

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION.

§25.88. Retail Market Performance Measure Reporting.

- (a) **Purpose.** This section establishes reporting requirements to allow the commission to obtain information to be used for evaluation of the performance of the retail electric market in Texas.
- (b) **Application.** This section applies to:
- (1) Electric Reliability Council of Texas (ERCOT) as defined in Public Utility Regulatory Act (PURA) §31.002(5) and §25.5 of this title (relating to Definitions);
 - (2) Retail electric providers (REPs) as defined in PURA §31.002(17) and §25.5 of this title (relating to Definitions); and
 - (3) Transmission and distribution utilities (TDUs) operating in a qualifying power region in the State of Texas where customer choice has been introduced as defined in PURA §31.002(19) and §25.5 of this title (relating to Definitions), except transmission service providers that provide only wholesale transmission.
- (c) **Filing requirements.** Using forms prescribed by the commission, a reporting entity shall report activities as required by this section. Such reports shall be filed with the commission under the project number assigned by the commission's central records office for all filings required each calendar year.
- (1) Each entity shall file four copies of the printed report and any attachments in accordance with §22.71 of this title (related to Filing of Pleadings, Documents, and Other Material). Additionally, each entity shall file an electronic version of its report consistent with the commission's electronic filing standards set forth in §22.72(h) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).
 - (2) A quarterly report shall be filed no later than the 45th day following the end of the preceding quarterly reporting period. Quarterly periods shall begin on January 1, April 1, July 1, and October 1.
 - (3) The reporting entity may designate information that it considers to be confidential. A reporting entity must file as confidential any information relating specifically to any other entity unless the commission has determined that such information is not competitively sensitive or the disclosing entity has given the reporting entity express written permission to release such information publicly. Information designated as confidential shall be processed in accordance with §22.71 of this title and the requirements of commission rules pertaining to information received from ERCOT.
- (d) **Key performance indicators.** Reporting entities shall report on the following key performance indicators on a quarterly basis:
- (1) **Competitive market indicators.** These measures will allow the commission to assess the activity in the competitive market through the number of customers and corresponding load served by non-affiliated REPs and the number of active REPs.
 - (2) **Technical market mechanics.** These measures will allow the commission to assess whether the technical systems of the reporting entities are functioning properly to perform market transactions necessary for a customer to select a REP and to receive timely electric service with accurate and timely bills for that service.
- (e) **Supporting documentation.** Each performance measures report shall include:
- (1) **Analysis.** The reporting entity shall include an analysis of its data and performance for the reporting period with a comparison to performance in the previous period.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION.

§25.88(e) continued

- (2) **Report attestation.** All reports submitted to the commission shall be attested to by an owner, partner, officer, or manager of the reporting entity under whose direction the report is prepared. The attestation shall also verify that an internal review was conducted to confirm the accuracy of the information contained in the performance measures report.
 - (3) **Supporting documents available for inspection.** All supporting documents, including records, books, and memoranda shall be made available at the reporting entity's main office for inspection by the commission or its designee upon request. Supporting documents shall be maintained for a period of 24 months after the report date. Supporting documents may be kept outside the State of Texas so long as those records are returned to the State for any inspection requested by the commission or its designee.
 - (4) **Waiver of certain information.** The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome for the reporting entity to furnish the requested information. If any such information is omitted by commission waiver, a written explanation of the omission and a copy of the waiver must be included in the report.
- (f) **Other reports.** Reporting entities may be required to submit special reports to allow the commission to analyze the changing dynamics of the retail electric market or to obtain information on specific issues that may require additional diagnostic review.
- (1) **Supplemental information requested by the commission.** Upon request by the commission or its designee, a reporting entity shall provide any special and additional information that relates to its performance measures report. Such request shall specify a time for the reporting entity to respond that is reasonable in consideration of the information requested.
 - (2) **Additional reports requested through ERCOT.** Reporting entities may be required to provide to ERCOT, or groups operating under the authority of ERCOT, special and additional information that relates to market performance for specific analytical or diagnostic purposes.
- (g) **Enforcement by the commission.**
- (1) **Failure to timely file accurate report.** The commission may impose all applicable administrative penalties pursuant to PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title (relating to Administrative Penalties) for failure of a reporting entity to timely file an accurate performance measures report.
 - (2) **Technical market mechanics.**
 - (A) **Prohibited conduct.** Each entity shall complete within the parameters set forth in the ERCOT Protocols and/or the Standard Tariff for Retail Delivery Service pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), at least 98% of all its technical market transactions in each transaction category identified in the filing package.
 - (B) **Performance-improvement plan.** Prior to imposing any penalty for a violation of subparagraph (A) of this paragraph, the commission or its designee shall meet with the reporting entity and develop a performance-improvement plan. The performance-improvement plan shall contain specific goals and timeframes for improving performance and shall be reasonable in view of all relevant circumstances.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION.

§25.88(g)(2) continued

- (C) **Penalties.** If a reporting entity violates subparagraph (A) of this paragraph and fails to meet the performance required in a performance-improvement plan, the commission may impose the following penalties, as appropriate:
 - (i) Administrative penalties under PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title;
 - (ii) Any penalty against ERCOT as established by commission rule and as authorized by PURA §39.151; or
 - (iii) Suspension, revocation, or amendment of a REP's certificate or registration as authorized by PURA §39.356 and §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).
- (3) **Factors to be considered.** In assessing penalties pursuant to paragraphs (1) and (2) of this subsection, the commission shall consider the following factors:
 - (A) The reporting entity's prior history of performance;
 - (B) The reporting entity's efforts to improve performance;
 - (C) Whether the penalty is likely to improve performance; and
 - (D) Such other factors deemed appropriate and material to the particular circumstances.
- (h) **Public information.** The commission may produce a summary report on the performance measures using the information collected as a result of these reporting requirements. Any such report shall be public information. The commission may provide the reports to any interested entity and post the reports on the commission's Internet website.
- (i) **Commission review.** The commission may evaluate the reporting requirements as necessary to determine if modifications to the performance measures are necessary due to changing market conditions. Such evaluation process shall include notice and opportunity for public comment.