

**PROJECT NO. 23571**

<b>RULEMAKING CONCERNING</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TRUE-UP PROCEEDING UNDER</b>	<b>§</b>	
<b>PURA §39.262</b>	<b>§</b>	<b>OF TEXAS</b>
	<b>§</b>	
	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §25.263**

The Public Utility Commission of Texas (commission) proposes new §25.263 relating to True-Up Proceeding required pursuant to the Public Utility Regulatory Act (PURA) §39.262. The proposed new rule establishes the process for quantifying and reconciling stranded costs, the differences in the price of power obtained through the capacity auctions and the power costs used in the excess cost over market (ECOM) model, the results of the annual reports, the level of excess revenues for customers who continue to pay the price to beat, the reasonable regulatory assets not previously approved in a rate order that are being recovered through competition transition charges or transition charges, and the final fuel balances. Project Number 23571 has been assigned to this proceeding.

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 only interested in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on the proposed rule, the commission requests that parties specifically address the following issues:

1. The true-up adjustment required by PURA §39.262(d)(2) is determined in the proposed rule by calculating the effect on ECOM of using capacity auction prices, actual fuel costs, and actual sales as certain inputs to the ECOM model. Are there any substantive differences between using this method versus a method in which the adjustment is simply the difference between the price of power obtained through the capacity auctions and the corresponding power cost projections used in the ECOM model in the PURA §39.201 proceeding? If so, should an alternative method for calculating the adjustment required by PURA §39.262(d)(2) be incorporated into the final rule?
2. Should the final rule incorporate criteria for determining whether a utility has used good-faith attempts to renegotiate above-cost fuel and purchased power costs as required by PURA §39.252(d)? If so, what should those criteria be?
3. The definitions of market price used in subsection (j) of the proposed rule use the same mix of power products (i.e., based on a three-year full requirements request for proposal and 12 months of capacity auction products) developed in the price to beat rule (Substantive Rule §25.41) to permit adjustments to the price to beat. Is this the appropriate method to determine the "prevailing market price" or is another method more appropriate? If this method is appropriate, should the prices used be forward looking or should they be historical prices?

Attached Figures 1 and 2, based on positive and negative true-up balances, respectively, provide various scenarios illustrating the treatment of the true-up balance pursuant to the rule.

Darryl Tietjen, Director of Financial Analysis, Financial Review 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. Tietjen has also 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 final reconciliation of amounts due the unbundled successors-in-interest of deregulated electric utilities. There will be no effects on small businesses or micro-businesses as a result of enforcing this section. There will be economic costs to persons who are required to comply with the section as proposed associated with preparing and processing their true-up applications and defending their applications at hearing, if necessary. There may also be additional economic costs to such persons if they are required to return funds to electric customers as a result of the true-up proceeding.

Mr. Tietjen 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 Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Wednesday, July 25, 2001, at 9:00 a.m. in the Commissioners' Hearing Room on the 7th floor.

Comments on the proposed new rule (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 30 days after publication. Reply comments may be submitted within 45 days after publication. 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 23571.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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 §39.252 which addresses a utility's right to recover stranded costs and PURA §39.262 which requires the commission to conduct a true-up proceeding for each investor-owned electric utility after the introduction of customer choice and which prohibits overrecovery of stranded costs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.252 and 39.262.



**§25.263. True-up Proceeding.**

(a) **Purpose.**

- (1) The purpose of the true-up proceeding is to quantify and reconcile the amount of stranded costs, the differences in the price of power obtained through the capacity auctions and the power costs used in the excess costs over market (ECOM) model, the results of the annual reports, the level of excess revenues from customers who continue to pay the price to beat, the reasonable regulatory assets not previously approved in a rate order that are being recovered through competition transition charges (CTCs) or transition charges (TCs), and the final fuel balances.
- (2) An electric utility, together with its affiliated retail electric provider (AREP), its affiliated power generation company (APGC), and its affiliated transmission and distribution utility, shall not be permitted to overrecover stranded costs through the application of the measures provided in the Public Utility Regulatory Act (PURA), Chapter 39, or under the procedures established in PURA §39.262 and this section.

- (b) **Application.** This section applies to all investor-owned transmission and distribution utilities established pursuant to PURA §39.051, their affiliated power generation companies, and their affiliated retail electric providers.

- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:
- (1) **Capacity auction total price of power (\$/MWh)** — The total (fuel plus non-fuel) capacity auction revenues divided by the total capacity auction energy delivered for a specified time period.
  - (2) **Mitigation** — The total excess earnings and redirected depreciation applied to generation assets pursuant to PURA §39.254 and §39.256 or a commission order.
  - (3) **Net mitigation** — Any mitigation that has not been reversed or refunded as of the date of the final order in the true-up proceeding.
  - (4) **Net value realized** — All compensation paid by a buyer for generating assets, including the buyer's assumption of debt, less any costs of sale such as legal fees, broker fees, and other reasonable transaction costs.
  - (5) **Projected stranded costs** — The value produced by the ECOM model and approved by the commission in the proceeding conducted pursuant to PURA §39.201.
  - (6) **Regulatory assets** — The generation-related portion of the Texas jurisdictional portion of the amount reported by the electric utility in its 1998 annual report on Securities and Exchange Commission Form 10-K as regulatory assets and liabilities, offset by the applicable portion of generation-related investment tax credits permitted under the Internal Revenue Code of 1986.
  - (7) **Residential market price of electricity** — The simple average of the results of a three-year request for proposal for full-requirements service for 10% of residential price

to beat load and the most recent aggregated 12-month forward capacity auction prices, utilizing the appropriate mix of capacity auction products needed to serve residential customers.

- (8) **Residential net price to beat** — The average residential price to beat rate (expressed in cents per kilowatt-hour) in effect on January 1, 2004, less the average non-bypassable charges (expressed in cents per kilowatt-hour) applicable to residential customers.
- (9) **Small commercial market price of electricity** — The simple average of the results of a three-year request for proposal for full-requirements services for 10% of small commercial price to beat load and the most recent aggregated 12-month forward capacity auction prices, utilizing the appropriate mix of capacity auction products needed to serve small commercial customers.
- (10) **Small commercial net price to beat** — The average small commercial price to beat rate (expressed in cents per kilowatt-hour) in effect on January 1, 2004, less the average non-bypassable charges (expressed in cents per kilowatt-hour) applicable to small commercial customers.
- (11) **Transferee corporation** — A separate affiliated or non-affiliated company to whom an electric utility or its APGC transfers generation assets.
- (12) **Transmission and distribution utility (TDU)** — A transmission and distribution utility that, pursuant to PURA §39.051, is the successor in interest of an electric utility certificated to serve an area.

(13) **Transmission and distribution utility region (TDU region)** — The affiliated transmission and distribution utility's service territory.

(d) **Obligation to file a true-up proceeding.**

(1) Each TDU, its APGC, and its AREP shall jointly file after January 12, 2004, on a schedule to be determined by the commission, a true-up application pursuant to subsection (e) of this section.

(2) Each TDU that is a successor in interest of any utility that was reported by the commission to have positive ECOM, denoted as the "base case" for the amount of stranded costs before full retail competition in 2002 with respect to its Texas jurisdiction in the April 1998 Report to the Texas Senate Interim Committee on Electric Utility Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update," and such TDU's APGC and AREP, shall file the true-up application as required by subsections (f) – (k) of this section.

(3) All TDUs not described in paragraph (2) of this subsection, their APGCs, and their AREPs shall file the applications required by subsections (h) and (j) of this section.

(e) **True-up filing procedures.**

(1) Each TDU, APGC and AREP shall file all testimony and schedules on which they intend to rely in accordance with the true-up filing package prescribed by the commission.

- (A) Within 20 calendar days of the filing of a true-up application, commission staff or any intervenor may file a motion stating that the filing is materially deficient. Any such motion shall include a detailed explanation of the claimed material deficiencies.
  - (B) If the presiding officer determines that an application is materially deficient, the TDU, APGC, and AREP shall correct the deficiencies within 30 calendar days. The deadline for final commission order shall be extended day for day from the date of initial filing until the corrections are filed with the commission.
- (2) At least 180 days prior to the filing of the first true-up application scheduled by the commission, a utility's APGC shall file a notification of intent with the commission if it intends to utilize PURA §39.262(i) to determine the amount of its stranded costs for nuclear assets.
  - (3) The commission may initiate a generic proceeding to determine true-up issues that are common to multiple TDUs, APGCs and AREPs. This proceeding may include updates to the ECOM model required by subsection (f)(2)(B) of this section, in the event a notification of intent is filed pursuant to paragraph (2) of this subsection. The commission may order further updates to any order approved in a generic proceeding pursuant to this section for any utility whose customers are not offered competition on January 1, 2002.
  - (4) As part of the true-up proceeding, the commission shall make a determination with respect to whether the TDU, the APGC, and the AREP have complied with PURA

§39.252(d). If the commission finds that the TDU, the APGC, or the AREP have failed, individually or in combination, to fully comply with their obligations under PURA §39.252(d), the commission may reduce the net book value of the APGC's generation assets or take other measures it deems appropriate in the true-up proceeding filed under this section.

