

**PROJECT NO. 39246**

<b>RULEMAKING PROCEEDING</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CONCERNING RECOVERY OF</b>	<b>§</b>	
<b>PURCHASED POWER CAPACITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>COSTS, INCLUDING AMENDMENT</b>	<b>§</b>	
<b>OF SUBST. R. 25.238</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF REPEAL OF §25.238 AND NEW §25.238  
AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §25.238, relating to Power Cost Recovery Factors, and new §25.238, relating to Purchased Power Capacity Cost Recovery Factor. The new rule will provide a mechanism, outside of a base-rate proceeding, by which an electric utility may seek to recover certain reasonable and necessary purchased power capacity costs, excluding costs associated with direct or indirect purchases from affiliates of the utility, incurred in the course of providing reliable electric service to ratepayers. The rule would allow a utility to apply to establish a purchased power capacity cost recovery factor (PCRf) rider with the requirement that it be adjusted once a year to reflect appropriate costs, changes in demand, over- and under-recoveries, and changes in revenues resulting from load growth. The rule would provide for the reconciliation of costs recovered through the PCRf at least once every three years, in conjunction with a fuel reconciliation proceeding. Project Number 39246 is assigned to this proceeding.

William Abbott, Director of Tariff and Rate Analysis, Rate Regulation Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Abbott has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be the provision of a mechanism that allows timely reflection in rates of changes to certain purchased power capacity costs incurred by utilities. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Abbott has also determined that for each year of the first five years the proposed sections are 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. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed repeal and 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 30 days after publication. Reply comments may be submitted within 45 days after publication. Sixteen copies of comments to the proposed repeal and new section 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 proposed sections. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 39246.

In addition, the commission solicits input on the following questions regarding the proposed new rule:

1. Should the proposed rule allow for the inclusion of the cost of firm energy purchases from unaffiliated entities along with the cost of purchased power capacity for recovery via the PCR? If so, should subsection (i) of the proposed rule be amended to require crediting of off-system firm energy sales?
2. Should the proposed rule address purchases from a qualifying facility under the Public Utility Regulatory Policies Act? If so, how?
3. Should a process be established wherein a utility may seek commission review of a utility's purchase of power capacity or firm energy from an affiliate so that the utility may thereafter seek to include the costs of such a commission-approved purchase in its purchased power capacity cost recover rider?
4. If the commission establishes the review process described in question 2, should such a process be available for both bilateral, wholesale market purchases as well as purchases made pursuant to a tariff of a Regional Transmission Organization and/or Independent System Operator (RTO/ISO)?

5. If the commission establishes the review process described in question 2, should it limit the frequency of such reviews in order to limit the intervenor and commission resources devoted to such reviews?

This repeal and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (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 §36.051, which states that in establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses; PURA §36.058, which limits the commission's authority to allow the recovery of a payment made by an electric utility to an affiliate; PURA §36.204, which grants the commission the authority to allow timely recovery of the reasonable costs of purchased power; PURA §36.205, which permits the commission to use any appropriate method to provide for the adjustment of the cost of purchased electricity that has been accepted by a federal regulatory authority or approved after a hearing by the commission; and PURA §36.206, which provides what may be included in a purchased power cost recovery factor.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.051, 36.058; 36.204, 36.205, and 36.206.

**§25.238. Power Cost Recovery Factors (PCRF). (REPEAL)****§25.238. Purchased Power Capacity Cost Recovery Factor (PCRF).**

- (a) **Application.** This section applies to an electric utility that sells electricity.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise.
- (1) **Class billing determinants** -- Kilowatt-hours (kWh) for each class that is not billed using a demand charge, and kilowatts (kW) for each class that is billed using a demand charge.
  - (2) **Cost-year** -- The most recent historical 12-month period for which data are available at the time a utility prepares an application to establish, adjust, or terminate a PCRF.
  - (3) **Net production capacity invested capital** -- Production capacity invested capital costs recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 303, 310 - 317, 320 - 326, 330 - 337, and 340 - 347, less accumulated depreciation and adjusted for any changes in production capacity-related accumulated deferred federal income taxes and excluding any impact associated with Financial Accounting Standards Board Interpretation No. 48.
- (c) **Establishment, adjustment, and termination of a PCRF.**
- (1) A utility may apply for establishment of a PCRF rider only if the utility's most recent comprehensive base-rate proceeding established sufficient information to

allow for the determination of values for the parameters in subsection (g) of this section, and no more than two years have passed since the final order in such a base-rate proceeding. The application in which the utility applies for the establishment or adjustment of a PCRf rider shall be limited to issues related to the establishment or adjustment of the PCRf rider.

