

**PROJECT NO. 37909**

<b>RULEMAKING PROCEEDING TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND PUC SUBST. R. 25.193,</b>	<b>§</b>	
<b>RELATING TO DISTRIBUTION</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SERVICE PROVIDER TRANSMISSION</b>	<b>§</b>	
<b>COST RECOVERY FACTOR (TCRF)</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENT TO §25.193  
AS APPROVED AT THE SEPTEMBER 29, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factor (TCRF), with changes to the proposed text as published in the April 16, 2010 *Texas Register* (35 TexReg 2909). The amendment requires a distribution service provider (DSP) to include in its rates an adjustment that reflects the difference between (1) the amount of transmission service providers' (TSPs) commission-approved wholesale transmission costs that are paid by the DSP and not included in the base rates of the DSP, and (2) the revenues recovered through the DSP's TCRF. Project Number 37909 is assigned to this proceeding.

The commission received written comments on the amendment from AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively, Joint DSPs); City of Houston (COH); the Steering Committee of Cities Served by Oncor (Cities); the Coalition of Regulatory Entities (CORE); Electric Transmission Texas LLC, Lone Star Transmission LLC, and Wind Energy Transmission Texas LLC (collectively, Interested TSPs); Office of Public Utility Counsel (OPUC); the Retail Electric Provider Coalition (REP Coalition); Sharyland Utilities, L.P. (Sharyland); and Texas Industrial Energy Consumers (TIEC).

***Workshop to Discuss Modified Proposal***

On July 29, 2010, the commission staff, after reviewing parties' filed initial comments and reply comments on the published proposal, conducted a workshop to discuss a modified version of the proposal. Commission staff put forward this modified version (the "modified proposal") in an attempt to constructively address and respond to certain of the major concerns expressed by parties in initial and reply comments. Prominent among these concerns was 1) the legality of the provision in the published proposal that would allow a utility to temporarily implement its requested TCRF amount as filed rather than the amount ultimately approved by the commission, 2) the potential complexity arising from the subsequent true-up of requested rates and commission-approved rates, and 3) the additional complexity related to the determination of carrying costs on true-up amounts. The modified proposal addresses these concerns primarily by requiring an earlier filing date for TCRF filings—thereby ensuring that a DSP implements only commission-approved (rather than requested) TCRF amounts—and omitting carrying charges from the TCRF recovery entirely.

Both the published proposal and the modified proposal achieve the same fundamental objective: allow a DSP to recover certain increases in wholesale transmission costs that TSPs pass through to the DSP as a result of the TSPs' rate cases and interim transmission cost updates. The modified proposal achieves this objective by allowing a DSP to include in its TCRF amount an adjustment that reflects the under- or over-recovered TCRF transmission costs accumulated over a prescribed six-month period. The DSP then includes the adjustment amount in its next TCRF filing and recovers it in six equal monthly installments beginning with the effective date of the updated TCRF.

The total time period over which a DSP accumulates and recovers a given adjustment amount is 16 months: the six-month period during which the DSP accumulates the adjustment amount, the four-month period between the end of the six-month accumulation period and the eventual inclusion of the adjustment in the TCRF rate (this period encompasses the time required for the DSP's preparation and filing of the TCRF update and the commission's decision thereon), and the six-month period during which the DSP actually recovers the adjustment amount. The modified proposal does not provide for carrying costs on the adjustment amount at any time during the 16-month period.

The modified proposal is the basis of the adopted rule; its application and responsiveness to parties' initial and reply comments on the published proposal are further explained below in the summary of general comments. Also included below, following the summary of general comments on the published proposal, is a summary of the oral and written comments that were received at and after the workshop and that relate to the modified proposal specifically.

### **General Comments on *Published Amendment***

#### ***Purpose and Need for Amendment***

Joint DSPs urged the commission to adopt the amended rule, expressing support for their position by describing how changes in the TSP's transmission service rates occur as a result of interim transmission cost of service (TCOS) updates pursuant to §25.192 or when final rates are approved in general rate cases. Joint DSPs stated that, throughout the year, wholesale transmission charges change as a result of changes in transmission service rates, and that the

transmission service rates are collected from all DSPs once new rates are approved by the commission. To facilitate the payment and recovery of wholesale transmission charges, the commission's rules provide that a DSP must pay the TSPs for wholesale transmission services provided for the benefit of retail electric providers (REPs) and the DSP's other customers. Joint DSPs explained that DSPs recover from REPs the changes to wholesale transmission charges resulting from changes in transmission service rates through the TCRF, which may be updated only twice per year on March 1 and September 1, and that because changes to transmission service rates can occur at anytime during a year, the changes in the TCRF do not coincide with changes to wholesale transmission rates. The Joint DSPs stated that the end result of this process is that DSPs make payments to TSPs that the DSPs cannot recover. Joint DSPs provided the example of a TCOS update that becomes effective on April 1 but that is not reflected in the DSPs' TCRFs until September 1; under the commission's current rules, DSPs can never recover the wholesale transmission costs incurred between April 1 and September 1. Joint DSPs submitted that although the DSPs serve as nothing more than billing and collection agents for the transmission services provided by the TSPs, under the commission's existing rules the DSPs have no means to avoid such monetary losses. Joint DSPs stated that the level of losses has generally increased over time, observing that in 2002, the total wholesale TCOS in ERCOT was \$901,432,020, while the recently approved total wholesale TCOS in ERCOT for 2010 was \$1,543,031,760. Joint DSPs commented that these losses are likely to increase in the future as TSPs construct transmission projects both for competitive renewable energy zones (CREZ) and non-CREZ growth-related purposes, and the proposed amendment would allow DSPs the opportunity to recover the full costs they pay to the TSPs for the transmission service provided by the TSPs for the benefit of REPs and end-use customers. Joint DSPs additionally pointed out

that the published proposal would provide REPs and end-use customers with certainty regarding TCRF changes by requiring the DSP to implement its requested change, with any difference between the TCRF rate requested and the rate ultimately approved by the commission reflected in a subsequent TCRF filing.

Interested TSPs echoed the basic points of Joint DSPs' comments and stated that they support the published proposal because it addresses the concerns of DSPs and REPs about timely recovery of transmission charges passed through the interim TCOS and TCRF mechanisms.

