

PROJECT NO. 32104

RULEMAKING PROCEEDING	§	PUBLIC UTILITY COMMISSION
RELATING TO RETAIL ELECTRIC	§	
COMPETITION IN NORTHEAST	§	OF TEXAS
TEXAS	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.422
AS APPROVED AT THE APRIL 28, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.422, relating to Transition to Competition for Certain Areas Within the Southwest Power Pool. The proposed new rule addresses the readiness of the Southwestern Electric Power Company service area in Texas (SWEPCO) and the Southwest Power Pool portion of the AEP Texas North Company service area in Texas (Texas North-SPP) to offer retail competition. Customer choice has been delayed in these areas by either legislative mandate or order of the commission and is currently delayed until January 1, 2007, at the earliest, by order in Docket Number 24869, *Southwest Power Pool Market Readiness Implementation Docket*. If this rule is adopted as proposed, the commission would determine, pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2005) §39.103 (PURA), that the power region in which SWEPCO and Texas North-SPP are located is unable to offer fair competition and reliable service to all retail customer classes in Texas; therefore, customer choice would be further delayed until at least January 1, 2011, and until the stages of development set forth in this rule are completed. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 32104 is assigned to this proceeding.

The commission's proposal to determine that the power region in which SWEPCO and Texas North-SPP are located is unable to offer fair competition and reliable service to all retail

customer classes in Texas is based on its experience in introducing retail competition in the Electric Reliability Council of Texas (ERCOT) region, and its attempt to introduce retail competition in other areas of Texas outside of ERCOT, including previous efforts involving the SWEPCO service area. The commission's successful efforts to establish retail competition in ERCOT began after the passage of Senate Bill 7 in 1999. In order to transition to retail competition in accordance with the statutory timeline of PURA, the commission and market participants engaged in various proceedings to restructure the existing electric utilities, develop protocols for the market, and establish ERCOT as an independent regional transmission operator. These steps were completed before the commission opened a pilot project in ERCOT and determined that the market was ready for retail competition.

Outside of the ERCOT service area, the commission has authorized pilot programs for retail competition in the non-ERCOT service areas of Entergy Gulf States, Inc. (Entergy), Southwestern Public Service Company (SPS), and SWEPCO. In two of these areas, no retail electric providers (REPs) offered service during the pilot projects, and no customers switched their service from the utility to a REP. At one point, a single REP served a small number of commercial customers under the Entergy pilot project, but subsequently discontinued service to these customers. As a result of the outcome of these pilot projects, the commission delayed the beginning of retail competition in the Entergy and SWEPCO areas. Subsequently, the legislature enacted a law to delay competition in the SPS area and required Entergy to submit a new transition to competition plan by January 2007.

SWEPCO and Texas North-SPP have taken steps towards a possible transition to competition, including the initiation of pilot programs and the establishment of rates for the pilot programs;

the filing of a business separation plan, unbundled cost of service rates, and price-to-beat rates; and the separation of competitive energy services. However, many of the steps that led to the successful introduction of competition in the ERCOT area have not taken place in the SWEPCO and Texas North SPP areas, including the development of a centralized wholesale market in the power region, development of retail market protocols and the certification of a qualified power region. Due to the lack of participation in the existing pilot programs in the areas and the need for further development of the wholesale and retail market structure that the commission deems necessary for a successful transition to competition, the commission proposes that retail competition in these areas be further delayed. Additionally, the commission proposes that the necessary steps to achieve retail competition be set out in a rule to establish an orderly transition to full customer choice in those areas.

The new section, if adopted, will establish an orderly transition to full customer choice in those areas, recognizing the preliminary steps to competition that have already been taken in the SWEPCO and Texas North-SPP areas. The sequence set forth in this rule would be based upon completing the listed items in each stage before the next stage is initiated. This sequence of events is similar to that approved in P.U.C. SUBST. R. §25.421, of this title (relating to Transition to Competition for a Certain Area Outside the Electric Reliability Council of Texas Region) which delays competition in the portions of Texas served by El Paso Electric Company (EPE). However, unlike EPE, in the case of SWEPCO some preliminary steps towards competition have been taken, and therefore the proposed rule recognizes that certain positive steps have already been taken. The current pilot projects for SWEPCO and Texas North-SPP would continue throughout these stages, but must progress to a point that the commission can evaluate the results

of the pilot projects pursuant to §25.431 of this title (relating to Retail Competition Pilot Projects). Under the proposed rule, before opening the area to full retail competition, the commission must determine whether the pilot projects have progressed to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the SWEPCO and Texas North-SPP service areas. After the completion of the other required stages and successful operation of a robust pilot project, the commission would determine whether full retail competition should commence in these areas.

