

**PROJECT NO. 40601**

**PUC PROCEEDING TO MODIFY            §            PUBLIC UTILITY COMMISSION  
REQUIREMENTS FOR PGC            §  
REGISTRATION AND REPORTING       §            OF TEXAS**

**ORDER ADOPTING AMENDMENT TO §25.109  
AS APPROVED AT THE JANUARY 10, 2013 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.109, relating to Registration of Power Generation Companies and Self-Generators, with changes to the proposed text as published in the September 28, 2012 issue of the *Texas Register* (37 TexReg 7645). These amendments will clarify the registration procedure for power generation companies (PGC) and self-generators. These amendments are adopted under Project Number 40601.

The commission received written comments on the amendments from Luminant Generation Company, LLC (Luminant) and Texas Industrial Energy Consumers (TIEC).

**General Comments**

Luminant commented that the rule should include broad, substantive registration categories, although not in the same level of detail as in the current rule, rather than shifting the categories to the form and relying on a catch-all reference to the form in the rule, would provide more effective notification of the applicable requirements to persons subject to the rule. Specifically, Luminant recommended that “contact information” could be included as a broad category, without listing the specific types of contact information. Luminant’s position was that rules are more visible than forms to regulated persons because rules are the place such persons expect to

find substantive requirements. Luminant commented that moving the substantive requirements from the rule to the form will not substantially further administrative efficiency because significant changes to the form must follow the Administrative Procedure Act (APA) notice and comment process anyway. Luminant suggested a degree of specificity between the current rule and the proposed rule.

*Commission Response*

**The commission believes that more specificity in the rule is unnecessary. The detailed provisions of the current §25.109 limit the commission’s ability to make minor adjustments to the registration form without making changes to the rule as well. Because the commission cannot anticipate future technological advances that may affect the method by which forms may be submitted or the information necessitated therein, flexibility is warranted. Commission forms are readily accessible on the commission’s website and are therefore sufficiently visible to regulated entities.**

**Section 25.109(d): Registration requirements for power generation companies and self-generators.**

TIEC commented that combining the requirements for PGCs and self-generators would subject self-generators to expanded registration requirements that are unnecessary and inappropriate because they do not sell power in the wholesale market. Since the revised form did not reflect those changes to the rule, TIEC requested that the commission’s intent be clarified.

*Commission Response*

**The commission agrees that the expanded registration requirements for self-generators are unnecessary, and the commission has therefore modified the rule language accordingly.**

**Section 25.109(f): Registration procedures.**

TIEC commented that, because self-generators do not participate in the wholesale market, the current requirement that they report material changes to their registration forms annually should suffice. TIEC suggested that the commission provide guidance on the format and method for reporting such changes should the commission decide to require that they be filed within 45 days.

*Commission Response*

**The commission agrees with TIEC's suggestion. The commission will require that self-generators report changes annually, and the rule has been amended accordingly.**

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the amendments, the commission has made changes consistent with the discussion above and to clarify its intent.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (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 §39.351, which requires the commission to

register power generation companies and grants the commission authority to collect information on generation facilities.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.351.

**§25.109. Registration of Power Generation Companies and Self-Generators.****(a) Application.**

- (1) A person that owns an electric generating facility, or electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies, in Texas and is either a power generation company (PGC), as defined in §25.5 of this title (relating to Definitions), or a qualifying facility (QF) as defined in §25.5 of this title, and generates electricity intended to be sold at wholesale, must register as a PGC.
- (2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.
- (3) A person that becomes subject to this section after September 1, 2000 must register on or before the first date of generating electricity.

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

- (1) **Generating facility** -- All generating units located at, or providing power to the electricity-consuming equipment at an entire facility or location.
- (2) **Nameplate rating** -- The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.
- (3) **Net dependable capability** -- The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions

for a given period of time, without exceeding approved limits of temperature and stress.

- (4) Person -- Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(c) **Capacity ratings.** For purposes of this section, the capacity of generating units shall be reported as follows:

- (1) Renewable resource generating units shall be rated at the nameplate rating;
- (2) All other generating units having a nameplate rating of ten MW or less shall be rated at the nameplate rating; and
- (3) All other generating units having a nameplate rating greater than ten MW shall be rated at the summer net dependable capability. Self-generation units that are not required to calculate net dependable capability by the reliability council in which they operate or by the independent organization for the power region in which they operate shall be rated at the nameplate rating.

(d) **Registration requirements for self-generators.** To register as a self-generator, a person shall provide all of the following information:

- (1) A description of the location of the facility used to generate electricity and
- (2) Any information requested on the commission-prescribed form.

(e) **Registration requirement for power generation companies.** To register as a power generation company, a person shall provide all of the following information.

- (1) A description of the location of the facility used to generate electricity;
  - (2) A description of the types of services provided by the person that pertain to the generation of electricity;
  - (3) For any application filed with the Federal Energy Regulatory Commission (FERC) after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed in connection with the FERC registration, and any order issued by the FERC pursuant thereto. Such registrations shall include, for example, determination of exempt wholesale generator (EWG) or QF status; and
  - (4) Any information requested on the commission-prescribed form.
- (f) **Registration procedures.** The following procedures apply to the registration of PGCs and self-generators.
- (1) Registration shall be made by completing the commission-prescribed form, which shall be verified by oath or affirmation and signed by an owner, partner, or officer of the registering party. Registration forms may be obtained from the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each registering party shall file its registration form with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).
  - (2) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete form, the commission staff shall

notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.

- (3) The registering party may designate answers or documents that it believes to contain proprietary or confidential information. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to registration information for PGCs and self-generators.
- (g) **Post-registration requirements for self-generators.** Self-generators shall report any material change during the preceding year in the information provided on the registration form by February 28 of each year.
- (h) **Post-registration requirements for power generation companies.** PGCs shall report any change in the information provided on the registration form within 45 days of the change. PGCs shall comply with the reporting requirements of §25.91 of this title (relating to Generating Capacity Reports).
- (i) **Suspension and revocation of power generation company registration and administrative penalty.** Pursuant to PURA §39.356, registrations of PGCs pursuant to this section are subject to suspension and revocation for significant violations of PURA or rules adopted by the commission. The commission may also impose an administrative

penalty for a significant violation at its discretion. Significant violations may include the following:

- (1) Failure to comply with the reliability standards and operational criteria duly established by the independent organization that is certified by the commission;
- (2) For a PGC operating in the Electric Reliability Council of Texas (ERCOT), failure to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT;
- (3) Providing false or misleading information to the commission;
- (4) Engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;
- (5) A pattern of failure to meet the conditions of this section, other commission rules, regulations or orders;
- (6) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (7) Failure to operate within the applicable legal parameters established by PURA §39.351; and
- (8) Failure to respond to commission inquiries or customer complaints in a timely fashion.

This agency hereby certifies that the amendments and form changes, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.109, relating to Registration of Power Generation Companies and Self-Generators, and the Registration Form for Power Generation Companies and Self-Generators are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_\_ day of \_\_\_\_\_ 2013.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**ROLANDO PABLOS, COMMISSIONER**