Cities, TIEC, and OPUC opined that the apparent rationale for this change is to eliminate—not just minimize—the regulatory lag that results from transmission cost increases experienced by DSPs, but that neither the commission nor the DSPs have presented evidence that this change is necessary to avoid severe financial distress or financial harm affecting DSPs. Cities, TIEC, and COH argued that Texas law recognizes regulatory lag as an inherent part of utility ratemaking and that, in moderation, regulatory lag can provide beneficial incentives for improved cost controls on the part of the utility. Cities observed that the provisions would enable the utility to be insulated from deviations between actual and projected TCRF revenue collections, whether caused by weather or economic events. TIEC expressed a similar observation. OPUC, TIEC, and COH stated that the TCRF available to DSPs under the existing rule is a generous cost recovery mechanism that is more than sufficient to allow “timely” recovery of wholesale transmission costs, as envisioned by PURA (Public Utility Regulatory Act) §35.004(d). TIEC and OPUC stated that when one type of cost increases for a utility, that increase is often offset by load growth or decreases in other costs, and that these types of relationships are the reason for

the general policy against piecemeal ratemaking, because a utility's cost increases and offsetting decreases can be properly explored only through a comprehensive rate proceeding. TIEC, Cities, and COH opined that, unlike other costs, the existing rule allows DSPs to account for increases in wholesale transmission costs without undergoing a full rate case, and this interim TCRF adjustment mechanism greatly reduces DSPs' regulatory lag and shifts risk to consumers by allowing DSPs to change an isolated component of their rates without a thorough vetting of their entire costs of service. COH contended that several features of the proposed revision are contrary to PURA and sound regulatory policy.

Joint DSPs stated in reply that "severe financial harm" or "financial distress" is hardly the appropriate standard, and the proposed amendment would do nothing more than allow DSPs the opportunity to recover the full costs they pay to the TSPs for transmission service and for the benefit of REPs and end-use customers. Joint DSPs stressed that these costs result from commission-approved rates that the DSPs are required to pay to the TSPs and that the DSPs do not receive or benefit from these services and have no control over these costs whatsoever. Accordingly, Joint DSPs averred, such costs should be recovered from those who receive the services provided. Joint DSPs reiterated that they essentially serve as nothing more than a billing agent for the recovery of transmission costs, and they should not be at risk of loss in performing that function. Joint DSPs further replied that the shortfall of TCRF revenue compared to incremental transmission expense for the Joint DSPs is well documented and completely ignored by OPUC, TIEC, Cities, and COH. Joint DSPs also reiterated that the onset of hundreds of millions of dollars in annual wholesale transmission costs related to the investment in CREZ-related transmission projects in the near future will exacerbate the losses currently being

experienced, and that commenters opposed to the amendment are willing to accept the energy savings and environmental benefits from the wind generation being brought to market by the CREZ projects, but would require the DSPs to bear the risk of the associated regulatory lag. Joint DSPs contended that while parties argue that “there is no justification for allowing DSPs to guarantee dollar-for-dollar recovery of those costs at customers’ expense,” to impose the transmission costs on the parties who have caused those costs to be incurred, rather than some third-party billing agent, is a fundamental ratemaking principle.

### *Commission Response*

**The commission agrees with Joint DSPs that DSPs essentially serve as billing and collection agents for passed-through TCRF costs and, under the commission’s current rules, have no ability to avoid such costs or address and manage the regulatory lag that exists with respect to these costs. This aspect distinguishes a DSP’s TCRF costs from the DSP’s costs recovered through base rates. The commission additionally agrees that, because of expected investment in CREZ facilities, passed-through transmission costs to DSPs will likely increase over the next several years, thereby exacerbating the amount of losses currently borne by DSPs for services they do not provide and over which they have no control. The commission’s adoption of the modified proposal allows DSPs to recover, but not over-recover, the additional transmission costs flowed through by TSPs.**

### *Commission’s Authority to Authorize Temporary Rates*

TIEC, Cities, and CORE argued that allowing DSPs to charge a rate that is different from the one that is ultimately approved by the Commission would violate the Commission’s obligation under

PURA §36.003(a) to ensure that every rate charged by a utility is just and reasonable. Cities provided an example of the way that the published proposal could be abused by noting that a utility that desires additional cash flow could file a proposed tariff based upon an excessive TCRF amount that would be collected until the next true-up proceeding, without any remedy for the commission to suspend the collection of a clearly excessive rate. CORE commented that if interest is charged on under-recoveries or if the entirety of over-collected amounts is not refunded to end-use customers, the proposed amendment would be confiscatory. CORE additionally contended that §35.004 does not expressly provide for temporary rates, and the commission does not have the authority to order temporary rates that may be inconsistent with rates that are just and reasonable. CORE noted that §35.004 states only that the commission “may approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment,” and that this does not give the commission the authority to violate §36.003 by ensuring that DSPs have immediate recovery of transmission investment or providing REPs with pricing certainty. CORE also opined that implementing temporary rates that would be in effect for at least six months after the updated TCRF is approved has the appearance of retroactive ratemaking. CORE asserted that the published proposal would violate the commission’s statutorily imposed duty to ensure that all rates are just and reasonable, and that this statutory mandate should take precedence against the goal of eliminating regulatory lag and creating pricing certainty for REPs. CORE further contended that the commission has no duty to eliminate all regulatory lag for DSPs or to create pricing certainty for REPs. Cities stated that deferring the impact of commission-ordered changes to the TCRF update is unprecedented and inconsistent with proper regulatory practice. TIEC and Cities opined that exposing customers to these risks for the purpose of providing additional, unnecessary price certainty for

REPs is exceedingly poor public policy, and the automatic adjustment mechanism should be rejected.

Joint DSPs disagreed with the contentions that the true-up mechanism is impermissible under PURA, and argued that the commission can implement temporary or interim rates that are subject to later true-up. Joint DSPs observed that various rates are implemented without the commission finding them to be “just and reasonable,” noting that bonded rates and interim rates are examples of rates that are implemented and subject to later true-up. Joint DSPs cited the additional example of transition charges, which are effective immediately, approved pursuant to securitization financing orders, and filed by the utility under various interim true-up proceedings; any necessary corrections to the true-up adjustment, because of mathematical errors in the calculation of such adjustment or otherwise, are made in future true-up adjustment proceedings. Joint DSPs additionally replied that fuel factor revision proceedings are “limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors,” as provided by §25.237(c)(2). Joint DSPs noted that the commission does not examine the reasonableness of the proposed costs or rates in such a proceeding, but rather, “the reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title.” Joint DSPs argued that, in sum, rates are implemented on an interim basis and subject to refund in a number of instances, and there is no reason why the commission cannot do the same with TCRF adjustments.