Lauren Damen, Senior Retail Market Analyst, Electric Industry Oversight 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 section.

Ms. Damen 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 increased certainty with respect to utility rates and service and the transition to competition in the SWEPCO and Texas North-SPP service areas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The introduction of retail competition requires a regulated utility to undertake a number of organizational changes and regulatory activities that may have an economic cost. The proposed rule would sequence these activities in a way that is logical and that should help avoid unnecessary costs. The proposed rule would not impose additional costs on the regulated utility.

Ms. Damen has also determined that for each year of the first five years the proposed section 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 Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, June 27, 2006, at 10:00 a.m. The request for a public hearing must be received within 30 days after publication of the proposed rule.

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 31 days after publication. Sixteen copies of comments to the proposed new section 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 32104.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (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 §39.051, which requires an electric utility to separate its business functions prior to the introduction of retail competition; PURA §39.102, which requires the implementation of retail customer choice after January 1, 2002 and allows the affiliated retail electric provider to provide service until the customer chooses service from another provider; PURA §39.103, which grants the commission the authority to delay competition if a power region cannot offer fair competition and reliable service to all customer classes; PURA §39.104, which addresses the retail competition pilot projects; PURA §39.151, which requires that a power region establish one or more independent organizations, and sets forth requirements for commission authority over an independent organization; PURA §39.152, which grants the commission authority to certify a power region; PURA §39.153 which sets forth requirements for capacity auctions; PURA §39.154, which grants the commission authority to evaluate market power; PURA §39.156, which requires the mitigation of market power due to ownership of capacity; PURA §39.201, which addresses unbundled cost-of-service rates; PURA §39.202, which establishes the price-to-beat obligation for affiliated retail electric providers; and PURA §39.904 and §39.905, which address the state goals for renewable energy development and energy efficiency.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.051, 39.102, 39.103, 39.104, 39.151, 39.152, 39.153, 39.154, 39.156, 39.201, 39.202, 39.904, and 39.905.

§25.422. Transition to Competition for Certain Areas Within the Southwest Power Pool.

- (a) **Purpose.** The purpose of this section is to address the process and the sequence of events for the introduction of retail competition in the Southwestern Electric Power Company service area in Texas (SWEPCO) and in the Southwest Power Pool portion of the AEP Texas North Company service area in Texas (Texas North-SPP).
- (b) **Application.** This section shall apply to SWEPCO and Texas North-SPP (collectively referred to as “the utilities”).
- (c) **Readiness for retail competition.** The commission determines that the power region in which SWEPCO and Texas North-SPP are located will be unable to offer fair competition and reliable service to all retail customer classes in Texas until January 1, 2011, at the earliest. Therefore, pursuant to Public Utility Regulatory Act (PURA) §39.103, the introduction of full retail competition for these portions of the power region in Texas shall be further delayed until this region can offer fair competition and reliable service to all retail customer classes, subject to the terms and conditions established in this section.
- (d) **Cost-of-service regulation.** Until the date authorized by the commission for the implementation of full retail competition in SWEPCO and Texas North-SPP pursuant to this section, the rates of the utilities are subject to regulation under PURA Chapter 36. Until full retail competition begins, the utilities shall file Annual Earnings Reports as required by §25.73 of this title (relating to Financial and Operations Reports) in lieu of the Annual Report required by PURA §39.257.

(e) **Transition to competition.** Full retail competition shall not be introduced in the utilities' service areas before January 1, 2011. In addition, the introduction of retail competition in the utilities' service areas shall be conditioned on successful fulfillment of the sequence of events and activities set forth in paragraphs (1) through (5) of this subsection. All the listed items in each stage must be completed before the next stage is initiated. Unless stated otherwise in the rule, each of the activities will be conducted by the commission in conjunction with SWEPCO and Texas North-SPP and other interested parties. Full retail competition will not begin in SWEPCO and Texas North-SPP until completion of the fourth stage.

(1) The stages outlined below assume that the following activities have been completed, by SWEPCO and Texas North-SPP:

(A) The initiation of a pilot program, including the establishment of rates for the pilot program.

(B) The filing of a business separation plan, unbundled cost of service, and price-to-beat rates.

(C) The separation of competitive energy services.

(D) Approval by the Federal Energy Regulatory Commission (FERC) of a regional transmission organization for the power region containing the utilities' service areas and the commencement of independent operation of the transmission network, that ensures non-discriminatory access, under the approved regional transmission organization.