- (5) The State Office of Administrative Hearings shall employ expedited procedures during discovery in the true-up proceedings.
- (6) The commission shall issue the final order for each proceeding filed under this section not later than the 150th day after the filing of a complete, non-deficient application. Notwithstanding the foregoing, however, the 150-day deadline may be extended by the commission for good cause.

(f) **Quantification of market value of generation assets.**

- (1) Market value of generation assets shall be quantified using one or more of the following methods:
  - (A) **Sale of assets method.** If an electric utility or its APGC sells some or all of its generation assets after December 31, 1999, in a bona fide third-party transaction under a competitive offering, the total net value realized from the sale shall establish the market value of the generation assets sold. The utility shall provide to the commission, at least 120 days prior to the transfer, a detailed

explanation of the transaction and a complete description of all assets to be sold, including any ancillary items related to the assets.

(B) **Stock valuation method.** The following method of market valuation without using a control premium may be used to value generation assets.

(i) If, at any time after December 31, 1999, an electric utility or its APGC has transferred some or all of its generation assets, including, at the election of the electric utility or the APGC, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, not less than 51% of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the true-up filing required by this section establishes the market value of the common stock equity in each transferee corporation.

(ii) The average book value of each transferee corporation's debt and preferred stock securities during the 30-day period chosen by the commission to determine the market value of common stock shall be added to the market value of its stock.

- (iii) The market value of each transferee corporation's assets that is determined as the sum of clauses (i) and (ii) of this subparagraph shall be reduced by the corresponding net book value of the assets acquired by the transferee corporation from any entity other than the affiliated electric utility or power generation company.
- (iv) The market value of the assets determined from the procedures required by clauses (i), (ii), and (iii) of this subparagraph establishes the market value of the generation assets transferred by the electric utility or power generation company to each separate corporation.

(C) **Partial stock valuation method.** The following method of market valuation using a control premium may be used to value generation assets.

- (i) If, at any time after December 31, 1999, an electric utility or its APGC has transferred some or all of its generation assets, including, at the election of the electric utility or the APGC, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, at least 19%, but less than 51%, of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days

before the filing establishes the market value of the common stock equity in each transferee corporation.

- (ii) The commission may accept the market valuation to conclusively establish the value of the common stock equity in each transferee corporation or convene a valuation panel of three independent financial experts to determine whether the per-share value of the common stock sold is fairly representative of the per-share value of the total common stock equity or whether a control premium exists for the retained interest.
- (iii) Should the commission elect to convene a valuation panel, the panel must consist of financial experts chosen from proposals submitted in response to commission requests from the top ten nationally recognized investment banks with demonstrated experience in the United States electric industry, as indicated by the dollar amount of public offerings of long-term debt and equity of United States investor-owned electric companies over the immediately preceding three years as ranked by the publication "Securities Data" or "Institutional Investor."
- (iv) None of the financial experts chosen for the panel shall have participated, or be employed by an investment house or brokerage house which has participated, in the business separation, securitization, or other activities related to the implementation of PURA Chapter 39

on behalf of the utility for which the market valuation is being determined.

- (v) If the panel determines that a control premium exists for the retained interest, the panel shall determine the amount of the control premium, and the commission shall adopt the determination, but may not use the control premium to increase the market value of the assets by more than 10%.
- (vi) The costs and expenses of the panel, as approved by the commission, shall be paid by each transferee corporation.
- (vii) The determination of the commission, based on the finding of the panel and other admitted evidence, conclusively establishes the value of the common stock of each transferee corporation.
- (viii) The average book value of each transferee corporation's debt and preferred stock securities during the 30-day period chosen by the commission to determine the market value of common stock shall be added to the market value of its stock.
- (ix) The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by the transferee corporation from any entity other than the electric utility or its APGC.

