

**PROJECT NO. 28884**

**TRANSMISSION PLANNING, § PUBLIC UTILITY COMMISSION**  
**LICENSING AND COST-RECOVERY §**  
**RULEMAKING § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF NEW §25.199 AND AMENDMENT TO §25.231  
AS APPROVED AT THE OCTOBER 13, 2004 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.199, relating to Transmission Planning, Licensing and Cost-Recovery for Utilities within the Electric Reliability Council of Texas (ERCOT) and proposes to amend §25.231 relating to Cost of Service. The proposed new §25.199 would prescribe the procedures and criteria under which the commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to reduce transmission constraints in ERCOT in a cost-effective manner. The proposed amendment to §25.231 would prescribe additional criteria the commission would consider in authorizing construction work in progress rate relief for a transmission utility ordered to build facilities under §25.199. Project Number 28884 is assigned to this proceeding.

Adrienne G. Brandt, Senior Retail Market Analyst, Retail Market Oversight, Electric 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.

Ms. Brandt also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a more effective planning and licensing process to address reliability and transmission constraints and other transmission-related concerns of electric customers, utilities, power producers, and other affected

persons. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Applicants who file a request under §25.199 will incur costs related to that request and the preparation of the required cost benefit study. These costs will vary from applicant to applicant and vary based on the specifics of the request and are difficult to ascertain. However, the benefits of requiring the applicant to demonstrate the necessity of the proposed upgrade outweigh the costs. There may be some incremental cost to transmission utilities ordered to build transmission under this section. However, public comments on the proposed rules should assist the commission in fashioning a process for reviewing transmission proposals that is efficient and effective.

Ms. Brandt also has determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, December 17, 2004, 10:00 a.m. The request for a public hearing must be received within 30 days after publication of the proposal.

Comments on the proposed new §25.199 and proposed amended §25.231 may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments

are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 28884.

This new §25.199 and amended §25.231 are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (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 §35.004 which requires a transmission and distribution utility to provide transmission services at non-discriminatory rates and terms and permits the commission to allow a utility to include construction work in progress related to transmission investment in its rate base; PURA §35.005 which grants the commission the authority to order transmission service to include the construction or enlargement of a facility; PURA §37.056 which delineates the criteria the commission will consider to grant or deny a certificate of convenience and necessity; PURA §39.203 which grants the commission authority to require transmission facilities to be built to ensure safe and reliable service, and to relieve congestion in a cost-effective manner where the constraints are not being resolved through Chapter 37 or the ERCOT planning process.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004, 35.005, 37.056, and 39.203.

**§25.199. Transmission Planning, Licensing and Cost-Recovery for Utilities within the Electric Reliability Council of Texas.**

- (a) **Purpose.** The purpose of this section is to prescribe the procedures and criteria under which the commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to reduce transmission constraints within the Electric Reliability Council of Texas (ERCOT) in a cost-effective manner.
- (b) **Application.** This section applies to all electric utilities, transmission and distribution utilities and ERCOT. This section does not apply to an electric utility or transmission and distribution utility located outside of the ERCOT region. For the purpose of this section, an electric utility includes a municipal utility and an electric cooperative.
- (c) **Eligibility for filing a request under this section.** Any interested party in the ERCOT electric market may file a request for an order under this section.
- (d) **Application.** A request for an order under this section filed by an applicant shall be accompanied by all testimony and schedules upon which the applicant intends to rely for its direct case.
- (e) **Standard for review.** The commission may require an electric utility or a transmission and distribution utility to construct or enlarge transmission facilities to ensure safe and

reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process.

- (1) An applicant must demonstrate that the facilities are necessary to ensure safe and reliable service for the state's electric markets or to reduce transmission constraints within ERCOT in a cost-effective manner.
  - (2) An applicant must demonstrate that the transmission constraints are not being resolved through Chapter 37 or the ERCOT transmission planning process. In assessing whether these matters are being resolved through Chapter 37 or the ERCOT transmission planning process, the applicant shall demonstrate that:
    - (A) the facilities are not the subject of a pending application for a certificate of convenience and necessity; and
    - (B) the facilities have been presented to and considered in the ERCOT transmission planning process and have been rejected, either in the regional planning process or by the board of directors.
- (f) **Cost effectiveness.** The applicant shall present a comprehensive cost benefit analysis to allow the commission to consider both quantitative and qualitative costs and benefits of the proposed facilities. The results of the analysis shall demonstrate that the cost of the proposed transmission project is lower than the cost of other congestion management techniques, such as system re-dispatch. The analysis should consider at a minimum:
- (1) capital costs;
  - (2) projected operation and maintenance costs;

- (3) carrying costs of the proposed upgrade;
  - (5) system reliability; and
  - (6) impact on wholesale power costs in the ERCOT region.
- (g) **Commission order.** If the commission concludes that the applicant has demonstrated that the facilities are needed to ensure safe and reliable service for the state's electric markets or to reduce transmission constraints within ERCOT in a cost-effective manner and that the constraints are not being resolved through Chapter 37 or the ERCOT transmission planning process, it shall order a utility or utilities to construct or enlarge the requested facilities.
- (1) The commission shall issue the final order in a proceeding initiated under this section not later than the 180th day after the filing of a complete, non-deficient application. Notwithstanding the foregoing, however, the 180-day deadline may be extended by the commission for good cause.
  - (2) An order adopted under this section:
    - (A) shall be contingent on the successful outcome of the subsequent certificate of convenience and necessity proceeding for the proposed facilities;
    - (B) shall include a date, appropriate for the required construction, by which the transmission and distribution utility ordered to construct the facilities will be required to file an application for a certificate of convenience and necessity;
    - (C) shall provide that the transmission and distribution utility need not prove in any proceeding filed under PURA Chapter 37 that the construction or

upgrade ordered is necessary for the convenience, accommodation, convenience or safety of the public, and need not address the factors listed in PURA §37.056(c)(1)-(3) and (4)(E); and

- (D) shall provide that the electric utility or transmission and distribution utility ordered to construct or enlarge the requested facilities may request the inclusion of construction work in progress (CWIP) in the transmission and distribution utility's transmission cost of service rate proceeding. The commission will grant CWIP in accordance with §25.231 of this title (relating to Cost of Service).

**§25.231. Cost of Service.**

(a) - (b) (No change.)

(c) **Return on invested capital.** The return on invested capital is the rate of return times invested capital.

(1) (No change.)

(2) **Invested capital; rate base.** The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as set out in subparagraphs (A) - (F) of this paragraph.

(A) - (C) (No change.)

(D) Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that:

(i) the electric utility has proven that:

(I) the inclusion is necessary to the financial integrity of the electric utility; and

(II) major projects under construction have been efficiently and prudently planned and managed. However, construction

work in progress shall not be allowed for any portion of a major project which the electric utility has failed to prove was efficiently and prudently planned and managed; or

- (ii) for a project ordered by the commission under §25.199 of this title (relating to Transmission Planning, Licensing and Cost-Recovery for Utilities within the Electric Reliability Council of Texas), if there will be a significant delay between initial investment and the initial cost recovery for a transmission project.

(E) - (F) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 13th DAY OF OCTOBER 2004 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**