

The Public Utility Commission of Texas proposes new §25.265 relating to Securitization by River Authorities and Electric Cooperatives. The proposed new rule implements Senate Bill 7 (SB 7) Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2602, 2608 (Vernon) (to be codified as amendments to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §40.003 and §41.003) and will govern the procedures for the securitization of stranded costs for river authorities and electric cooperatives. Project Number 21077 has been assigned to this proceeding.

Although PURA requires the commission to establish rules and procedures for the securitization of stranded costs for river authorities and electric cooperatives, the statute is silent on several key issues. Parties are invited to address the following questions:

1. Is the proposed definition of stranded costs in this rule appropriate?
2. What entity is responsible for determining (a) whether a river authority has stranded costs; and (b) the amount of stranded costs eligible for securitization?
3. Does §40.001 of SB 7 specifically exempt river authorities from the definition of stranded costs found in §39.251?
4. What is the scope of the commission's authority over a cooperative's or river authority's wholesale customers?

5. Does the existence of a wholesale power contract between a river authority and its customer affect the river authority's or cooperative's ability to securitize?
6. Does the commission have the authority to impose a non-bypassable charge on the customers of a cooperative or river authority, or to add such a charge to the rates of a securitizing Chapter 40 or 41 entity? If the commission does not have such authority, does this affect the feasibility of issuing securitized bonds?
7. Does the governing body of a Chapter 40 or 41 entity have the authority to impose a non-bypassable charge upon its wholesale customers?
8. If non-bypassable transition charges can be imposed upon wholesale customers of a river authority, can those charges continue to be imposed upon wholesale customers once their contract with the river authority expires?
9. Can those charges be imposed upon wholesale customers who were once, but are no longer, served by the river authority?
10. If a cooperative or river authority securitizes stranded costs and adopts a non-bypassable charge that it collects from its wholesale customers, do these customers have a means of recovering these costs from their retail customers?

Thomas F. Best, Attorney for the Office of Regulatory Affairs, 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.

Thomas F. Best 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 issuing this rule will be the establishment of standards governing securitization by river authorities and electric cooperatives.

There will be no 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.

Thomas F. Best 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, Wednesday, January 12, 2000 at 10:00 a.m. in the Commissioners' Hearing Room.

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 25 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 21077.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (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, Senate Bill 7 (SB 7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2625 (Vernon) (as required by uncodified section 65 of SB 7), which requires the commission to establish rules and procedures for the securitization of stranded costs for river authorities and electric cooperatives not later than the 180th day after the effective date of SB 7.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 40.003, 41.003 and section 65 of SB7.

§25.265. Securitization by River Authorities and Electric Cooperatives.

- (a) **Application.** This section applies to securitization transactions carried out by a river authority or electric cooperative. A river authority or electric cooperative may adopt and use securitization provisions having the effect of the provisions provided by the Public Utility Regulatory Act (PURA), Chapter 39, Subchapter G, to recover its stranded costs in accordance with this section.
- (b) **Definition of stranded costs.**
- (1) For electric cooperatives, the term "stranded costs" when used in this section shall mean "stranded investment" as defined in PURA §41.002(3).
 - (2) For river authorities, the term "stranded costs" when used in this section shall mean the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the river authority's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets.

- (c) **Quantification of stranded costs.** Only those river authorities and electric cooperatives having positive stranded costs as determined by this section may securitize such costs.
- (1) For electric cooperatives, the board of directors has the exclusive jurisdiction to reasonably determine the amount of the electric cooperative's stranded investments.
 - (2) For river authorities, the governing body shall determine the amount of stranded costs using an administrative model or other reasonable methodology.
- (d) **Demonstration of tangible and quantifiable benefits to ratepayers.** A river authority or electric cooperative may not utilize securitization financing to recover stranded costs unless it demonstrates that securitization provides tangible and quantifiable benefits to ratepayers greater than would have been achieved absent the issuance of transition bonds. Such demonstration shall be performed on an asset-by-asset basis.
- (e) **Limit on amount of qualified costs to be securitized.** The amount securitized may not exceed the sum of:
- (1) the present value, calculated using a discount rate equal to the proposed interest rate on the transition bonds, of the revenue requirement over the life of the

proposed transition bonds associated with the stranded costs sought to be securitized, and

- (2) the costs of issuing, supporting, and servicing the transition bonds and any costs of retiring and refunding existing debt of the river authority or electric cooperative.