(x) The market value of the assets resulting from the procedures required by clauses (i) - (ix) of this subparagraph establishes the market value of the generation assets transferred by the electric utility or APGC to each transferee corporation.

(D) **Exchange of assets method.** If, at any time after December 31, 1999, an electric utility or its APGC transfers some or all of its generation assets, including any fuel and fuel transportation contracts related to those assets, in a bona fide third-party exchange transaction, the stranded costs related to the transferred assets shall be the difference between the net book value and the market value of the transferred assets at the time of the exchange, taking into account any other consideration received or given.

(i) The market value of the transferred assets may be determined through an appraisal by a nationally recognized independent appraisal firm, if the market value is subject to a market valuation by means of an offer of sale in accordance with this subparagraph.

(ii) To obtain a market valuation by means of an offer of sale, the owner of the asset shall offer it for sale to other parties under procedures that provide broad public notice of the offer and a reasonable opportunity for other parties to bid on the asset.

- (iii) The owner of the asset may establish a reserve price for any offer based on the sum of the appraised value of the asset and the tax impact of selling the asset, as determined by the commission.
  - (iv) The utility shall provide to the commission, at least 120 days prior to the transfer, a detailed explanation of the transaction and a complete description of all assets to be exchanged, including any ancillary items related to the assets.
- (2) **ECOM Method.** Unless an electric utility or its APGC combines all its remaining generation assets into one or more transferee corporations pursuant to paragraph (1)(B) or (C) of this subsection, the electric utility shall quantify its stranded costs for nuclear assets using the ECOM method.
  - (A) The ECOM method is the estimation model prepared for and described by the commission's April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment--ECOM Report: 1998 Update." The methodology used in the model must be the same as that used in the 1998 report to determine the "base case."
  - (B) As part of the filing specified in subsection (d) of this section, the electric utility shall rerun the ECOM model using updated company specific inputs required by the model, updating the market price of electricity, and using updated natural gas price forecasts and the capacity cost based on the long-run marginal cost of the most economic new generation technology then available, as approved by

the commission pursuant to subsection (e)(3) of this section. Natural gas price projections used in the model shall be forward prices of Houston Ship Channel natural gas.

- (C) Growth rates in generating plant operations and maintenance costs and allocated administrative and general costs shall be benchmarked by comparing those costs to the best available information on cost trends for comparable generating plants.
- (D) Capital additions shall be benchmarked using the 1.5% limitation set forth in PURA §39.259(b).

(g) **Quantification of net book value of generation assets.**

- (1) For purposes of this section, the net book value of generation assets shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under subsection (f) of this section, whichever is earlier.
- (2) Net book value of generation assets consists of:
  - (A) The generation-related electric plant in service, less accumulated depreciation, plus generation-related asset additions as allowed in the ECOM model filed pursuant to the unbundled cost of service (UCOS) rate filing package, reduced by:
    - (i) net mitigation;

- (ii) the net book value of nuclear generation assets if quantification of ECOM related to those nuclear generation assets is determined pursuant to PURA §39.262(i); and
  - (iii) any generation-related invested capital recoverable through a CTC, exclusive of related carrying costs, projected to be collected through the date of the final order in the true-up proceeding.
- (B) Above-market purchased power costs arising from contracts in effect before January 1, 1999.
  - (i) The purchased power market value of the demand and energy included in the purchased power contracts shall be determined by using the weighted average costs of the highest three offers from a bona fide third-party transaction or transactions on the open market.
  - (ii) The bona fide third-party transaction or transactions on the open market shall be structured so that the above-market purchased power costs are determined pursuant to subclause (I) or (II) of this clause.
    - (I) A transaction may be structured so the electric utility pays a third party to assume the utility's obligations under the purchased power contract. The weighted average of the three highest offers received in the transaction establishes the above-market purchased power costs.

- (II) A transaction may be structured so a third party pays the utility to take power under the purchased power contract. The difference between the net present value of obligations under the existing contracts at the utility's cost of capital and the weighted average of the three highest offers received in the transaction establishes the above-market purchased power costs.
  - (C) Deferred debits related to a utility's discontinuance of the application of SFAS No. 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by PURA Chapter 39.
  - (D) Capital costs incurred before May 1, 2003 to improve air quality to the extent they have been approved by the commission pursuant to §25.261 of this title (relating to Stranded Cost Recovery of Environmental Cleanup Costs).
  - (E) Any adjustments resulting from the commission's review of the TDU's, APGC's, and AREP's efforts pursuant to subsection (e)(4) of this section.
- (h) **True-up of final fuel balance.**
- (1) An APGC shall reconcile the former electric utility's final fuel balance determined under PURA §39.202(c).

