

PROJECT NO. 24365

RULEMAKING CONCERNING	§	PUBLIC UTILITY COMMISSION
ARRANGEMENTS BETWEEN	§	
QUALIFYING FACILITIES AND	§	
ELECTRIC UTILITIES	§	OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.242
AS APPROVED AT THE DECEMBER 19, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.242 relating to Arrangements Between Qualifying Facilities and Electric Utilities. The proposed amendment addresses the sale and purchase of electricity between qualifying facilities (QFs) and retail electric providers (REPs) with the price to beat obligation (PTB REPs) and REPs serving as providers of last resort (POLRs) in the restructured electric market that takes effect on January 1, 2002. The amendment retains the applicability of the rule pertaining to arrangements between qualifying facilities and electric utilities in the parts of Texas in which the electric market has not yet been restructured. This amendment is proposed in commission Project Number 24365.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Gerardo Huerta, Attorney, Legal 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.

Mr. Huerta 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 compliance with federal law. Furthermore, 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.

Mr. Huerta 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 Texas Government Code §2001.022.

Comments on the proposed amendment (16 copies) 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 21 days after publication. Reply comments may be submitted within 30 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 24365.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code, Annotated, Title II, §§11.002, 14.002, and 35.061 (Vernon 1998 & Supplement 2002) (PURA); 16 U.S.C. §824a-3(f) (2000); and 18 C.F.R. Part 292 (2001). Section 11.002 states that the purpose of the Public Utility Regulatory Act is to grant the commission authority to make and enforce rules necessary to protect customers of electric services consistent with the public interest; §14.002 requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §35.061 requires the commission to adopt and enforce rules to encourage the economical production of electric energy by qualifying facilities; and 16 U.S.C. §824a-3(f) (2000) and 18 C.F.R. Part 292 (2001), which require state regulatory authorities to implement federal Public Utility Regulatory Policies Act regulations addressing arrangements between certain entities that sell electric energy.

Cross reference to statutes: Public Utility Regulatory Act §§11.002, 14.002, and 35.061; 16 U.S.C. §824a-3; and 18 C.F.R. Part 292.

§25.242. Arrangements Between Qualifying Facilities and Electric Utilities.

(a) **Purpose.** The purpose of this section is to regulate the arrangements between qualifying facilities, retail electric providers with the price to beat obligation (PTB REPs), providers of last resort (POLRs), and electric utilities as required by federal and state law in a manner consistent with the development of a competitive wholesale power market.

(b) **Application.** This section shall apply to all PTB REPs, POLRs, transmission and distribution utilities (TDUs), and electric utilities in Texas. This section shall not apply to municipal utilities, river authorities, or electric cooperatives.

(c) **Definitions** — The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Avoided costs** — The incremental costs to a PTB REP, POLR, or electric utility of electric energy, which, but for the purchase from the qualifying facility or qualifying facilities, such PTB REP, POLR, or electric utility would generate itself or purchase from another source.

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(2) **Back-up power** — Electric energy or capacity supplied to replace energy or capacity ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the qualifying facility.

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(3) (No change.)

(4) **Electric utility** — For purposes of this section, an integrated investor-owned utility that has not unbundled in accordance with PURA §39.051.

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(5) **Firm power** — From a qualifying facility, power or power-producing capacity that is available pursuant to a legally enforceable obligation for scheduled availability over a specified term.

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(6) **Host utility** — The utility with which the qualifying facility is directly interconnected.

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(7) **Maintenance power** — Electric energy or capacity supplied during scheduled outages of the qualifying facility.

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(8) **Market price** — The price of power purchases foregone by a PTB REP or POLR due to the purchase from a qualifying facility.

(9) **Non-firm power from a qualifying facility** — Power provided under an arrangement that does not guarantee scheduled availability, but instead provides for delivery as available.

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(10) **Parallel operation** — A mode of operation which enables a qualifying facility to export automatically any electric capacity which is not consumed by the qualifying facility or the user of the qualifying facility's output. Parallel operation results in three possible states of operation at any point in time:

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(A) The qualifying facility is generating an amount of capacity that is less than the customer's load. The customer is therefore a net consumer.

(B) The qualifying facility is generating an amount of capacity that is more than the customer's load. The customer is therefore a net producer.

(C) The qualifying facility is generating an amount of capacity that is equal to the customer's load. The customer is therefore neither a net producer nor a net consumer.

