

PROJECT NO. 40073

RULEMAKING TO IMPLEMENT	§	PUBLIC UTILITY COMMISSION
HB 2133 BY AMENDING PUC SUBST.	§	
R. §25.503 AND PUC PROC. RULE	§	OF TEXAS
§22.246	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.503
AS APPROVED AT THE APRIL 27, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.503, relating to Oversight of Wholesale Market Participants. The proposed amendment, coupled with procedural amendments proposed to §22.246, establishes procedures to return excess revenues to affected wholesale electricity market participants when the commission has ordered disgorgement of those excess revenues in an enforcement proceeding. House Bill (HB) 2133 requires the commission to adopt rules to establish such a procedure. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 40073 is assigned to this proceeding.

Evan Rowe, Deputy Division Director of the Oversight 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. Rowe 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 the return to electricity market participants of excess revenues improperly garnered by a market participant by

violating PURA, commission rules, or market protocols. It is difficult to estimate the magnitude or frequency of such violations and the resulting amount of disgorged excess revenues. Therefore, quantifying a specific benefit amount is difficult. 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. These costs are associated with the return of excess revenues to wholesale electricity market participants pursuant to a commission order finding the person in violation of a statute, rule or protocol and ordering disgorgement of those excess revenues, which are likely to vary from business to business, and are difficult to ascertain.

Mr. Rowe 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 (APA), Texas Government Code §2001.022.

Commission staff will conduct a public hearing on this rulemaking, if requested pursuant to 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 at 10:00 a.m. on Monday, July 9, 2012. The request for a public hearing must be received by Thursday, June 28, 2012.

Comments on the proposed amendments and 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, on or before Monday, June 11, 2012. 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 on or before Monday, June 25, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule(s). 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 40073.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2011) (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, including rules of practice and procedure. Specifically, PURA §15.023 which requires the commission to order disgorgement of excess revenues acquired by a market participant by violation of PURA §39.157 and grants the commission discretion to order disgorgement of excess revenues for wholesale electricity market violations of other PURA sections, commission rules, or wholesale electricity market protocols. Also, PURA §15.024 limits the parties to an administrative penalty proceeding to person alleged to have committed the violation and the commission. PURA §15.025 requires the commission to adopt rules to return excess revenues ordered disgorged to affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. PURA §35.004 requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, predatory, or anticompetitive. PURA §39.001

establishes the Legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry. PURA §39.101 establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and directs the commission to adopt and enforce rules to carry out this provision and to ensure that retail customer protections are established that afford customers safe, reliable, and reasonably priced electricity. PURA §39.151 requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures. PURA §39.157 directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses. PURA §39.356 allows the commission to revoke certain certifications and registrations for violation of an independent organizations procedures, statutory provisions, or the commission's rules. Finally, PURA §39.357 authorizes the commission to impose administrative penalties in addition to revocation, suspension, or amendment of certificates and registrations.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 15.023, 15.024, 15.025, 35.004, 39.001, 39.101, 39.151, 39.157, 39.356, and 39.357.

§25.503. Oversight of Wholesale Market Participants.

(a) – (b) (No change.)

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

(1) – (3) (No change.)

(4) ~~Excess Revenue~~--Revenue in excess of the revenue that would have occurred absent a violation of PURA §39.157 or this section.

~~(5)(4)~~ **Market entity**--Any person or entity participating in the ERCOT-administered wholesale market, including, but not limited to, a load serving entity (including a municipally owned utility and an electric cooperative,) a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, ERCOT, and any entity conducting planning, scheduling, or operating activities on behalf of, or controlling the activities of, such market entities.

~~(6)(5)~~ **Market participant**--A market entity other than ERCOT.

~~(7)(6)~~ **Resource**--Facilities capable of providing electrical energy or load capable of reducing or increasing the need for electrical energy or providing short-term reserves into the ERCOT system. This includes generation resources and loads acting as resources (LaaRs).

(d) – (k) (No change.)

- (l) **Investigation.** The commission staff may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any market entity has violated any provision of this section.

(1) – (3) (No change.)

- (4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues shall comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal procedure established by this subsection, the commission staff shall include as part of its prima facie case:

(A) – (D) (No change.)

(5) – (6) (No change.)

- (m) **Remedies.** If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues shall be

imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

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 27TH DAY OF APRIL 2012 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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