*Commission Response*

**In contrast to the provisions of the published proposal that enable a DSP to implement its filed TCRF amount prior to commission approval of the request, the modified proposal allows the DSP to implement only the amount the commission has actually authorized. Therefore, with regard to parties' concerns regarding the implementation of rates that have not been commission-approved, the commission's adoption of the modified proposal as the basis for the amended rule renders these concerns moot.**

*Carrying Costs and REPs' Pass-Through of Over-Recovery Credit*

COH expressed its belief that extending the TCRF provisions to allow for an adjustment to collect any under-recoveries by the TCRF factor in the prior six-month period and to allow interest on under-recoveries is excessive and appears to favor the DSP. COH observed that once TSPs begin filing major TCOS rate cases for CREZ facilities, the true-up adjustment would result in continual increases to the TCRF. COH expressed general concern that any credits resulting from an over-recovery of costs will not be passed through to the ratepayers by REPs, noting that REPs are currently not required to pass through the associated TCRF charges or credits and that without such a requirement, REPs would pass through any increased TCRF charges but would not necessarily pass through any credits. Cities and CORE agreed with these concerns and suggested that the commission could address this point by developing true-up tariffs that would require the REPs to pass through the credits to end users, but Cities noted that this would add a layer of complexity to the true-up procedure contemplated in the amendment.

The REP Coalition and Joint DSPs pointed out that, in the published proposal, any credit resulting from over-recovery will be used to offset the TCRF rate charged to customers in the next revision of the TCRF rate; therefore, when a REP receives the line-item charge from the DSP for the TCRF, any over-recovery will not result in a credit going to the REPs, but will simply reduce the otherwise applicable TCRF rate charged to the REPs. Joint DSPs noted that this fact is made plain in the TCRF formula set out in subsection (c) of the published proposal, and thus CORE's concern is without merit.

*Commission Response*

**The modified proposal adopted by the commission contains no provision for carrying costs nor does it result in the creation of a separate credit amount. Therefore, with regard to parties' concerns that allowing carrying costs is excessive and that the true-up provision contemplated in the published proposal could result in a credit that REPs might not flow through to customers, the commission's adoption of the modified proposal renders these issues moot.**

*Implementation of Temporary Rates to Enhance Pricing Certainty for REPs*

TIEC argued that allowing DSPs to automatically implement their as-filed TCRF increases for the purpose of providing price certainty for REPs is completely unwarranted and should not be adopted. TIEC contended that REPs have been able for years to successfully market and price their products under the current rule, which already allows bi-annual TCRF updates, and the proposed changes to the rule would not increase the number of interim TCRF adjustments per year. TIEC stated that allowing DSPs to automatically implement their requested TCRF

increases would result in DSPs charging more than their commission-approved transmission costs during certain time periods, which is inappropriate and will shift risk and costs to customers.

Joint DSPs stated that these comments miss the point of the issue, which is not whether REPs will be able to predict what the TCRF increase will be for any given DSP in its next TCRF filing four or five months in the future, but whether the process by which a DSP's filing will be approved without modification, on an interim basis subject to later true-up, provides REPs with adequate notice and certainty as to exactly what TCRF will be implemented once the DSP files its request. Joint DSPs opined that the published proposal provides the REPs with that notice and certainty, but stated that if the question had been directed at the impact of the true-up proceedings on future TCRF filings, then the size of any true-ups should be relatively small. Joint DSPs pointed out that transmission and distribution costs as a whole are only about 25-30% of a REP's total charges, with transmission costs being only a portion of that, TCRF revenues being only a portion of that, and any true-up amounts only a portion of that. Joint DSPs averred that a DSP will only be requesting a modification to its TCRF to reflect a change in the transmission costs it is paying to TSPs, so any true-up amount (and interest) will simply be one component of that overall change.

The REP Coalition stated that the published proposal provides sufficient pricing certainty and predictability, because REPs will have notice of the new TCRF 45 days in advance of its effective date. The REP Coalition asserted that the key point with respect to this issue is that any changes to be implemented by the DSP will be known with sufficient notice so that the REPs can

incorporate the changes in their invoices to end-use customers, and that an absence of that certainty would undermine the substantive rules that allow a REP to pass through TSP and related charges.

*Commission Response*

**The commission agrees with the REP Coalition that ensuring sufficient notice of rate changes to REPs is important for REP pricing decisions. Providing REPs greater pricing certainty reduces their risks, and therefore enables them to lower the prices they charge their customers. The modified proposal adopted by the commission achieves this objective by providing REPs with notice of TCRF changes 45 days before the new rate takes effect.**

*Filing schedules for TSPs*

TIEC, Cities, and CORE stated that if the Commission seeks closer alignment of TCRF recovery and interim TCOS updates, the approach taken in the published proposal is not the best solution. TIEC, Cities, and CORE referred to the published proposal in Project Number 37519 (Rulemaking Proceeding to Amend PUC Subst. R. 25.192(g), Relating to Transmission Service Rates), and stated that that published proposal allows TSPs to submit interim TCOS updates twice per year, rather than once (the commission has now adopted this provision). TIEC observed that it and other parties in that rulemaking argued that if the commission authorizes bi-annual interim TCOS updates, such updates should be implemented on designated dates aligned with the TCRF update schedule. TIEC stated that doing so would virtually eliminate any regulatory lag between TCOS and TCRF updates, and would fully resolve the issue that the

commission seeks to address here without requiring any changes to §25.193. Cities and CORE expressed similar sentiments.

Interested TSPs and Sharyland acknowledged that while this rulemaking is not the right venue for comments on the interim TCOS rulemaking, to the extent that the commission considers comments from CORE, Cities, and TIEC recommending that the commission adopt a fixed schedule for filing interim TCOS adjustments, Interested TSPs and Sharyland requested that the commission consider their comments as well. Interested TSPs and Sharyland stated that the recommendation by CORE, Cities, and TIEC would leave TSPs in a worse position than they are under the current interim TCOS procedure. Interested TSPs and Sharyland stated that a fixed filing schedule would destroy essential flexibility with respect to the filing of interim TCOS adjustments, limit TSPs to filing on specified dates regardless of when their facilities are placed into service, and increase regulatory lag rather than reduce it. Sharyland and Interested TSPs stated that the apparent purpose of the proposed (now adopted) rule in Project Number 37519 is to reduce regulatory lag for interim TCOS adjustments, but that the recommendation to establish a fixed schedule for interim TCOS filings would do exactly the opposite. Sharyland submitted that, in some circumstances, a fixed filing schedule could add as much as nearly six months to the regulatory lag associated with such filings. Interested TSPs commented that, ironically, the published rule in this proceeding that would permit DSPs to true-up the difference between TCRF revenues and costs eligible for TCRF recovery is designed to alleviate regulatory lag that *arises from the fixed schedule for TCRF filings* (Interested TSPs' emphasis). Interested TSPs contended that the recommendation by TIEC, Cities, and CORE would create the very same types of problems for TSPs by establishing a fixed schedule for interim TCOS filings.

