

PROJECT NO. 27464

RULEMAKING PROCEEDING	§	PUBLIC UTILITY COMMISSION
CONCERNING QUANTIFICATION OF	§	
STRANDED COSTS OF NUCLEAR	§	OF TEXAS
GENERATION ASSETS, SUBSTANTIVE	§	
RULE §25.264	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.264
AS APPROVED AT THE MARCH 21, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.264 relating to Quantification of Stranded Costs of Nuclear Generation Assets. The proposed new rule will clarify the methods that are available to an electric utility and its affiliated power generation company to quantify the market value of its nuclear generation assets for the purpose of determining its stranded costs under the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapter 39 (Vernon 1998, Supplement 2003) (PURA). In Docket Number 27120, *Petition of Central Power and Light Company for Declaratory Order and Plan of Divestiture*, the commission denied a request by AEP Texas Central Company (previously known as Central Power and Light Company) for a declaratory order interpreting the provisions of PURA Chapter 39 related to the stranded cost calculation for nuclear assets. The commission determined that it was more appropriate to address the issue in a rulemaking proceeding and established this project for that purpose. Project Number 27464 is assigned to this proceeding.

Patrick J. Sullivan, Attorney, Legal and Enforcement 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. Sullivan 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 to firmly establish the methods that may be employed to determine the stranded cost of nuclear power generation assets. In addition, the rule is needed to serve the public interest and legislative policy stating that utilities with uneconomic generation-related assets should be allowed to recover the reasonable excess costs over market value of those assets. In order to assure that the market value of nuclear generation assets is properly quantified in a manner that reduces, to the extent possible, the amount of excess costs over market value for those assets, the rule clarifies that a public utility and its affiliated companies may use any of the valuation methods specified in PURA §39.262(h) and (i) to quantify the market value of nuclear generation assets. The rule is proposed as part of the commission's efforts to adopt competitive rules to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry under PURA Chapter 39. 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. Sullivan 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.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 20 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 legislative history of the portions of PURA detailing the determination of stranded costs of nuclear generation assets. All comments should refer to Project Number 27464.

The commission staff will conduct a public hearing on this rulemaking under 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 on April 29, 2003 at 9:00 a.m. Interested persons are invited to comment on the rule at that time and to offer oral reply comments to the initial comments filed in this project.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (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 allows an electric utility to recover all of its net, verifiable, nonmitigable stranded costs in purchasing power and providing electric generation service; PURA §39.262(a), which provides that an electric utility and its affiliates may not be permitted to overrecover its stranded costs; PURA §39.262(c), which directs each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company to jointly file an application to finalize its stranded costs under procedures to be determined by the commission; and PURA §39.262(h) and (i), which establish the methods by which the final stranded costs shall be calculated.

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

§25.264. Quantification of Stranded Costs of Nuclear Generation Assets.

The market value of an affiliated power generation company's nuclear assets shall be established by compliance with any of the four methods of quantification specified in Public Utility Regulatory Act §39.262(h) and related requirements specified in §25.263 of this title (relating to True-up Proceeding). For any nuclear assets that are not valued pursuant to a sale of assets or an exchange of assets, the electric utility or its affiliated power generation company shall either combine those assets in one or more transferee corporations as described in PURA §39.262(h)(2) and (3) for purposes of determining their market value, or the commission will determine their market value using the "excess costs over market" or ECOM method.

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 MARCH 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**