(11) **Purchase** — The purchase of electric energy or capacity or both from a qualifying facility by a PTB REP, POLR, or electric utility.

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(12) **Purchasing utility** — The utility that is purchasing a qualifying facility's capacity and/or energy.

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(13) **Quality of firmness of a qualifying facility's power** — The degree to which the

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capacity offered by the qualifying facility is an equivalent quality substitute for firm purchased power or an electric utility's own generation. At a minimum the following factors should be considered in determining quality of firmness:

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- (A) reliability of generation and interconnection;
- (B) forced outage rate;
- (C) availability during peak periods;
- (D) the terms of any contract or other legally enforceable obligation, including, but not limited to, the duration of the obligation, performance guarantees, termination notice requirements, and sanctions for noncompliance;
- (E) maintenance scheduling;
- (F) availability for system emergencies, including the ability to separate the qualifying facility's load from its generation;

- (G) the individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system;
- (H) other dispatch characteristics;
- (I) reliability of primary and secondary fuel supplies used by the qualifying facility;
- and
- (J) impact on utility system stability.

(14) Retail electric provider with the price to beat obligation (PTB REP) — A REP

that makes available a PTB pursuant to Public Utility Regulatory Act (PURA) §39.202.

(15) Sale — The sale of electric energy or capacity or both supplied to a qualifying facility.

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(16) Supplementary power — Electric energy or capacity regularly used by a qualifying

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facility in addition to that which the facility generates itself.

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(17) System emergency — A condition on a utility's system that is likely to result in

imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(18) Transmission and distribution utility (TDU) — As defined in §25.5 of this title

(relating to Definitions).

(d) **Negotiation and filing of rates.**

(1) **Negotiated rates or terms.** Nothing in this section shall:

- (A) limit the authority of any PTB REP, POLR, or electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any

purchase, which differs from the rate or terms or conditions that would otherwise be required by this section; or

(B) affect the validity of any contract entered into between a qualifying facility and a PTB REP, POLR, or electric utility for any purchase before the adoption of this section.

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(2) (No change.)

(e) (No change.)

(f) **PTB REP, POLR, and electric utility obligations .**

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(1) **Obligation to purchase from qualifying facilities.**

(A) In accordance with this subsection and subsection (g) of this section, each PTB REP, POLR, and electric utility shall purchase any energy that is made available from a qualifying facility:

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- (i) directly to the PTB REP, POLR, or electric utility; or
- (ii) indirectly to the PTB REP, POLR, or electric utility in accordance with paragraph (4) of this subsection.

(B) (No change.)

(2) Obligation to sell to qualifying facilities. In accordance with subsection (k) of this section, each electric utility shall sell any energy and capacity requested to any qualifying facility located within the electric utility's service area. Each PTB REP and POLR shall

Deleted: (C)→An electric utility is not required to purchase firm capacity from a qualifying facility unless it wins an integrated resource planning solicitation pursuant to Subchapter H of this chapter (relating to Electrical Planning). ¶

also sell any energy requested to any qualifying facility; however, those sales shall be at market based rates. Nothing shall restrict the ability of any qualifying facility to purchase energy from any REP.

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- (3) **Obligation to interconnect.** The obligation of electric utilities and TDUs to interconnect with qualifying facilities is set forth in Subchapter I of this chapter (relating to Transmission and Distribution) with respect to qualifying facilities seeking to interconnect with TDUs in the Electric Reliability Council of Texas (ERCOT), and in the respective electric utility's Open Access Transmission Tariff for electric utilities in non-ERCOT power regions.

- (4) (No change.)

- (5) **PTB REP and POLR scheduling with qualifying facilities.** A PTB REP or POLR shall use dynamic resource scheduling or responsibility transfer in ERCOT with any qualifying facility that requests such scheduling, as permitted by ERCOT. The PTB REP's or POLR's cost of using dynamic resource scheduling or responsibility transfer attributable solely to purchases from qualifying facilities shall be charged to qualifying facilities that use such scheduling. If a qualifying facility uses static scheduling, the qualifying facility shall bear the costs for any imbalances resulting from the qualifying facility's failure to submit a schedule or to comply with the schedule.

- (g) **Rates for purchases from a qualifying facility.**

(1) Rates for purchases of energy and capacity from any qualifying facility shall be just and reasonable to the customers of the electric utility, PTB REP, and POLR, and in the public interest, and shall not discriminate against qualifying cogeneration and small power production facilities.