Joint DSPs stated that they do not agree with the recommendation to coordinate TCRF filings with TSPs' updated interim TCOS filings. Joint DSPs noted that such a recommendation completely ignores the situation where changes in transmission costs recovered through the TCRF arise from changes in TSP base rates as the result of a general rate case, and that surely those commenters do not intend to limit by rule the TSP's statutory right to file a general rate case at any time. Joint DSPs stated that, moreover, having updated TCOS filings all made at the same time would likely present problems for commission staff in reviewing those filings on a timely basis, and TSPs cannot readily time projects to be done at two points during the year. Joint DSPs held that adopting prescriptive dates for when each TSP can file its updated TCOS filing would reduce TSPs' scheduling flexibility and thereby increase the regulatory lag associated with updated TCOS filings, contrary to the amendments being considered (now adopted) in Project Number 37519.

*Commission Response*

**In the rule adopted in Project Number 37519, the commission declined to include a specific filing schedule for TSPs' interim TCOS filings. The commission agrees with Joint DSPs that, even if a filing schedule for interim TCOS filings had been or were at some point in the future adopted, such a policy would not take into account the timing of rate changes resulting from a base rate proceeding.**

*Adjustments to TCRF Formula to Account for Load Growth and Class Allocation Factors*

TIEC stated that if the commission makes any amendments to its rules in this proceeding, it should adjust the TCRF formula to properly account for load growth and changes in the appropriate class allocations. TIEC opined that several changes to the TCRF formula are necessary to ensure that it properly accounts for load growth and class changes since the last adjustment. First of all, TIEC argued, the class allocator used for the TCRF formula should be amended to take into account the appropriate class allocations at the time of the TCRF update, to reflect the fact that some classes may grow much faster than others and result in classes paying more than their share of transmission charges if the class allocators are not updated. Additionally, TIEC commented that the billing determinants should be updated to better account for load growth. TIEC recommended changes to the rule language to achieve these objectives, and TIEC submitted that these modifications should be made regardless of whether the commission makes any other changes to the existing rule. CORE, Cities, and OPUC similarly commented that the published proposal does not appear to consider the possible increase in a DSP's base revenues that offset increases to wholesale transmission costs. Cities, CORE, and OPUC disagreed, however, with TIEC's proposal that class allocation factors should be changed outside of a base-rate case, observing that TIEC proposes to update allocation factors for customer classes with IDR meters, and estimate allocation factors for other classes. Cities, CORE, and OPUC opined that while it is possible that IDR meters will allow more accurate measures of four coincident peak (4CP) loads for those classes, that does not necessarily translate into more accurate allocation factors, as each class's allocation factor, which is a ratio, is dependent on the 4CP loads of other classes, and because the class allocation factors must sum to 100%, a change in the load of one class will simply shift costs to other classes. Cities, CORE,

and OPUC commented that any estimates that update non-IDR class loads are likely to be based on simplistic assumptions that are inaccurate and may be unreliable. Cities and OPUC argued that the complexities of TIEC's suggested updating of class allocation factors are more suitable for litigation in a general rate case, not a TCRF proceeding.

Joint DSPs stated that TIEC's proposal to amend the class allocators to reflect the appropriate class allocations at the time of the TCRF update should be rejected. Joint DSPs commented that updating the class allocators has nothing to do with removing regulatory lag, and Joint DSPs observed that TIEC itself noted that the number and timing of TCRF updates will not be changing; rather, only the amounts to be charged will be impacted. Moreover, Joint DSPs stated that the allocation factors are related to the 4CPs occurring in the DSP's last base rate case, and TIEC's proposal would thus have the effect of having the base rate transmission costs allocated using one set of allocation factors while the transmission costs recovered through the TCRF would be recovered using a different set of allocation factors. Joint DSPs submitted that a single set of allocation factors should apply to all wholesale transmission costs, whether recovered through base rates or the TCRF. Joint DSPs additionally noted that TIEC's proposal would require DSPs to calculate new allocation factors that, for rate classes that are not 100% metered with interval data recorder meters, would require the use of load research data that has not previously been reviewed by the commission. Joint DSP's pointed out that this would result in a contentious and time-consuming proceeding, in direct conflict with the purpose of the published proposal. Joint DSPs submitted that, in sum, the administrative burden that would be imposed on these semi-annual filings would greatly outweigh any possible benefit to having updated class allocation information.

Joint DSPs also replied that the impact of various changes (weather, economic conditions, increased taxes, etc.) on base rate costs and revenues is reviewed by the commission in the utilities' annual (quarterly for Oncor) Earnings Monitoring Reports. Joint DSPs asserted that rather than assuming that base rate revenues will be higher than anticipated, the better course of action is for the commission to ensure that DSPs recover the level of transmission costs in excess of that included in rates, continue to monitor the utilities' earnings and, should one of them significantly over-earn, begin a commission inquiry into that utility's rates. Joint DSPs argued that to purposefully maintain a regulatory system that has resulted in inadequate TCRF revenues over time is not reasonable.

*Commission Response*

**As stated by the commission previously, DSPs essentially serve as billing and collection agents for passed-through TCRF costs and, under the commission's current rules, have no ability to avoid such costs or address and manage the regulatory lag that exists with respect to these costs. Therefore, the load growth adjustment advocated by TIEC would be inappropriate. In addition, changes to the class allocations would be inappropriate in a TCRF proceeding. As stated by the Joint DSPs, TIEC's proposal would require DSPs to calculate new allocation factors that would require the use of load research data that has not previously been reviewed by the commission, and consideration of these issues in a TCRF update could result in a contentious and time-consuming proceeding.**

*Adjustments to Rate of Return*

The REP Coalition commented that when the commission adopted the TCRF rule during the development of rate design for the unbundled cost of service (UCOS) cases prior to the start of competition, the commission recognized that the adopted TCRF did not address the risk to DSPs of under- and over-collection of transmission service charges. According to the REP Coalition, the commission stated at that time that the risk would be considered when the utility's rate of return was determined. The REP Coalition cited an example of the commission doing this in Docket Number 22350, which was the UCOS proceeding case for TXU Electric Company (now Oncor Electric Delivery). The order in that case states:

The Commission concludes, however, that an upward adjustment to the ROE of 0.5% is appropriate. This adjustment accounts for the following: (1) the Commission decision in the rate design phase of this proceeding; (2) potential rating uncertainty due to higher debt, based on the adoption of 60% debt and 40% equity ratio for capital structure in this proceeding; and (3) a risk premium recalculation as recommended by Commission Staff witness Martha Hinkle.