- (2) The final fuel balance shall be reduced by any revenues collected by the AREP under any commission-approved fuel surcharge, from the date of introduction of competition to the utility's customers through the date of the true-up filing under this section.
  - (3) If an electric utility or its TDU or APGC is assessed by another utility in Texas a fuel surcharge after 2001 for underrecoveries occurring through the end of 2001, the surcharged utility shall add the amount of surcharges paid after 2001 to its final fuel balance calculated pursuant to this section.
  - (4) The final fuel balance shall include carrying costs on the positive or negative fuel balance equal to the rate approved in §25.236 of this title (related to Recovery of Fuel Costs) until the date of the final true-up order.
- (i) **True-up of capacity auction proceeds.**
- (1) For purposes of the true-up required by PURA §39.262(d)(2), and for final reconciliation of monthly capacity auction true-up adjustment amounts billed or credited by the APGC as provided for under §25.381(h)(1) of this title (related to Capacity Auctions), the APGC shall compute the difference in ECOM resulting from any difference between the capacity auction total price of power and the power cost projections for the same time period as used in the determination of ECOM for each utility in the proceeding under PURA §39.201.
  - (2) The ECOM.xls model that supports the APGC's commission-approved ECOM run in the proceeding under PURA §39.201 shall be used to calculate the capacity auction

true-up amount for each year. This will be accomplished by calculating the revised ECOM amount resulting from substituting the capacity auction total price of power for the projected ECOM market prices as included on rows 5, 9, and 13 of the "Prices" worksheet of the ECOM.xls model for 2002 and 2003. The APGC shall also update the fuel expense for 2002 and 2003 based on the actual fuel costs incurred by the APGC. The APGC shall also update the sales for 2002 and 2003 based on the actual system-wide megawatt-hours at the busbar. The difference between this revised ECOM amount and the ECOM amount approved by the commission in the proceeding under PURA §39.201 will be calculated to produce the change in ECOM resulting from use of the capacity auction total price of power for that year.

- (j) **True-up of price to beat revenues.** This subsection specifies how the forty- percent threshold is calculated and how the price to beat comparison is made.
- (1) An AREP is not required to perform the reconciliation described in PURA §39.262(e) for the residential or small commercial customer class if the commission has determined that the AREP has reached the applicable 40% threshold requirements prior to January 1, 2004, pursuant to filing requirements listed in §25.41(l) of this title (relating to Price to Beat) applicable to that class.
  - (2) If an AREP has not reached the applicable 40% threshold requirements prior to January 1, 2004, for either the residential or the small commercial class, or both, the net price to beat for each such class must be compared to the market price of electricity for that

class in the TDU region on January 1, 2004 as provided in paragraphs (3) and (4) of this subsection.

- (3) If the 40% consumption threshold has not been reached for the residential class, the utility shall compute the difference between the residential net price to beat and the residential market price of electricity. The difference shall be multiplied by the total kilowatt-hours consumed by residential net price to beat customers of the AREP for the period beginning January 1, 2002 and ending January 1, 2004.
- (4) If the 40% consumption threshold has not been reached for the small commercial class, the utility shall compute the difference between the small commercial net price to beat and the small commercial market price of electricity. The difference shall be multiplied by the total kilowatt-hours consumed by small commercial price to beat customers for the period beginning January 1, 2002 and ending January 1, 2004.
- (5) For each of the residential and small commercial classes, the AREP shall credit the TDU the lesser of the amounts calculated in subparagraphs (A) and (B) of this paragraph:
  - (A) \$150 multiplied by (the difference between the number of residential or small commercial customers, as applicable, in the TDU Region taking price to beat service from the AREP on January 1, 2004 and the number of residential or small commercial customers, as applicable, outside the TDU region being served by the AREP on January 1, 2004); or

- (B) the total differential between the net price to beat and the market price of electricity calculated for the applicable class under paragraph (3) or (4) of this subsection.
- (k) **Regulatory assets.** To the extent that any amount of regulatory assets included in a TC or CTC exceeds the amount of regulatory assets approved in a rate order which became effective on or before September 1, 1999, the commission shall conduct a review during the true-up proceeding to determine any such amounts that were not appropriately calculated or that did not constitute reasonable and necessary costs.
- (l) **TDU/APGC True-up balance.**
- (1) The formula to establish the true-up balance between the TDU and APGC is shown in the following table. TDUs described in subsection (d)(3) of this section and their APGCs shall insert zero for all inputs in this equation except the input entitled "Final fuel balance calculated pursuant to subsection (h)."