(2) Rates for purchases of energy and capacity from any qualifying facility shall not exceed avoided cost. ~~Rates for purchase shall be based upon a market-based determination of~~ avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchase do not violate this subsection if the rates for such purchase differ from avoided cost at the time of delivery. Payments which do not exceed avoided cost shall be found to be just and reasonable operating expenses of the utility.

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Deleted: Avoided costs shall be determined through a competitive bidding process pursuant to Subchapter H of this chapter, and subject to the limitations of the Public Utility Regulatory Act (PURA) §34.054 (relating to Qualifying Facility Bids; Avoided Costs).

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(h) (No change.)

(i) **Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility.** Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility shall be filed with the commission based on one of the following approaches:

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(1) Rates for purchases of nonfirm power may, by agreement of both the electric utility and the qualifying facility, be based on the utility's average avoided energy costs. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.

(2) Rates for purchases of nonfirm power may, by agreement of both a PTB REP or POLR and the qualifying facility, be based on average market price over the period of sale by the qualifying facility. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility. Such agreements may include provisions to prevent the potential for arbitrage between this paragraph and paragraph (4) of this subsection.

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(3) Rates for purchases of nonfirm power may, at the option of the qualifying facility, be based on the full cost at the time of delivery of decremental energy that would have been incurred by the electric utility had the qualifying facility not been in operation.

- (A) The following factors should be considered in the calculation of the cost of decremental energy:
- (i) fuel costs;
 - (ii) variable operating and maintenance costs;
 - (iii) line losses;
 - (iv) heat rates;
 - (v) cost of purchases from other sources;
 - (vi) other energy-related costs;
 - (vii) capacity costs, if, as a class, qualifying facilities providing nonfirm energy offer some predictable capacity; and
 - (viii) for short term energy purchases, the time and quantity of energy furnished.

- (B) If practical, the avoided cost should be determined by calculating by time period, using the utility's economic dispatch model (or comparable methodology), the difference between the cost of the total energy furnished by both the qualifying facility and the utility, computed as though the energy furnished by the qualifying facility had been furnished by the utility, and the actual cost of energy furnished by the utility.
- (C) The economic dispatch model should take into consideration the following factors:
- (i) fuel costs;
 - (ii) variable operating and maintenance costs;
 - (iii) line losses;
 - (iv) heat rates;
 - (v) purchased power opportunity;
 - (vi) system stability; and
 - (vii) operating characteristics.
- (D) Time periods should be hourly if the utility has an automated economic dispatch model available; otherwise the shortest reasonable time period for which costs can be determined should be used.
- (E) Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.

- (4) Rates for purchases of nonfirm power may, at the option of the qualifying facility, be based on the market price of energy purchases that would have been incurred by the PTB REP or POLR had the qualifying facility not been in operation. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.
- (5) PTB REPs and POLRs shall file with the commission a description of the methodology that will be used in calculating these rates for purchase.

(j) **Periods during which purchases not required.**

- (1) Any PTB REP, POLR, or electric utility which gives notice to each affected qualifying facility in time for the qualifying facility to cease delivery of energy or capacity to the PTB REP, POLR, or electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, including resource ramp rate limitations that could cause imbalances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself, provided, however, that this subsection does not override contractual obligations of the PTB REP, POLR, or electric utility to purchase from a qualifying facility.
- (2) Any PTB REP, POLR, or electric utility which fails to give notice to each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the PTB REP, POLR, or electric utility will be required to pay the same rate

for such purchase of energy or capacity as would be required had the period of greater costs not occurred.

(3) A claim by PTB REP, POLR, or an electric utility that such a period has occurred or will occur is subject to such verification by the commission either before or after the occurrence.

(k) (No change.)

(l) **Interconnection costs.** The establishment and reimbursement of interconnection costs are set forth in Subchapter I of this chapter with respect to qualifying facilities seeking to interconnect with TDUs in ERCOT, and in the respective utility's Open Access Transmission Tariff for electric utilities in non-ERCOT power regions.

(m) (No change.)

(n) **Enforcement.** A proceeding to resolve a dispute between an electric utility, PTB REP, or POLR, and a qualifying facility arising under this section may be instituted by filing of a petition with the commission. Electric utilities, PTB REPs, POLRs, and qualifying facilities are encouraged to engage in alternative dispute resolution prior to the filing of a complaint.

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This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 21st DAY OF DECEMBER 2001 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**