The REP Coalition stated that the changes proposed in this rulemaking would eliminate the risk associated with the under- and over-collection of the transmission service charges for the first time since the inception of the TCRF. The REP Coalition argued that it must therefore be assumed that in subsequent rate cases the commission considered this risk premium in setting the return on equity. The REP Coalition stated that, consequently, a proper reduction to a DSP's return on equity should occur in future rate proceedings if the commission approves in this rulemaking the proposed changes that would eliminate the risk of regulatory lag.

Cities similarly held that the current authorized returns on equity for DSPs are based on the regulatory lag that existed prior to this rulemaking, and that by providing for total elimination of regulatory lag associated with DSP transmission cost recovery, the revisions shift the risk from the DSP's investors to the DSP's customers. Cities contended, therefore, that the amendment should also address the manner in which DSPs' authorized rates of return will be reduced to reflect the reduced regulatory lag. TIEC and CORE agreed with the viewpoints of the REP Coalition and Cities regarding the reduction of regulatory lag and its effect on return on equity.

Joint DSPs strongly disagreed with the comments suggesting that adoption of the amendment should result in a reduction to the DSPs' future authorized returns on equity. Joint DSPs acknowledged the REP Coalition's comments describing how the commission provided, at the

time of unbundling and in recognition of the risk of under-recovery of transmission charges, an explicit risk premium to returns on equity otherwise found to be reasonable. Joint DSPs pointed out, however, that in more recent cases, the commission has not included any such risk premium but has simply adopted the return on equity resulting from standard discounted-cash-flow and risk-premium analyses as applied to the appropriate “comparable utility” group. Joint DSPs submitted that, in essence, the risk of the DSPs not recovering the full amount of TCRF amounts it pays to TSPs is not reflected in current authorized returns on equity; thus, implementing the proposed amendment will in fact do nothing more than bring the TCRF recovery process in line with the unadjusted returns on equity that the commission has adopted in recent general rate cases and make the transmission cost recovery process consistent with the risks embedded in the DSPs’ returns on equity. Joint DSPs held that, in light of the current mismatch between TCRF under-recoveries and the failure of current returns on equity to reflect that risk, adoption of the proposed amendment should have no impact on the DSPs’ authorized returns on equity.

*Commission Response*

**The commission agrees with Joint DSPs that, in rate cases since the UCOS proceedings, authorized rates of return have generally been based upon “comparable company” analyses, and the commission has not made any explicit increases to ROEs to reflect additional risk related to the existing TCRF recovery process. The commission additionally agrees with Joint DSPs that the rule amendment will serve to make the transmission cost recovery process more consistent with the risks embedded in the DSPs’ returns on equity. Accordingly, the commission declines to include in the rule an explicit provision to adjust the rate of return to reflect the amendment to the TCRF recovery**

**process. The commission notes, however, that in rate-of-return recommendations in general rate cases, parties are free to make arguments regarding the impact of the amendment.**

### *Language Clarity*

For clarity and consistency, the REP Coalition recommended that the rule refer to “customers” instead of “ratepayers,” rather than using both terms interchangeably. CORE opined that the REP Coalition’s requested change highlights the problem of amending the rule to include true-up proceedings that may result in refunds due to “ratepayers” (*i.e.*, the end-use customer) but that are retained by the DSP’s “customers” (*i.e.*, the REPs).

### *Commission Response*

**The adopted rule does not contain the word “ratepayers”; therefore, the REP Coalition’s comments regarding clarity and consistency are moot. Because the modified proposal adopted by the commission does not allow the temporary implementation of TCRF rates that have not been approved—and therefore does not create a situation in which refunds are due to ratepayers—CORE’s concerns in this regard are moot.**

### **Response to Commission Question**

In addition to the published proposal, the commission requested that parties submit responses to the following question:

*Are the provisions in this rule sufficient to provide certainty and predictability regarding price changes to both retail electric providers and customers?*

Joint DSPs submitted that the proposed provision in §25.193(b)(1) that requires the DSP to implement its requested TCRF amount, regardless of whether the Commission ultimately approves a different amount (with the difference to be reflected in a subsequent TCRF filing), provides 45 days' notice of the actual rate that will be implemented, thereby providing more than adequate certainty and predictability for both REPs and customers.

Cities commented that although some provisions of the published proposal are intended to increase predictability for REPs, those provisions are not likely to be particularly effective in achieving the intended purpose, and that furthermore, those provisions also exacerbate the impact of regulatory lag upon DSPs. Cities opined that from a consumer perspective, the higher the TCRF adjustment, the more adverse the impact, and the apparent attempt to improve predictability generally delays the recognition of commission adjustments to the filed request until the next TCRF adjustment date.

CORE responded that the provision in subsection (b)(2) that requires the commission to order the DSP to temporarily implement a requested amount until its subsequent TCRF filing does not provide certainty or predictability regarding price changes for REPs or customers, but rather the provision increases the likelihood for surcharges and credits related to reconciling the TCRF; additionally, interest on the over- and under-recoveries would add an additional variable to consider when determining rates in the future. CORE contended that not knowing whether a surcharge or credit will ultimately be necessary once an amount is approved adds uncertainty to pricing for REPs and end-use customers, particularly if interest is collected on top of the over- or under-recovered amount, as the published amendment proposes. CORE held that REPs and

customers will not be paying commission-approved transmission costs but will continually be playing catch-up to the eventual commission-determined “just and reasonable” rates. CORE further stated that the reconciliation process should require a DSP to again change its rates at the next available TCRF update regardless of whether it otherwise would have filed for an update to its transmission costs. CORE held that the reconciliation of the requested amount with the commission-approved amount would ultimately require another two TCRF updates, because in the subsequent TCRF filings, not only would balances from over- and under-recoveries be reconciled, additional adjustments related to increased transmission investments would be requested. CORE submitted that such a process would add complexity to calculating the actual cost that a customer ultimately pays for transmission, thereby reducing pricing certainty and predictability.