- (2) The PCRf shall not include:
  - (A) the cost of capacity purchased directly or indirectly, including through one or more intermediaries or pursuant to a tariff of a Regional Transmission Organization or Independent System Operator, from an affiliate, as defined in §25.5(3) of this title (relating to Definitions), of the utility; and
  - (B) the cost of capacity owned by the utility.
- (3) A PCRf shall not be billed using a demand ratchet mechanism.
- (4) Upon the establishment of a utility's PCRf, the utility shall annually file an application for an adjustment of the PCRf. The cost-year used in an annual PCRf adjustment shall be the 12-month period that immediately follows the cost-year used to set the existing PCRf. In addition, the utility shall file the application to adjust the PCRf promptly after the relevant cost-year data become available. The commission may establish a schedule for the filing of such applications.
- (5) A utility may request to have its PCRf terminated as part of any annual PCRf adjustment proceeding. The final order approving the termination of a PCRf shall specify the date by which the utility shall be required to file an application

for the final reconciliation of the costs and revenues associated with the terminated PCRf.

- (6) Commission staff may petition at any time to terminate a utility's PCRf.
- (7) A utility's request to establish, adjust, terminate, or reconcile a PCRf shall include the utility's direct testimony supporting the request.

(d) **Notice of PCRf proceeding.**

- (1) Within one commission working day of filing an application limited to establishing or adjusting a PCRf, a utility shall provide notice of the application in accordance with the following:

(A) **Method of notice.**

- (i) The utility shall serve notice of the application on the parties to the utility's last PCRf reconciliation proceeding or, if there has been no PCRf reconciliation proceeding, on the parties to the utility's last comprehensive base-rate proceeding.
- (ii) The utility shall issue a news release and post the news release on its website.

(B) **Content of notice.** Notice provided pursuant to this paragraph shall include the following:

- (i) The date the application was filed;
- (ii) A description of the application, including the relief requested;
- (iii) The date of the intervention and hearing request deadline. The date of the intervention and hearing request deadline shall be 30

days after the application was filed, except that if the date would fall on a day that is not a commission working day, the intervention and hearing request deadline shall be the first commission working day after the 30<sup>th</sup> day after the application was filed;

- (iv) To the extent applicable, the existing PCRf and the proposed PCRf by rate class, and the percentage difference between the two;
- (v) For an application seeking to establish or adjust a PCRf, the following statement: "The PCRf is subject to final review in the next PCRf reconciliation.";
- (vi) The statement, "Persons with questions or who want more information on this application may contact (utility name) at (utility address) or call (utility toll-free telephone number) during normal business hours. A complete copy of this application is available for inspection at the address listed above"; and
- (vii) The statement, "Persons who wish to intervene in the proceeding for this application, or who wish to provide their comments concerning this application, should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals



with text telephones (TTY) may call (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.”

- (C) **Proof of notice.** Within five commission working days from the filing of the application limited to establishing or adjusting a PCRf, the utility shall file proof in the form of an affidavit that it complied with this paragraph.
- (2) If a utility applies to reconcile a PCRf in a base-rate proceeding, the appropriate method and proof of notice set forth in §22.51 of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) shall apply. The notice shall include a description of the requested change to the PCRf.
- (3) If a utility applies to reconcile a PCRf outside of a base-rate proceeding, the method of notice set forth in §25.235(b)(1)(B) of this title (relating to Fuel Costs-General) shall apply. The proof of notice set forth in §25.235(b)(3) of this title shall apply. The notice shall include a description of the requested reconciliation of the PCRf.
- (e) **Procedural schedule.** Upon the filing of an application limited to the annual adjustment of a PCRf pursuant to this section, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows, except where good cause supports a different procedural schedule:
- (1) within 60 days after a sufficient application was filed, if no hearing is requested within 30 days of the filing of the application; or

- (2) within 120 days after a sufficient application was filed, if a hearing is requested within 30 days of the filing of the application. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application was filed.
- (f) **Exclusion from fuel factor.** Purchased power costs that are recovered through a PCRFF shall be excluded in calculating the utility's fixed fuel factor as defined in §25.237 of this title (relating to Fuel Factors).
- (g) **PCRFF formula.**
- (1) The PCRFF for each rate class shall be calculated using the following formula:

$$\text{PCRFF} = \frac{\{(PPC_{CY} + APC_M) * TRAF_{CY} * CAF_{CY}\} - \{(PPC_{RC-CLASS} + APC_{RC-CLASS}) * (CBD_{CY} / CBD_{RC})\} - \{((PCIC_{RC-CLASS} * ROR_{AT}) + PCDEP_{RC-CLASS} + PCFIT_{RC-CLASS} + PCOT_{RC-CLASS}) * ((CBD_{CY} - CBD_{RC}) / CBD_{RC})\} + CTU}{CBD_E}$$

Where:

$PPC_{CY}$  = Cost-year purchased power capacity costs from entities that are not affiliates, in accordance with subsection (c)(2) of this section.

