

PROJECT NO. 24462

**PROCEEDING TO ESTABLISH § PUBLIC UTILITY COMMISSION
PERFORMANCE MEASURES §
RELATING TO THE COMPETITIVE § OF TEXAS
RETAIL ELECTRIC MARKET §**

**PROPOSAL FOR PUBLICATION OF NEW §25.88
AS APPROVED AT THE JANUARY 30, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.88, relating to Retail Market Performance Measure Reporting. This section was originally published in the October 11, 2002, *Texas Register* (27 TexReg 9525). The commission has withdrawn that rule and is republishing the rule. Project Number 24462, *Proceeding to Establish Performance Measures Relating to the Competitive Retail Electric Market*, is assigned to this proceeding.

Proposed new §25.88 will establish reporting requirements for the Electric Reliability Council of Texas (ERCOT), retail electric providers (REPs), and transmission and distribution utilities (TDUs). The reporting requirements will allow the commission to obtain information to evaluate the performance of the retail electric market. The performance measures focus on key indicators relating to competitive activity and the technical systems necessary to enable customers to enroll with alternative providers and receive timely electric service with accurate and timely bills for that service. The proposed new section also outlines penalties for failure to timely file an accurate performance measures report or for continued failure of an entity to meet reasonable standards of performance.

In the proposed section, the commission attempts to balance its need for information with the time and cost of reporting. Accordingly, the commission directs its focus to those transactions with the most customer impact. The commission realizes that penalties for poor performance may not be appropriate in a developing market or for a new entrant; however, consideration in this rulemaking is proper given that the commission may need to impose penalties at a later date if necessary.

The standard format for reporting is established as a commission prescribed form in accordance with Procedural Rule §22.80 of this title (relating to Commission Prescribed Forms). This will permit the commission to review and revise the performance measures or the reporting format as necessary to address changing market conditions without the necessity of a full rule amendment.

This rule differs from the rule originally published on October 11, 2002, in four main aspects. First, the rule does not apply to competitive affiliates of a municipally owned utility or electric cooperative that have chosen to participate in customer choice pursuant to the Public Utility Regulatory Act (PURA) §40.051(b) or PURA §41.051(b) and are providing electric energy at retail to consumers in Texas outside their certificated retail service areas. Second, the rule requires reporting entities to file as confidential any information relating specifically to any other entity unless the commission has determined that such information is not competitively sensitive or the disclosing entity has given the reporting entity express written permission to release such information

publicly. Third, the rule prohibits reporting entities from failing to complete within the parameters set forth in the ERCOT Protocols and/or the Standard Tariff for Retail Delivery Service pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) at least 98% of all its technical market transactions in each transaction category. Finally, the commission may evaluate the reporting requirements as necessary to determine if modifications to the performance measures are necessary due to changing market conditions and the evaluation process shall include notice and opportunity for public comment.

In addition, the reporting requirements in the form differ from those originally published in four main aspects. First, TDUs are mandated to report data concerning meter read transactions. Second, TDUs are mandated to report the number of safety net move-ins executed in which the Electronic Data Interchange (EDI) transaction is still outstanding. Third, TDUs are required to report inter-company invoices, or the total number of 810_02 transactions, including the percentage of 810_02 cancel transactions as a percentage of the total number of 810_02s sent. Fourth, REPs are required to report information on billing.

Angela Hurdle, Retail Industry Analyst, Retail Market Oversight 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.

Angela Hurdle 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 this section will be increased transparency of the performance of the retail electric market which will lead to more effective oversight by the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Entities required to comply with the proposed section may experience some economic costs from the time and resources necessary to report the performance measures. These costs are likely to vary between entities and are not possible to quantify at this time. However, the benefit to competition in the retail electric market is expected to far outweigh any costs of reporting the performance measures.

Angela Hurdle 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.

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, if one is requested by 25 or more

persons, a governmental subdivision or agency, or an association having at least 25 members. A request for public hearing must be received no later than March 7, or 21 days after this proposed section is published in the *Texas Register*.

The commission seeks comments on the proposed new section from interested persons. Comments on the proposed 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. The deadline for submission of comments is March 7, 2003, or 21 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 sections. Commenters may, if they so choose, incorporate their previously filed comments by reference. All comments should refer to Project Number 24462.

In addition to the new section, the commission is proposing a new form for the reporting of performance measures under §25.88. The commission is also requesting comments concerning the new form. Copies of the proposed form can be obtained from the commission's Central Records, the commission's Interchange, and the commission's website under Project Number 24462.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2003) (PURA) §14.002, which provides the Public Utility Commission with authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.001, which provides authority to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power; §14.003, which provides authority to require reports of a public utility; §15.023, which provides for commission imposition of an administrative penalty against a person regulated under PURA who violates PURA or a rule adopted under PURA; §31.003, which requires the commission to report to the Legislature on the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets; §39.001, which sets forth the legislative policy and purpose of PURA Chapter 39, Restructuring of Electric Utility Industry; §39.101, which sets forth customer safeguards; §39.151, which subjects to commission review procedures established by an independent operator relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants; §39.352, which sets forth standards for certification of REPs; §39.356, which provides for suspension, revocation, or amendment of a REP's certificate; and §39.357, which provides for the imposition of administrative penalties on a REP for violations described by §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 15.023, 31.003, 39.001, 39.101, 39.151, 39.352, 39.356, and 39.357.

§25.88. Retail Market Performance Measure Reporting.