OPUC commented that the 45-day window seems reasonable for REPs, but its impact is not so clear when retail customers are considered. OPUC commented that customers rely on this kind of information from their REP, but OPUC finds no requirement in the commission’s consumer protection rules requiring the REP to notify its customers of these kinds of future rate changes. OPUC suggested that it might be a good business practice to keep customers informed in order to avoid “rate shock.” The REP Coalition stated that it believes the comprehensive pricing disclosure provisions adopted in 2009 as part of the rulemaking to amend §25.475 adequately address the issue of customer notice concerning retail price changes and no additional changes are needed in this rule.

TIEC stated that both customers and REPs have appropriate price certainty under the existing §25.193, as both the existing rule and the published proposal allow bi-annual, scheduled TCRF updates. TIEC contended, therefore, that even if the proposed changes were adopted, they would not result in distribution rates being adjusted any more frequently than they are now and, as a result, there is no reason to allow DSPs to automatically implement their requested TCRF increases for the sake of “price certainty.” TIEC stated that allowing DSPs to automatically implement their requested TCRF changes, subject to future true-up, will shift risk and costs to customers without providing any justifying benefit. TIEC stated that DSPs would be authorized under the published proposal to charge a rate that is different from what the commission approves, and then refund or surcharge the difference at a later time, potentially to a different group of customers, and such a process would create less price certainty for customers, result in intergenerational inequities, be inconsistent with traditional ratemaking principles, and violate the commission’s duty under §36.003(a) to ensure that every rate charged by a utility is just and reasonable.

The REP Coalition disagreed with TIEC’s contention that existing §25.193 provides appropriate price certainty. The REP Coalition provided information indicating that, during 2009 and 2010, REPs received between three and seven calendar days’ notice of the final approved TCRF rates, and that although different REPs may have different internal timelines for their billing systems, seven calendar days or less is not sufficient for a REP to incorporate TDU rate revisions into retail offers, which must be prepared weeks before they are introduced into the market.

The REP Coalition expressed support for the rate certainty and notice provisions afforded by the published proposal, and commended the commission and its staff for proposing a rule amendment that provides REPs with 45 days' notice of TCRF rate changes. The REP Coalition stated, however, that the published proposal applies only to the DSP TCRF rate schedule and not other DSP rate schedules. The REP Coalition commented that in general a process that permits semi-annual DSP rate adjustments with a minimum of 45 days' notice for all rate changes will improve certainty and predictability for REPs and their customers. The REP Coalition urged the commission to employ, in any future order in which a new rate is approved or an existing rate is changed, standardized ordering language that will provide REPs with a minimum of 45 days' notice of both the amount and the effective date of the new rate.

CORE agreed that providing a period of rate certainty is a viable approach, but REPs can have more certainty in their prices without basing those prices on rates that have not been reviewed and approved by the commission to be just and reasonable; this would also eliminate the need for a true-up proceeding and avoid situations in which the rule could be confiscatory. CORE recognized that knowledge of effective dates for regulatory rate changes in advance of those changes is critical to REPs, which are entitled under the commission's rule to incorporate regulatory rate changes in their prices.

TIEC stated that the REP Coalitions' request for 45 days' notice of all retail rate changes is beyond the scope of this rulemaking, but if the commission seeks to address the REP Coalition's notice request with respect to TCRF adjustments, it can be alternatively accomplished by requiring DSPs to wait 45 days from commission approval of a rate change to implement that

change. TIEC stated that a 45-day implementation delay would not have a financial impact on the DSPs, and that this would be a more reasonable way to address the REPs' concerns than the automatic adjustment mechanism contained in the published proposal.

Joint DSPs stated that whether to effectively provide 45 days' notice to the REPs by mandatory, interim approval of the TCRF filing made by the DSP, or to continue the current process whereby the proposed TCRF change is reviewed and is subject to revision prior to approval and implementation, is a subjective decision to be made by the commission. Joint DSPs submitted, however, that the REP Coalition's proposals to require additional notice of other types of rate changes by DSPs and to limit the number of instances each year in which those rate changes can take effect are beyond the scope of this rulemaking and unnecessary. Joint DSPs argued that with respect to the scope of this rulemaking, the published proposal makes clear that the commission can only address notice and implementation of TCRF updates; other rates or charges are not within the scope of this rulemaking, and to go beyond TCRF updates would violate due process requirements.

### *Commission Response*

**The commission concludes that the adopted rule's provision for 45 days between the commission's approval of a new TCRF rate and a DSP's implementation of that rate provides appropriate pricing certainty for REPs. Because the modified proposal adopted by the commission does not allow the temporary implementation of TCRF rates that are not commission-approved, parties' concerns in this regard are moot.**

*Other comments on specific sections of the rule:****§25.193(b)(2): Reconciliation***

OPUC commented that the language in subsection (b)(2) is unclear and offered clarifying language. TIEC commented that while it opposes the addition of this subsection, if the commission proceeds with this concept, the proposed changes are unnecessarily complicated and confusing. TIEC offered alternative language, which CORE supported, that includes a provision for refunding TCRF over-recoveries, but which does not contain a provision that allows utilities to surcharge ratepayers for under-recoveries as contemplated in the published proposal. TIEC stated that there is no surcharge provision in existing §25.193, and one should not be adopted here. TIEC commented that PURA allows DSPs to adjust their rates to ensure “timely” recovery of wholesale transmission costs—not exact cost recovery—and DSPs should not be authorized to surcharge under-recoveries to ratepayers. TIEC stated that the commission should, however, require over-recoveries to be returned to retail customers with interest, and that such a mechanism will ensure that DSPs do not over-recover their wholesale transmission costs through the TCRF and recognize the reduction in regulatory lag that will result from allowing DSPs to carry forward a balance. TIEC opined that the interest rate for over-recoveries should be the DSP’s weighted average cost of capital (WACC), which represents the costs the DSP would have incurred to obtain capital from a source other than its ratepayers.

Joint DSPs stated that the purpose of the published proposal is to ensure that a DSP collects all, but no more than, the transmission costs paid to TSPs that are not included in the DSP’s base rates (with interest on any under or over-recoveries), and that disallowing surcharges will defeat the purpose of the published proposal. In response to TIEC’s comments regarding the use of the

utility's WACC for interest on over-recoveries, Joint DSPs submitted that the interest rate should reflect economic conditions during the under- or over-recovery period, with the appropriate interest rate being the commission-prescribed rate of interest applicable to overcharges, which is modified annually and thus reflects current market interest rates during the period of over-recovery.