<u>Calculation of True-up Balance</u>	
	Net book value calculated pursuant to subsection (g)
-	Market value calculated pursuant to subsection (f)(1)
+/-	Value calculated by ECOM model pursuant to subsection (f)(2)

+/-	Final fuel balance calculated pursuant to subsection (h)
+/-	Capacity auction true-up calculated pursuant to subsection (i)
+/-	<u>Regulatory asset amount calculated pursuant to subsection (k)</u>
=	TDU/APGC True-up Balance

(2) For TDUs described in subsection (d)(2) of this section, the TDU/APGC true-up balance shall be compared to projected stranded costs as provided in subparagraphs (A) – (C) of this paragraph. For TDUs described in subsection (d)(3) of this section, the TDU/APGC true-up balance shall be treated as provided in subparagraph (D) of this paragraph.

(A) If the TDU/APGC true-up balance is positive, and greater than projected stranded costs, then the commission shall increase the CTC (or establish a CTC, if no CTC has previously been approved for the utility), extend the time for the collection of the CTC, or both, to enable the TDU to collect the TDU/APGC true-up balance. The utility may seek to securitize any or all of the amounts determined under this subparagraph under PURA Chapter 39, Subchapter G.

(B) If the TDU/APGC true-up balance is positive, but less than projected stranded costs, then the commission shall reduce non-bypassable delivery rates in the amount of the difference by:

(i) reducing any CTC established under PURA §39.201;

- (ii) reversing, in whole or in part, the depreciation expense that has been redirected under PURA §39.256;
    - (iii) reducing the TDU's rates; or
    - (iv) any combination of clauses (i), (ii), and (iii) of this subparagraph.
  - (C) If the TDU/APGC true-up balance is negative, then
    - (i) any CTC established under PURA §39.201 shall be eliminated;
    - (ii) net mitigation shall be reversed until exhausted or until a zero true-up balance is achieved, and the amount of net mitigation reversed shall be returned to ratepayers by the APGC through an excess mitigation credit; and
    - (iii) if net mitigation is exhausted and some amount of the negative true-up balance remains, then a negative CTC shall be established based upon the lesser of the absolute value of the remaining negative true-up balance or the securitization amount on which any TCs are based.
  - (D) If the TDU/APGC true-up balance is positive, then a CTC shall be imposed to enable the APGC to recover any positive fuel balance. If the TDU/APGC true-up balance is negative, then a fuel credit shall be implemented to return the over-recovered fuel balance to ratepayers.
- (3) The TDU shall be allowed to recover, or shall be liable for, carrying costs on the true-up balance. Carrying costs shall be calculated using the utility's cost of capital

established in the utility's UCOS proceeding, and shall be calculated for the period of time from the date of the true-up final order until fully recovered.

(m) **TDU/AREP true-up balance.** The TDU shall bill the AREP for, and the AREP shall remit to the TDU, the amount calculated pursuant to subsection (j) of this section, plus carrying costs. Carrying costs shall be calculated using the utility's cost of capital established in the utility's UCOS proceeding, and shall be calculated for the period of time from the date of the true-up final order until fully recovered. The commission may reduce the TDU's rates to reflect the amounts due from the AREP.

(n) **Rate case subsequent to the true-up proceeding.**

(1) The TDU shall file an application to adjust its rates within 60 days following the issuance of a final, appealable order on its true-up proceeding. In the rate case, the commission shall adjust the TDU's rates and any CTC approved in the true-up proceeding, and allocate the recovery responsibility for such rates and any CTC to the TDU's customer classes.

(2) In the rate case, the commission shall also consider adopting remittance standards, if necessary, with respect to the credits or bills as among the TDU, the APGC and the AREP.

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 30th DAY OF MAY 2001 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**