(2) The first stage consists of the following activities:

- (A) The utilities will continue the operation of the pilot projects to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the pilot program offered in the utilities' service areas;
 - (B) The utilities will file a plan for the development of retail market protocols to facilitate retail competition;
 - (C) The utilities will file a plan for the development of a balancing energy market, market for ancillary services, and market-based congestion management system for the wholesale market in the region in which the regional transmission organization operates; and
 - (D) A seams agreement will be implemented with adjacent power regions to reduce barriers to entry and facilitate competition.
- (3) The second stage consists of the following activities:
- (A) The utilities shall file a transition to competition plan identifying how they intend to achieve full customer choice, including:
 - (i) certification of a qualified power region under PURA §39.152;
 - (ii) auctioning rights to generating capacity;
 - (iii) the establishment of a price to beat for eligible residential and commercial customers;
 - (iv) the retail market protocols that will be applicable in the utilities' service areas;
 - (v) a plan, developed with the regional transmission organization, the statewide registration agent, and market participants, for testing

retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions;

- (vi) any necessary amendments to the previously filed business separation plan;
- (vii) an unbundled cost of service rate filing package; and
- (viii) any necessary amendments the previously filed price-to-beat rates.

(B) The activities to be completed by the commission in the second stage are to:

- (i) Approve, modify, or reject the transition to competition plan within 180 days after the date of filing unless a hearing is requested. If a hearing is requested, the 180-day deadline shall be extended one day for each day of hearing;
- (ii) Approve a business separation plan or amendments to business separation plan;
- (iii) Set unbundled transmission and distribution rates;
- (iv) Certify a qualified power region, for an area that includes the utilities, pursuant to PURA §39.152; and
- (v) Set price-to-beat rates for the utilities' service areas.

(4) The third stage consists of the following activities:

- (A) The commission shall evaluate the results of the pilot projects pursuant to §25.431 of this title (relating to Retail Competition Pilot Projects), including whether the pilot project has progressed to a point that

competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the pilot programs offered in the utilities' service areas and whether the retail and wholesale systems have been tested and are performing adequately.

- (B) The utilities shall initiate capacity auctions pursuant to PURA §39.153 and §25.381 of this title (relating to Capacity Auctions) at a time to be determined by the commission, and consistent with the transition to competition plan.
- (5) The fourth stage consists of the following activities:
- (A) The utilities shall file a request for approval to commence competition, consistent with the procedures and standards developed in the previous stages. This filing should be made at least 180 days before the anticipated date of the commencement of competition.
 - (B) The commission shall evaluate whether the power region can offer fair competition and reliable service to all retail customer classes, and whether there are any outstanding items in the competition plan that must be completed prior to the commencement of full competition. If the commission concludes that the power region can offer fair competition and reliable service to all retail customer classes, it shall issue an order initiating retail competition consistent with the approved transition to competition plan.

- (f) **Annual Report.** If full retail competition has not been implemented by January 1, 2011, the utilities shall file a report with the commission by January 31, 2011 identifying the items required by this rule that have not yet been completed and an estimate of when completion of each item is anticipated. The utilities shall make a similar filing each year on January 31 until full retail competition in their service areas is authorized by the commission or the commission rules that no further reports are necessary.
- (g) **Pilot Project Continuation.** Notwithstanding the provisions of subsection (e) of this section, the Pilot Projects in the utilities' service areas shall continue. However, so long as the utilities can effectively administer customer registrations and convey information relating to a customer's choice of retail electric provider and meter information to persons who need such information, they may continue to perform these functions, subject to the codes of conduct.
- (h) **Protection of Contractual Rights.** The transition to competition plan in the utilities' service areas shall not adversely affect the rights or obligations of an electric cooperative under a wholesale generation or transmission agreement.
- (i) **Energy efficiency, and renewable energy requirements.** SWEPCO and Texas North SPP shall:
- (1) Be subject to requirements of PURA §39.905 and §25.181 of this title (relating to Energy Efficiency Goal) and shall continue to participate in the required energy efficiency programs.

- (2) Be subject to the requirements of PURA §39.904 and §25.173 of this title (relating to Goal for Renewable Energy), and continue to participate in the renewable energy credits program.
- (j) **Applicability of other rules.** This section governs the implementation of PURA Chapter 39 requirements as applied to SWEPCO and Texas North-SPP. If there is an inconsistency or conflict between this section and other rules in this Chapter (relating to Substantive Rules Applicable to Electric Service Providers), the provisions of this section shall control.
- (k) **Good cause.** Upon a finding of good cause, as determined by the commission, the sequence for retail competition set forth in subsection (e) of this section may be modified by commission order.

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 28th DAY OF APRIL 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

Q:\CADM\TXR-Rules Management\Rules\Rulemaking Projects\Electric\32104\32104pub.doc