

PROJECT NO. 37519

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND PUC SUBST. R. 25.192(g),	§	
RELATING TO TRANSMISSION	§	OF TEXAS
SERVICE RATES	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.192
AS APPROVED AT THE JANUARY 29, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.192, relating to Transmission Service Rates. The proposed amendment increases from once to twice per year the frequency with which a transmission service provider may file for an interim update to its rates to reflect changes in invested capital. The amendment also limits the number of times a utility may update its rates on an interim basis before being required to file a complete rate case, and it provides that the Commission shall consider in the utility's next complete rate case the effects of interim updates on regulatory lag and the utility's financial risk. Additionally, for cases that are uncontested, the proposed amendment provides for streamlined approval of interim updates to transmission service rates. Project Number 37519 is assigned to this proceeding.

Darryl Tietjen, Director of the Rate Regulation Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Tietjen has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the potential for lower rates because of decreased financial risk and greater administrative efficiency in utilities' recovery of costs related to transmission facilities. There will be no adverse economic effect on

small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Tietjen has also determined that for each year of the first five years the amendment 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.

Initial comments on the amendment 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. Reply comments may be submitted within 45 days after publication. Sixteen copies of comments on the amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 37519.

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. The request for a public hearing must be received within 30 days after publication.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (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 §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §35.004(d), which allows the commission to approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment; §35.006(a), which requires that the commission adopt rules relating to wholesale transmission service, rates and access; and §36.001(a), which allows the commission to establish and regulate rates of an electric utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§ 14.001, 14.002, 35.004(d), 35.006(a), and 36.001(a).

§25.192. Transmission Service Rates.

(a) - (f) (No change.)

(g) **Revision of transmission rates.** Each TSP in the ERCOT region shall periodically revise its transmission service rates to reflect changes in the cost of providing such services. Any request for a change in transmission rates shall comply with the filing requirements established by the commission under this section.

(h) Interim Update of Transmission rates.

- (1) **Frequency.** Each TSP in the ERCOT region may no more than twice per calendar year apply to ~~on an annual basis~~ update its transmission rates on an interim basis to reflect changes in its invested capital. If the TSP elects to update its transmission rates, the new rates shall reflect the addition and retirement of transmission facilities and include appropriate depreciation, federal income tax and other associated taxes, and the commission-allowed rate of return on such facilities as well as changes in loads.
- (2) **Reconciliation.** An update of transmission rates under paragraph (1) of this subsection shall be subject to reconciliation at the next complete review of the TSP's transmission cost of service. The commission shall review whether the costs of transmission plant additions are reasonable and necessary at the next complete review of the TSP's transmission cost of service. Any over-recovery of costs, as a result of the update, is subject to refund, with interest applied to the refund using the TSP's last commission-approved rate of return. If the commission has not approved

a rate of return for the TSP within the last four years, the commission will use an updated rate of return.

(3) **Limitation on number of requests.** If a TSP has updated its transmission rates pursuant to paragraph (1) of this subsection six times without having applied for a complete review of its transmission cost of service, the TSP must apply for a complete review of its transmission cost of service before it may seek additional rate increases pursuant to paragraph (1) of this subsection.

(4) **Future consideration of effect on TSP's financial risk and rate of return.** For a TSP that has increased its rates pursuant to paragraph (1) of this subsection, the commission shall, in setting rates in the next complete review of the TSP's transmission cost of service, expressly consider the effects of reduced regulatory lag resulting from the interim updates to the TSP's rates and the concomitant impact on the TSP's financial risk and rate of return.

(5) **Commission processing of application.** The commission shall process an application filed pursuant to paragraph (1) of this subsection in the following manner.

(A) **Notice and intervention deadline.** The applicant shall provide notice of its application to the distribution service providers listed in the last docket in which the commission set the annual transmission service charges for the Electric Reliability Council of Texas. The intervention deadline shall be 21 days from the date service of notice is completed.

(B) Sufficiency of application. A motion to find an application materially deficient shall be filed no later than 28 days after an application is filed. The motion shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery, or by e-mail if agreed to by the applicant or ordered by the presiding officer. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within ten working days after the deadline for filing a motion to find an application materially deficient, the presiding officer has not filed a written order concluding that material deficiencies exist in the application, the application is deemed sufficient.

(C) Review of application. A proceeding initiated pursuant to paragraph (1) of this subsection is eligible for disposition pursuant to §22.35(b)(1) of this title (relating to Informal Disposition). If the requirements of §22.35 of this title are met, the presiding officer shall issue a notice of approval within 60 days of the date a materially sufficient application is filed unless good cause exists to extend this deadline or the presiding officer determines that the proceeding should be considered by the commission.

- (3)(6) **Filing Schedule.** The commission may prescribe a schedule for providers of transmission services to file proceedings to revise the rates for such services.
- (4)(7) **DSP's right to pass through changes in wholesale rates.** A DSP may expeditiously pass through to its customers changes in wholesale transmission rates approved by the commission, pursuant to §25.193 of this title (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)).
- (5)(8) **Reporting requirements.** TSPs shall file reports that will permit the commission to monitor their transmission costs and revenues, in accordance with any filing requirements and schedules prescribed by the commission.

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 29TH DAY OF JANUARY 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**