

PROJECT NO. 45131

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
IMPLEMENT HOUSE BILL NO. 1535,	§	
RELATING TO COST RECOVERY	§	OF TEXAS
AND RATE ADJUSTMENT	§	
STANDARDS AND PROCEDURES FOR	§	
CERTAIN NON-ERCOT UTILITIES	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.246 AS APPROVED AT THE
FEBRUARY 11, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.246, relating to Rate Filing Standards and Procedures for Non-ERCOT Utilities. The proposed new rule will implement the provisions of Section Nos. 1 through 3 of House Bill No. 1535 (84th Legislature, Regular Session, 2015). The proposed new rule allows for the use of adjustments to test-year data to include actual information for an update period; defines the update period and provides requirements for a test-year update; provides requirements for a post-test-year adjustment for a natural-gas-fired plant; provides requirements to initiate a rate proceeding, including timing and notice requirements; allows for an extension of the automatic rate-case-filing deadline and includes the factors the Commission will use in its standard of review in making a determination concerning an extension to the deadline; and, provides requirements and procedures for the relation back of final rates to an effective date 155 days after the filing of the rate application. Project Number 45131 is assigned to this proceeding.

Mark Filarowicz, Regulatory Accountant in the Rate Regulation 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. Filarowicz 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 a more predictable rate-setting process and more timely recovery of costs by virtue of the use of more current cost information. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the proposed section; such costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Filarowicz 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 the Administrative Procedure Act, Texas Government Code §2001.022 (APA).

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on March 31, 2016. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed 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. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 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 45131.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (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 §36.212, which requires the commission to implement rules regarding rate case requirements for certain non-ERCOT utilities. This new section implements the provisions of PURA §§36.112, 36.211, and 36.212 into the Texas Administrative Code.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.112, 36.211, and 36.212.

§25.246. Rate Filing Standards and Procedures for Non-ERCOT Utilities.

- (a) **Application.** The provisions of this section apply only to an electric utility that operates solely outside of the Electric Reliability Council of Texas.
- (b) **Adjustments to test year information.**
 - (1) **Definitions.**
 - (A) **Test year** – The period defined in §25.5(134) of this title (relating to Definitions).
 - (B) **Update period** – The period beyond the end of the test year for which the electric utility submits additional information to be used in establishing its base rates. The update period chosen by the utility must end not later than the 30th day before the date the applicable rate proceeding is filed.
 - (2) **Test year update.** In establishing the base rates of an electric utility under the Public Utility Regulatory Act (PURA), Chapter 36, Subchapter C or D, the commission shall determine the utility’s revenue requirement based on, at the election of the utility:
 - (A) information submitted for a test year, adjusted for known and measurable changes; or
 - (B) information submitted for a test year, adjusted for known and measurable changes, updated to include information for the update period that reflects the most current actual or estimated information regarding increases and decreases in the utility’s cost of service, including expenses, capital investment, cost of capital, and sales.
 - (3) **Requirements for test year update.** The updated information authorized to be submitted by paragraph (2)(B) of this subsection may be further adjusted for known and measurable changes occurring after the update period, as permitted by PURA and commission rules, and shall be subject to the following additional standards:
 - (A) expenses authorized by §25.231(b) of this title (relating to Cost of Service) for inclusion in revenue requirement shall reflect the 12-month period ending on the final day of the update period;

- (B) components of rate base as defined by §25.231(c)(2) of this title shall be included through the end of the update period;
 - (C) the electric utility's cost of capital shall be updated to reflect any transactions affecting those items that occur between the end of the test year and the end of the update period; and
 - (D) the utility's sales revenues and customer count shall reflect the 12-month period ending on the final day of the update period.
- (4) **Use of estimates; supplementation of information.**
- (A) An electric utility that includes estimated information for the update period in the initial filing of a rate proceeding shall supplement that filing with actual information not later than the 45th day after the date the initial filing was made.
 - (B) The commission shall extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing, except that the extension period may not exceed 45 days.
- (5) **Post-test year adjustment for newly constructed or acquired natural-gas-fired power plant.** In addition to the test year update authorized by paragraph (2)(B) of this subsection, and without limiting the availability of known and measurable adjustments otherwise permitted by PURA and commission rules, the commission shall allow an electric utility to make a known and measurable adjustment for a newly constructed or acquired natural-gas-fired generation facility.
- (A) The commission is required to allow a known and measurable adjustment under this paragraph only if the natural-gas-fired generation facility is in service before the effective date of new rates.
 - (B) A known and measurable adjustment under this paragraph shall include the utility's prudent capital investment in the facility, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts associated with

the newly constructed or acquired natural-gas-fired generation facility, including any offsetting revenue.