- (a) **Purpose.** This section establishes reporting requirements to allow the commission to obtain information to be used for evaluation of the performance of the retail electric market in Texas.
- (b) **Application.** This section applies to:
- (1) Electric Reliability Council of Texas (ERCOT) as defined in Public Utility Regulatory Act (PURA) §31.002(5) and §25.5 of this title (relating to Definitions);
 - (2) Retail electric providers (REPs) as defined in PURA §31.002(17) and §25.5 of this title (relating to Definitions); and
 - (3) Transmission and distribution utilities (TDUs) operating in a qualifying power region in the State of Texas as defined in PURA §31.002(19) and §25.5 of this title (relating to Definitions).
- (c) **Filing requirements.** Using forms prescribed by the commission, a reporting entity shall report activities as required by this section. Such reports shall be filed with the commission under the project number assigned by the commission's Central Records Office for all filings required each calendar year.
- (1) Each entity shall file with the filing clerk of Central Records at the commission offices in Austin, Texas, four copies of the printed report and

any attachments in accordance with §22.71 of this title (related to Filing of Pleadings, Documents, and Other Material). Additionally, entities shall file an electronic version consistent with the commission's electronic filing standards set forth in §22.72(h) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission);

- (2) A quarterly report shall be filed no later than the 45th day following the end of the preceding quarterly reporting period. Quarterly periods shall begin on January 1, April 1, July 1, and October 1.
 - (3) The reporting entity may designate information that it considers to be confidential. A reporting entity must file as confidential any information relating specifically to any other entity unless the commission has determined that such information is not competitively sensitive or the disclosing entity has given the reporting entity express written permission to release such information publicly. Information designated as confidential shall be processed in accordance with commission policy set forth in §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Material) and the requirements of commission rules pertaining to information received from ERCOT.
- (d) **Key performance indicators.** Reporting entities shall report on the following key performance indicators on a quarterly basis:

- (1) **Competitive market indicators.** These measures will allow the commission to assess the activity in the competitive market through the number of customers and corresponding load served by non-affiliated REPs and the number of active REPs.
 - (2) **Technical market mechanics.** These measures will allow the commission to assess whether the technical systems of the reporting entities are functioning properly to perform market transactions necessary for customers to choose REPs and to receive timely electric service with accurate and timely bills for that service.
- (e) **Supporting documentation.** Each performance measures report shall include:
- (1) **Analysis.** The reporting entity shall include an analysis of its data and performance for the reporting period with a comparison to performance in the previous period.
 - (2) **Report attestation.** All reports submitted to the commission shall be attested to by an owner, partner, officer, or manager of the reporting entity under whose direction the report is prepared. The attestation shall also verify that an internal review was conducted to confirm the accuracy of the information contained in the performance measures report.
 - (3) **Supporting documents available for inspection.** All supporting documents, including records, books, and memoranda shall be made available at the reporting entity's main office for inspection by the

commission or its designee upon request. Supporting documents shall be maintained for a period of 24 months after the report date. Supporting documents may be kept outside the State of Texas so long as those records are returned to the State for any inspection requested by the commission or its designee.

- (4) **Waiver of certain information.** The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome for the reporting entity to furnish the requested information. If any such information is omitted by commission waiver, a written explanation of the omission and copy of the waiver must be included in the report.
- (f) **Other reports.** Reporting entities may be required to submit special reports to allow the commission to analyze the changing dynamics of the retail electric market or to obtain information on specific issues that may require additional diagnostic review.
- (1) **Supplemental information requested by the commission.** Upon request by the commission or its designee, a reporting entity shall provide any special and additional information that relates to the performance measures report. Such request shall specify a time for the reporting entity to respond that is reasonable in consideration of the information requested.

- (2) **Additional reports requested through ERCOT.** Reporting entities may be required to provide to ERCOT, or groups operating under the authority of ERCOT, special and additional information that relates to market performance for specific or diagnostic purposes.
- (g) **Enforcement by the commission.**
- (1) **Failure to timely file accurate report.** The commission may impose all applicable administrative penalties pursuant to PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title (relating to Administrative Penalties) for failure of a reporting entity to timely file an accurate performance measures report.
- (2) **Technical market mechanics.**
- (A) **Prohibited conduct.** No entity shall fail to complete within the parameters set forth in the ERCOT Protocols and/or the Standard Tariff for Retail Delivery Service pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) at least 98% of all its technical market transactions in each transaction category.
- (B) **Performance-improvement plan.** Prior to imposing any penalty for a violation of subparagraph (A) of this paragraph, the commission or its designee shall meet with the reporting entity and

develop a performance-improvement plan. The performance-improvement plan shall contain specific goals and timeframes for improving performance and shall be reasonable in view of all relevant circumstances.

(C) **Penalties.** If a reporting entity violates subparagraph (A) of this paragraph and fails to meet the performance required in a performance-improvement plan, the commission may impose the following penalties, as appropriate:

- (i) Administrative penalties under PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title;
- (ii) Any penalty against ERCOT as established by commission rule and as authorized by PURA §39.151; or
- (iii) Suspension, revocation, or amendment of a REP's certificate or registration as authorized by PURA §39.356 and §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).

(D) **Factors to be considered.** In assessing penalties, the commission shall consider the following factors:

- (i) The reporting entity's prior history of performance;
- (ii) The reporting entity's efforts to improve performance;
- (iii) Whether the penalty is likely to improve performance; and

- (iv) Such other factors deemed appropriate and material to the particular circumstances.

- (h) **Public information.** The commission may produce a summary report on the performance measures using the information collected as a result of these reporting requirements. Any such report shall be public information. The commission may provide the reports to any interested entity and post the reports on the commission's Internet website.

- (i) **Commission review.** The commission may evaluate the reporting requirements as necessary to determine if modifications to the performance measures are necessary due to changing market conditions. Such evaluation process shall include notice and opportunity for public comment.

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 31st DAY OF JANUARY 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**