

CHAPTER 25. SUBSTANTIVE RULES RELATING TO ELECTRIC SERVICE PROVIDERS.

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

§25.90. Market Power Mitigation Plans.

- (a) **Application.** An electric utility or power generation company that the commission determines owns and controls more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region shall file a market power mitigation plan with the commission not later than December 1, 2000. An electric utility or power generation company that the commission determines owns and controls more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region after January 1, 2002 shall file a market power mitigation plan as directed by the commission. The commission may, for good cause, waive or modify the requirement to file a market power mitigation plan, in accordance with Public Utility Regulatory Act (PURA) §39.154(b). This section does not apply to an electric utility subject to PURA §39.102(c) until the end of the utility's rate freeze.
- (b) **Initial information filing.** Each utility or power generation company that owns and controls, either separately or in combination with its affiliates, more than 10,000 megawatts (MW) of electric generation capacity located in a power region that is partly or entirely within the state shall file a calculation by September 5, 2000, detailing the installed generation for its power region expected as of January 1, 2002, and showing its percentage share of the installed generation capacity located in, or capable of delivering electricity to, the power region, plus the capacity expected to be interconnected to the transmission system by January 1, 2002, less the capacity to be auctioned off pursuant to PURA §39.153, and any grandfathered facilities capacity pursuant to PURA §39.154(e). The calculation shall be made pursuant to the requirements of §25.401 of this title (relating to Share of Installed Generation Capacity). The filing shall include detailed information that will allow the commission to replicate the calculation. At a minimum, the filing must include an itemized list of all generating units that are located in, or capable of delivering electricity to, the power region and are owned and controlled by the utility or power generation company and its affiliates in the power region or capable of delivering electricity to the power region. Generating units should be identified by name, capacity rating, ownership, location, and reliability council. Capacity shall be rated according to the method established in §25.91(f) of this title (relating to Generating Capacity Reports). The filing shall also include the transmission import capacity amounts that are to be included in the numerator and the denominator of the calculation prescribed by §25.401 of this title and an explanation of how the transmission capacity amounts were determined. Any interested parties may respond to the utility filings by filing comments with the commission by September 29, 2000. By October 20, 2000, the commission will indicate which utilities, if any, exceed the 20% threshold and are required to file a market power mitigation plan on or before December 1, 2000.
- (c) **Market power mitigation plan.** A market power mitigation plan is a written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by PURA §39.154. A market power mitigation plan may provide for:
- (1) the sale of generation assets to a nonaffiliated person;
 - (2) the exchange of generation assets with a nonaffiliated person located in a different power region;
 - (3) the auctioning of generation capacity entitlements as part of a capacity auction required by PURA §39.153;
 - (4) the sale of the right to capacity to a nonaffiliated person for at least four years; or
 - (5) any reasonable method of mitigation.

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- (d) **Filing requirements.** The plan shall include all supporting information necessary for the commission to fully understand and evaluate the plan. On a case-by-case basis, the commission may require the electric utility or power generation company to provide any additional information the commission finds necessary to evaluate the plan. The plan submitted should incorporate information addressing the determinations listed in subsection (f) of this section.
- (e) **Procedure.** The commission shall approve, modify, or reject a plan within 180 days after the date of filing. The commission may not modify the plan to require divestiture by the electric utility or power generation company.
- (f) **Commission determinations.** In reaching its determination under subsection (e) of this section, the commission shall consider:
 - (1) the degree to which the electric utility's or power generation company's stranded costs, if any, are minimized;
 - (2) whether on disposition of the generation assets the reasonable value is likely to be received;
 - (3) the effect of the plan on the electric utility's or power generation company's federal income taxes;
 - (4) the effect of the plan on current and potential competitors in the generation market;
 - (5) whether the plan provides adequate mitigation of market power; and
 - (6) whether the plan is consistent with the public interest.
- (g) **Request to amend or repeal mitigation plan.** An electric utility or power generation company with an approved mitigation plan may request to amend or repeal its plan. On a showing of good cause, the commission may modify or repeal the mitigation plan.
- (h) **Approval date.** If an electric utility's or power generation company's market power mitigation plan is not approved before January 1 of the year it is to take effect, the commission may order the electric utility or power generation company to auction generation capacity entitlements according to PURA §39.153, subject to commission approval, of any capacity exceeding the maximum allowable capacity prescribed by PURA §39.154 until the mitigation plan is approved. An auction held under this subsection shall be held not later than 60 days after the date the order is entered.