i) any time after September 1, 1999.
 - (3) An electric utility that seeks to securitize its stranded costs under PURA §39.201(i) must obtain a determination by the commission of its revised estimate of stranded costs prior to submitting its application.
 - (4) The amount of regulatory assets eligible for securitization as determined by the commission in a proceeding pursuant to §39.201(i)(1) shall be considered in the quantification of stranded costs in subsection (f) of this section.
- (h) **Allocation of stranded costs.** Allocation of stranded costs and calculation of CTC per customer class shall be part of the cost separation proceedings as defined in §25.344 of this title (relating to Cost Separation Proceedings). The utility shall submit information in accordance with the instructions contained in the UCOS-RFP.
 - (1) **Jurisdictional allocation.** Costs shall be allocated to the Texas retail jurisdiction in accordance with the jurisdictional allocation methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.
 - (2) **Allocation among Texas customer classes.** Stranded costs shall be allocated in the following manner.
 - (A) Any capital costs incurred by an electric utility to improve air quality under PURA §39.263 or §39.264 that are included in a utility's invested capital in accordance with those sections shall be allocated among customer classes as follows: 50% of those costs shall be allocated in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design; and the remainder shall be allocated on the basis of the energy consumption of the customer classes.
 - (B) All other retail stranded costs shall be allocated among retail customer classes in the following manner:
 - (i) The allocation to the residential class shall be determined by allocating to all customer classes 50% of the stranded costs in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design and allocating the remainder of the stranded costs on the basis of the energy consumption of the classes.

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- (ii) After the allocation to the residential class required by clause (i) of this subparagraph has been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design. Non-firm industrial customers shall be allocated stranded costs equal to 150% of the amount allocated to that class.
 - (iii) After the allocation to the residential class required by clause (i) of this subparagraph and the allocation to the nonfirm industrial class required by clause (ii) of this subparagraph have been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.
 - (iv) Notwithstanding any other provision of this section, to the extent that the total retail stranded costs, including regulatory assets, of investor-owned utilities exceed \$5 billion on a statewide basis, any stranded costs in excess of \$5 billion shall be allocated among retail customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.
 - (v) The energy consumption of the customer classes used in subparagraph (A) of this paragraph and clause (i) of this subparagraph shall be based on the data for the test year ending May 1, 1999 adjusted only for line losses and weather.
 - (vi) For the rate classes which were not treated as a separate class in the utility's last cost of service study, the generation portion of the base revenues shall be used to develop a demand allocator. For the rate classes that have been determined as discounted rate schedules by the commission, the base revenues used to determine the demand allocator for these rate classes should include imputed revenue.
- (i) **Applicability of CTC to customers receiving power from new on-site generation or eligible generation.** A retail customer receiving power from new on-site generation or eligible generation to serve its internal electrical requirements may not avoid payment of stranded costs except as provided in this subsection. A customer's responsibility for payment of stranded costs shall be determined as follows:
- (1) **No CTC.** An end-user whose actual load is lawfully served by eligible generation and who does not receive any electrical service that requires the delivery of power through the facilities of a transmission and distribution utility is not responsible for payment of any stranded cost charges.
 - (2) **CTC for eligible generation.** A retail customer whose actual load is lawfully served by eligible generation who also receives electrical service that requires the delivery of power through the facilities of a transmission and distribution utility shall be responsible for payment of stranded cost charges based solely on the services that are actually provided by the transmission and distribution utility, if any, to the customer after the eligible generation facility became fully operational, such as delivery of supplemental, standby, or backup service. Such charges may not include any costs associated with the service that the customer was receiving

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from the electric utility or its affiliated transmission and distribution utility under their tariffs before the operation of the eligible generation. A customer who changes the type of service received from the electric utility or its affiliated transmission and distribution utility after the customer commences taking energy from eligible generation will pay stranded cost charges associated with the service it is actually receiving from the transmission and distribution utility.

- (3) **CTC for new on-site generation.** A retail customer who commences taking power from new on-site generation that represents a material reduction in the customer's use of energy delivered through the utility's facilities shall be responsible for payment of stranded cost charges that are calculated by multiplying the output of the new on-site generation utilized to meet the internal electrical requirements of the customer each month by the sum of the applicable stranded cost charges in effect for that month. The applicable CTC for such customer shall be the CTC associated with the service that the customer was receiving from the electric utility prior to switching to new on-site generation. These stranded cost charges shall be paid in addition to the stranded cost charges applicable to energy actually delivered to the customer through the transmission and distribution utility's facilities. A customer who commences taking power from new on-site generation that does not represent a material reduction in the customer's use of energy delivered through the transmission and distribution utility's facilities shall pay the CTC calculated as set forth in paragraph (2) of this subsection for that portion of the customer's load served by the new on-site generation.
- (4) **Material reduction.** For purposes of this subsection, a material reduction shall be a reduction of 12.5% or more of the retail customer's use of energy delivered through the utility's transmission and distribution facilities. The reduction shall be calculated by comparing the customer's monthly use of energy attributable to new on-site generation to the customer's average monthly use of energy delivered through the utility's facilities for the 12-month period immediately preceding the date on which the customer commenced taking energy from the new on-site generation.
- (5) **Multiple on-site power production facilities.** A retail customer may designate any number of on-site power production facilities located on a single site as eligible generation under subsection (c)(2)(B) of this section as long as the sum of rated capacities of such facilities does not exceed ten megawatts. Stranded cost charges for any on-site power production facility with a rated capacity of ten megawatts or less, not designated as eligible generation under this paragraph, shall be calculated in accordance with the methodology set forth in paragraph (3) of this subsection for new-on-site generation that results in a material reduction in the retail customer's use of energy delivered through the utility's transmission and distribution facilities. For purposes of determining whether the installation of multiple on-site power production facilities under this paragraph has caused a material reduction in the customer's use of energy under paragraph (4) of this subsection, all of the energy delivered to the customer from such facilities will be taken into account. A customer may not create separate entities on a single site for the purpose of gaining exemptions under this paragraph. A retail customer may change the designation of such an on-site power production facility:
- (A) No sooner than one year after the facility's initial designation;
 - (B) No sooner than one year after the facility's subsequent designation; or
 - (C) Upon addition or retirement of any such on-site power production facility being used to serve the customer's load.

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- (6) **Reporting requirements.** Persons owning or operating new on-site generation or eligible on-site generation shall submit the information required by §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities). Those persons shall also comply with procedures and reporting requirements described in the transmission and distribution utility's tariffs related to the assignment and collection of the CTC from eligible and new on-site generation and any other commission rule or regulation related to the implementation of this section.
- (7) **Adjustment to overall CTC.** On and after January 1, 2005, the commission will periodically review the overall allocation of the CTC among customers and/or customer classes to incorporate the loss of contribution due to customers taking advantage of the specific statutorily granted exceptions under this section and adjust the charges prospectively. To the extent these are known and measurable at the time of the April 2000 filing, sufficient information shall be provided by the filing utility to allow for calculation of the CTC.
- (j) **Collection and rate design of CTC charges.** These charges shall be billed to a customer's retail electric provider. The CTC shall recover the amount of stranded costs as defined in PURA, Chapter 39, Subchapter F that are reasonably projected to exist on the last day of the freeze period. Utilities shall consolidate existing rate classes into the minimum number of classes needed to sufficiently recognize differences in usage of the underlying generation assets. Customers shall be classified into no fewer than the following classes: Residential, Commercial, Firm Industrial, Non-firm, and Back-up Service. No customer classes shall be materially disadvantaged by class consolidation.