TIEC additionally stated that it is not clear from the published proposal that DSPs would have to adjust their rates at the next opportunity for an interim TCRF update to correct for over-recoveries. Cities, CORE, and OPUC echoed this viewpoint, stating that under the current rule and published proposal, a DSP is not required to make a TCRF filing. Cities, CORE, OPUC, and TIEC stated that the current rule and published proposal could be read to leave open the possibility that DSPs would continue in a state of over-recovery until they decided to submit an interim TCRF filing, which could be delayed for some time. Cities, CORE, OPUC, and TIEC stated that although the published proposal references truing-up costs and revenues over a six-month period, it is not clear that this provision actually requires DSPs to update or true-up their TCRFs every six months; rather, this provision could be interpreted to mean that only the last six months prior to the TCRF would be trued-up in the subsequent TCRF update, or that DSPs that fail to file for another TCRF update after six months are relieved of the obligation to true-up costs and revenues for that period. CORE commented that the referenced six-month true-up period would not allow a DSP to capture all of its over- or under-recoveries in a single TCRF update, and that these potential issues and interpretations of the published proposal create significant cost exposure for customers. To correct these problems, TIEC recommended language to clarify that DSPs must file for an interim TCRF update at the next available

opportunity if they begin to over-recover their transmission costs; Cities and CORE stated that the rule should require any over-recoveries be returned to customers within six months of occurrence. CORE stated that the published proposal clearly requires the DSP to file a true-up in its next possible TCRF update to prevent over-recoveries that occur beyond the six-month true-up period from not being refunded, and that surcharges for under-recovered amounts should not be permitted. CORE further recommended that if surcharges are permitted, interest should not be applied.

Joint DSPs acknowledged that a DSP could be in a position of over-recovery if it were not required to file a TCRF update every six months, but also noted the possibility that a DSP could be in a position of under-recovery. Contrary, however, to the resolution to this problem suggested by some commenters—that DSPs be required to file a TCRF update at every semi-annual opportunity—Joint DSPs expressed their believe that the better approach is to simply remove the references to “six months” in the portion of subsection (b)(2) that deals with the prior period to be trued-up, and have the rule include a provision that would cover a period beginning with the first day after the most recent true-up. This approach would ensure that, once the true-up provision takes effect, no periods will escape being trued-up, but will also allow a DSP to skip a TCRF update if the DSP determines that an update is unwarranted.

### *Commission Response*

**The commission agrees with Joint DSPs that disallowing recovery of under-recovered TCRF amounts is contrary to the purpose of the published proposal. The commission concludes that the modified proposal as reflected in the adopted rule appropriately allows a**

**DSP to recover—but not over-recover—the passed-through transmission costs that the DSP is charged by TSPs.**

**The commission agrees with parties' comments that requiring DSPs to file TCRF updates every six months eliminates uncertainty and helps avoid overly complex filings. The commission's adopted rule therefore provides that DSPs "shall" rather than "may" file their TCRF updates every six months.**

**Because the modified proposal adopted by the commission does not allow a DSP to recover carrying costs on unrecovered TCRF amounts, avoids the need for complicated true-ups of temporarily over-recovered amounts by not allowing the implementation of TCRF rates that have not been approved by the commission, and requires DSPs to update their TCRFs every six months, parties' concerns regarding these issues are moot.**

***Workshop Conducted on July 29, 2010—Oral Comments***

At the workshop, oral comments in response to staff's opening discussion of the modified proposal were generally minimal. CenterPoint Energy Houston Electric, Oncor Electric Delivery Company, AEP Texas Central Company, and AEP Texas North Company expressed support for the modified proposal. The Alliance for Retail Markets and TXU Energy Retail likewise expressed support. CORE stated that while it was not yet able to state whether it supported the modified proposal, it appreciated the changes that had been made and the work that had been done towards making the proposal more palatable.

***Post-Workshop Filed Comments***

In written comments filed after the workshop, CenterPoint Energy Houston Electric, Oncor Electric Delivery Company, Texas-New Mexico Power Company, AEP Texas Central Company, and AEP Texas North Company affirmed their support for the modified proposal. The Alliance for Retail Markets (specifically, Direct Energy LP, First Choice Power LP, and Green Mountain Energy Company) also commented that they support the proposal, as did CPL Retail LP, Reliant Energy Retail Services LLC, TXU Energy Retail Company LLC, and WTU Retail LP.

COH, CORE, Cities, TIEC, and OPUC stated that they do not support the modified proposal. COH and Cities continued to maintain that the amendment is unnecessary and does not balance the interests of the electricity consumer and DSPs. COH additionally asserted that the modified proposal would create a piecemeal and perpetual true-up mechanism. CORE stated that the modified proposal includes changes to the TCRF formula that were not included in the published proposal or recommended by parties in comments, and opined that the amendment should be re-

noticed and re-published. CORE additionally commented that the modified proposal would result in transmission revenues being trued-up along with transmission costs; CORE contended that this is not authorized by PURA §35.004(d), which pertains only to transmission investment. CORE stated that, consequently, the modified proposal remains contrary to PURA but for different reasons than the published proposal. TIEC and OPUC held that the modified proposal would far surpass the legislative intent to provide “timely” recovery of transmission costs. COH, Cities, TIEC, and OPUC stated that the modified proposal does not take into account the impact of load growth on a DSP’s base-rate revenues, and TIEC and OPUC jointly recommended a revision, which was supported by Cities, to the modified proposal’s TCRF formula that would take into account not only a DSP’s TCRF costs and revenues, but also a DSP’s revenues and expenses related to transmission costs recovered through base rates.