- (C) Notwithstanding the requirements of §25.231(c)(2)(F)(i)(II) of this title, the commission shall allow the adjustment regardless of whether the investment is less than 10% of the utility's rate base before the date of the adjustment.

(c) **Requirement to initiate rate proceeding.**

- (1) **Timing.** An electric utility is required to make filings with regulatory authorities as required by PURA, Chapter 33, Subchapter B, and shall file a rate-filing package under PURA, Chapter 36, Subchapter D, to initiate a comprehensive base rate proceeding before all of the utility's regulatory authorities in the following circumstances:
- (A) on or before the fourth anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding; or
- (B) if the commission determines, before the deadline described in subparagraph (A) of this paragraph, that the utility has earned materially more than the utility's authorized rate of return on investment, on a weather-normalized basis, in the utility's two most recent consecutive commission earnings monitoring reports.
- (C) If a rate-filing package is required to be submitted under this subsection, the utility's rate filing shall reflect a test year, which at the election of the utility may be updated pursuant to subsection (b)(2)(B) of this section, and may be otherwise adjusted for known and measurable changes as permitted by PURA and commission rules.
- (2) **Extension of rate-case-filing deadline.** A utility is required to make a rate filing by the deadline set forth in paragraph (1)(A) of this subsection unless the commission grants an extension of the deadline. The commission may extend the deadline set forth in paragraph (1)(A) of this subsection and set a new deadline if the commission determines that a comprehensive base rate case would not result in materially different rates. The utility shall have the burden to prove that a delay

in the rate-case-filing deadline is warranted and shall submit all requisite information to meet such burden.

- (A) On or before the third anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding, the utility shall submit a filing to the commission indicating whether the utility seeks an extension to the deadline described in paragraph (1)(A) of this subsection. If the utility seeks an extension, at the time of such filing it shall provide all relevant information to meet its burden in showing that an extension is justified. The commission shall give interested parties a reasonable opportunity to present materials and argument before making a determination under this subsection; the Administrative Law Judge(s) assigned to the docket concerning the extension shall set procedural guidelines, including discovery limits and deadlines allowing the commission sufficient time to provide notice pursuant to paragraph (3)(A)(i) of this subsection.
- (B) **Standard of review.** In determining whether to extend the time period for the filing of a base rate proceeding, the commission may consider matters such as the following:
- (i) the results of recent earnings monitoring reports for the utility, including such adjustments to those reports as may be found appropriate by the commission;
 - (ii) recent and expected levels of expenses, sales revenues, and capital investment for the utility;
 - (iii) recent and projected financial results for the utility;
 - (iv) continued appropriateness of the utility's allocation of costs and rate design;
 - (v) capital market conditions;
 - (vi) whether there has been a material change in circumstances since the utility's base rates were last established by the commission; and

(vii) any other factors the commission deems relevant to its determination.

(3) **Notice.**

(A) **Notice to the utility.** The utility must make the filings described in paragraph (1) of this subsection not later than the 120th day after the date the commission provides written notice to the utility:

- (i) that a filing under paragraph (1)(A) of this subsection will be required; or
- (ii) that the condition of material over-earning described by paragraph (1)(B) of this subsection exists.

The 120-day period provided by this subsection may be extended by the commission for good cause.

(B) **Notice to parties.** If the utility seeks an extension to the filing deadline pursuant to paragraph (2) of this subsection, the utility shall provide, at the time the utility submits its filing to the commission requesting an extension, notice to all persons who were parties to the utility's most recent base rate proceeding.

(d) **Relation back of rates.**

(1) In a rate proceeding under PURA, Chapter 36, Subchapter D, or if requested by an electric utility in the utility's statement of intent initiating a rate proceeding under PURA, Chapter 36, Subchapter C, notwithstanding §36.109(a) of PURA, the final rate set in the proceeding, whether a rate increase or rate decrease, shall be made effective for consumption on and after the 155th day after the date the rate-filing package is filed.

(2) The commission shall:

- (A) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 155th day after the date the rate-filing package is filed; or
- (B) authorize the electric utility to collect a surcharge from customers to recover the amount by which the money collected on or after the 155th day

after the utility files its rate-filing package is less than the money that would have been collected under the rate finally ordered.

- (3) The commission may require refunds or surcharges of amounts determined under paragraph (2) of this subsection over a period not to exceed 18 months, along with appropriate carrying costs. The commission shall make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding. Customers who receive service at transmission voltage levels, as well as any groups of seasonal agricultural customers as identified by the electric utility, shall be subject to refund or surcharge rates calculated based upon their individual historical usage and demand recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary. All other customers shall be subject to refund or surcharge rates calculated based upon the historical usage and demand of all customers served under the same tariffed rate schedule.
- (4) An electric utility may not assess more than one surcharge authorized by paragraph (2)(B) of this subsection at the same time.

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 12TH DAY OF FEBRUARY 2016 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**