- (f) **Use of proceeds.** The proceeds of the transition bonds shall be used solely for the purpose of reducing the amount of recoverable stranded costs as determined pursuant to this section, through the refinancing or retirement of debt of the river authority or electric cooperative.

- (g) **True-up in the event of sale.** A river authority or electric cooperative shall not overrecover its stranded costs. If the recovery of an asset has been securitized through a sale of transition bonds, and the asset is subsequently sold in a bona fide third-party transaction, then that asset shall be subject to true-up. To the extent the total net value received from the sale of such asset exceeds its remaining book value, the river authority or electric cooperative shall make refunds of the entire overcollected amounts, with interest, to its ratepayers through an appropriate mechanism.

(h) **Recovery of stranded costs.** An electric cooperative or river authority may recover its securitized stranded costs and the reasonable costs of issuing, supporting, and servicing the transition bonds through a transition charge.

(1) **Electric Cooperatives.** An electric cooperative may recover its stranded costs through transition charges from all existing or future customers, including the facilities, premises and loads of those customers taking service from the cooperative as of May 1, 1999. An electric cooperative's board of directors has the exclusive jurisdiction to establish non-discriminatory transition charges reasonably designed to recover the stranded costs over an appropriate period of time consistent with this section.

(2) **River Authorities.** A river authority may recover its qualified costs, as defined in PURA, Chapter 39, Subchapter G, including its stranded costs as defined herein, through transition charges from those wholesale customers receiving generation service from the river authority as of May 1, 1999. A river authority may implement non-discriminatory transition charges reasonably designed to recover the stranded costs over an appropriate period of time consistent with this section. These charges shall be considered to be included in rates of the wholesale contracts in effect on May 1, 1999.

(3) **Transition charges for both electric cooperatives and river authorities.**

- (A) The transition charge shall be sufficient to recover the stranded costs at the level, up to 100%, deemed appropriate by the electric cooperative or river authority.
 - (B) Any transition charges adopted in accordance with this section shall constitute property rights, as described in PURA, Chapter 39, Subchapter G, and otherwise conform in all material respects to the transition charges provided by PURA, Chapter 39, Subchapter G.
 - (C) A river authority or electric cooperative may recover a transition charge notwithstanding the expiration of a wholesale contract.
- (i) **Financing order.** A cooperative or river authority which chooses to adopt and use securitization provisions shall adopt a financing order consistent with this section.
- (1) The financing order shall contain a finding that the present value total amount of revenues to be collected under the financing order is less than the present value of the revenue requirement that would be recovered over the remaining life of the stranded costs using conventional financing methods.
 - (2) The financing order shall have the effects of the provisions provided by PURA, Chapter 39, Subchapter G. The effects shall be detailed in the financing order and shall include, but are not limited to, provisions regarding property rights, set-off, security interests, no bypass, true-up, true sale, and security interests.

- (3) The financing order shall detail the stranded costs to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years.
- (4) The financing order shall detail how the proceeds from the transition bond are being used to refinance or retire river authority or cooperative debt as prescribed by subsection (f) of this section.
- (5) The financing order shall contain findings detailing the tangible and quantifiable benefits as prescribed by subsection (d) of this section.
- (6) The financing order shall contain a finding that the amount to be securitized does not exceed the limit on qualified costs as prescribed in subsection (e) of this section.
- (7) The financing order shall detail the allocation of the stranded costs to applicable classes and the corresponding design of transition charges.
- (8) The financing order shall provide for a structure and pricing of the transition bonds that results in the lowest transition charges consistent with market conditions.
- (9) The financing order shall include a mechanism requiring that transition charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the transition bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected

recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the transition bonds.

- (10) The financing order shall become effective in accordance with its terms, and the financing order, together with the transition charges, shall thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the cooperative, river authority or the commission, except for periodic true-ups as specified in this section.
- (11) Findings made by the governing body of the electric cooperative or river authority under the rules and procedures described in this section shall be conclusive.

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 19th DAY OF NOVEMBER 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**