### *Commission Response*

**The commission concludes that adoption of the modified proposal is reasonable because it enables DSPs to recover passed-through transmission service costs over which the DSPs have no control and for which they do not provide the underlying service. For this type of cost passed on to a DSP, the traditional concept that regulatory lag serves as a means of incentivizing greater efficiency does not hold, because the DSP has no means of controlling or managing the cost. The role of the DSP as a conduit for the billing and collection of transmission charges evolved during the early stages of implementing retail competition, when it was determined that TSPs could bill and collect transmission costs from a small number of DSPs more efficiently than they could from a significantly larger universe of REPs. The commission addressed this point in Docket Number 22344 (Generic Issues**

**Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and Public Utility Commission Rule §25.344), where it stated in Order No.**

**14 that:**

**The Commission concludes that the ERCOT TSPs should bill transmission and distribution utilities, which would then bill REPs a combined transmission and distribution charge. The direct-billing method, in which TSPs bill REPs directly for transmission service would introduce a billing relationship that does not exist today. It would also result in REPs paying each month over 30 TSPs for transmission service and the local distribution utility for distribution service.**

**One consequence of this market structure, however, is that DSPs have had to bear and absorb a certain portion of the passed-through transmission costs for which they are not responsible. The modified proposal addresses this situation and makes the DSPs whole with respect to incremental TCRF costs.**

**The commission disagrees with CORE that the modified proposal needs to be re-noticed and re-published. The modified proposal was developed in response to parties' specific comments and does not change the type of costs being recovered nor does it impact new entities. Regarding CORE's characterization of PURA §35.004(d), the commission notes that recovery of transmission investment necessarily requires the receipt of revenues by a DSP, and the modified proposal simply ensures that a DSP's incremental TCRF revenues are sufficient to cover the incremental TCRF costs. This result is consistent with the legislative intent to provide timely recovery of transmission investment.**

**For reasons previously stated, the commission rejects the proposals by COH, Cities, TIEC, and OPUC to take into account a DSP's load growth and the amount of transmission costs and revenues related to the DSP's base rates.**

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this amendment, the commission makes modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (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 §14.001, which provides the commission the general power 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 and jurisdiction; §35.004(d), which allows the commission to approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment; §35.006(a), which requires that the commission adopt rules relating to wholesale transmission service, rates and access; and §36.001(a), which allows the commission to establish and regulate rates of an electric utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 35.004(d), 35.006(a), and 36.001(a).

**§25.193. Distribution Service Provider Transmission Cost Recovery Factor (TCRF).**

- (a) **Application.** The provisions of this section apply to all investor-owned distribution service providers (DSPs) providing distribution service within the Electric Reliability Council of Texas (ERCOT) region to retail electric providers and other customers of the distribution system.
- (b) **TCRF authorized.**
- (1) A DSP subject to this section that is billed for transmission service by a transmission service provider (TSP) pursuant to §25.192 of this title (relating to Transmission Service Rates) shall be allowed to include within its tariff a TCRF clause that authorizes the DSP to charge or credit its customers for the amount of wholesale transmission cost changes approved or allowed by the commission to the extent that such costs vary from the transmission service cost utilized to fix the base rates of the DSP. The DSP shall update its TCRF twice per year on March 1 and September 1 to pass through the wholesale transmission cost changes billed by a TSP. For the March 1 update, the DSP shall file a request to update its TCRF no later than December 1; and for the September 1 update, no later than June 1. Within 45 days after a DSP files a request to update its TCRF, the commission shall issue an order establishing the amount of the revised TCRF and suspend the effective date of the revised TCRF as necessary so that the new TCRF charges will take effect on March 1 or September 1, as applicable.
- (2) A DSP shall include in its TCRF update calculation:

- (A) the cost of wholesale transmission cost changes approved or allowed by the commission to the extent that such costs vary from the transmission service cost utilized to fix the rates of the DSP; and
- (B) an adjustment amount, which shall equal:
  - (i) the actual costs paid by the DSP during the review period to TSPs as a result of increases in the TSPs' wholesale transmission rates above the wholesale transmission rates of the TSPs used to develop the retail transmission charges of the DSP in the DSP's last rate case; minus
  - (ii) the revenues recovered through the DSP's TCRF minus the portion of the adjustments approved by the commission in the DSP's most recent two TCRF filings that were in effect during the review period.
  - (iii) For a March 1 TCRF update, the adjustment shall reflect the six-month period beginning with the preceding May 1 and continuing through October 31 (review period); for a September 1 update, the adjustment shall reflect the six-month period beginning with the preceding November 1 and continuing through April 30 (review period). In no event shall a DSP's TCRF clause result in the DSP recovering more than its actual cost of wholesale transmission service included in the TCRF.
- (c) **TCRF Formula.** The TCRF for each class shall be computed pursuant to the following formula:

$$\frac{\{[\sum_{i=1}^N (NWTR_i * NL_i) - \sum_{i=1}^N (BWTR_i * NL_i)] * 1/2 * ALLOC\} + ADJ}{BD}$$

BD

Where:	<p>NWTR<sub>i</sub> is the new wholesale transmission rate of a TSP, approved by the commission by order or pursuant to commission rules, since the DSP's last rate case;</p>
	<p>BWTR<sub>i</sub> is the base wholesale transmission rate of the TSP represented in the NWTR<sub>i</sub>, used to develop the retail transmission charges of the DSP in the DSP's last rate case;</p>
	<p>NL<sub>i</sub> is the DSP's individual 4CP load component of the total ERCOT 4CP load information used to develop the NWTR<sub>i</sub>;</p>
Where:	$ADJ = \sum_{p=1}^6 \{EXP_p - (REV_p - ADJP_{1_p} - ADJP_{2_p})\}$ <p>ADJ = adjustment to Rate Class TCRF;</p> <p>EXP<sub>p</sub> = transmission expenses not included in base rates for period p;</p> <p>REV<sub>p</sub> = TCRF revenue for period p;</p> <p>ADJP<sub>1p</sub> = 1/6<sup>th</sup> of ADJ calculated in the previous TCRF update for the periods 5 and 6;</p> <p>ADJP<sub>2p</sub> = 1/6<sup>th</sup> of ADJ calculated in second previous TCRF update for the periods 1 through 4;</p>
	<p>ALLOC is the class allocator approved by the commission to allocate the transmission revenue requirement among classes in the DSP's last rate case, unless otherwise ordered by the commission; and,</p>

	BD is each class's billing determinant (kilowatt-hour (kWh), or kilowatt (kW), or kilovolt-ampere (kVa)) for the previous March 1 through August 31 period for the March 1 TCRF update, and for the previous September 1 through February 28 period for the September 1 TCRF update.
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- (d) **TCRF charges.** A DSP's TCRF charge shall remain in effect until adjusted under this section or until the DSP's delivery rates change pursuant to a commission order in a rate proceeding.
- (e) **Reports.** The DSP shall maintain and provide to the commission semi-annual reports containing all information required to monitor the costs recovered through the TCRF clause. This information includes, but is not limited to, the total estimated TCRF cost for each month, the actual TCRF cost on a cumulative basis, the amount of transmission costs included in base rates, total revenues resulting from the TCRF, and the calculation of the amount to be recovered under subsection (b)(2) of this section. The reports shall be filed by March 31 and September 30 of each year.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF), is hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS this the 4th day of OCTOBER 2010.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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