$APC_M$  = The lesser of purchased power capacity costs from affiliates used to set base rates in the utility's last comprehensive base-rate proceeding, or cost-year purchased power capacity costs from affiliates.

$TRAF_{CY}$  = Cost-year value of the Texas retail jurisdiction production demand allocation factor, using the same type of production demand allocation factor used to set rates in the utility's last comprehensive base-rate proceeding.

$CAF_{CY}$  = Cost-year value of the corresponding rate class production demand allocation factor, using the same type of production demand allocation factor used to set rates in the utility's last comprehensive base-rate proceeding.

$PPC_{RC-CLASS}$  = Purchased power capacity costs from entities that are not affiliates, in accordance with subsection (c)(2) of this section, allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

$APC_{RC-CLASS}$  = Purchased power capacity costs from affiliates allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

$CBD_{CY}$  = Cost-year rate class billing determinants.

$CBD_{RC}$  = Rate class billing determinants used to calculate base rates from the utility's last comprehensive base-rate proceeding.

$PCIC_{RC-CLASS}$  = Net production capacity invested capital allocated to the rate class from the utility's last comprehensive base-rate proceeding.

$ROR_{AT}$  = The after-tax rate of return from the utility's last comprehensive base-rate proceeding.

$PCDEP_{RC-CLASS}$  = Depreciation expense, as related to gross production capacity, allocated to the rate class from the utility's last comprehensive base-rate proceeding.

$PCFIT_{RC-CLASS}$  = Federal income tax, as related to net production capacity invested capital, allocated to the rate class from the utility's last comprehensive base-rate proceeding.

$PCOT_{RC-CLASS}$  = Other taxes, as related to net production capacity invested capital, allocated to the rate class from the utility's last comprehensive base-rate proceeding, and not including municipal franchise fees.

CTU = The rate class under/(over)-recovery, including interest, as calculated in subsection (h) of this section.

$CBD_E$  = Estimated PCRf rate year class billing determinants.

- (2) Where the cost-year used in setting a PCRf includes a change in base rates due to a comprehensive base-rate proceeding, parameters in the PCRf formula that refer to values from the utility's last comprehensive base-rate proceeding shall be calculated by prorating the values from the relevant base rate-proceedings across the cost-year.
- (h) **True-up.** After establishment of an initial PCRf, a subsequent PCRf cost-year is expected to contain portions of two different PCRf rate years. Therefore, for purposes of calculating class over- or under-recoveries for use in a proceeding to adjust the PCRf, previous PCRf revenue requirements from PCRf rate years in effect during the cost-year shall be prorated across the cost-year. For each rate class, the difference between the prorated cost-year PCRf revenue requirement that previous PCRfs were set to recover from that class and the actual cost-year PCRf revenues recovered from that class along with any net revenues from off-system sales allocated to that class as calculated in

accordance with subsection (i) of this section, with interest on the balance calculated at the rate established annually by the commission pursuant to §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments), shall be credited or charged to that class when calculating the adjusted PCRf. In the event that a PCRf rider is terminated, any over- or under-recovery amounts, with interest applied, shall be included in a separate rider.

- (i) **Off-system sales.** Any margins from wholesale power capacity sales transactions shall be allocated and credited to customer classes to the extent that such sales exceed the amount of capacity and firm energy sales revenue credits used to set base rates in the utility's last comprehensive base-rate proceeding. The cost-year class allocation factor (CAF<sub>CY</sub>) shall be used in allocating such excess revenues.
  
- (j) **Reconciliation of PCRf expenses.**
  - (1) The reasonableness and necessity of expenses recovered through the PCRf shall be reviewed, and such costs and corresponding PCRf revenues shall be reconciled, as part of any proceeding initiated under §25.236(b) of this title (relating to Recovery of Fuel Costs). Upon motion and showing of good cause, a PCRf reconciliation proceeding may be severed from or consolidated with other proceedings.
  - (2) In a proceeding in which PCRf costs are being reconciled, the electric utility has the burden of showing that:

- (A) its expenses recovered through the PCRFB during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service to retail customers; and
  - (B) it has properly accounted for the amount of purchased power capacity-related revenues collected pursuant to the PCRFB and corresponding to costs reviewed during the reconciliation period.
- (3) Any refunds or surcharges resulting from a PCRFB reconciliation, with interest applied, shall, in the annual PCRFB proceeding immediately subsequent to the filing of the final order in the reconciliation proceeding, be incorporated into the true-up balances described in subsection (h) of this section. In the event that a PCRFB rider is terminated, such refunds or surcharges, with interest applied, shall be included in a separate rider.

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 16<sup>th</sup> DAY OF NOVEMBER 2012 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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