

**PROJECT NO. 34914**

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**RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION  
AMEND §25.237, FUEL FACTORS §  
§ OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §25.237  
AS APPROVED AT THE FEBRUARY 22, 2008 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.237, relating to Fuel Factors. Current §25.237 allows utilities to petition for fuel factor modifications once every six months according to a fixed schedule and a prescribed filing package. The proposed amendment establishes the option, and procedure, for utilities to determine their fuel factors by using a commission-approved, utility-specific fuel factor formula. The proposed amendment allows utilities that use such a commission-approved, utility-specific fuel factor formula to request more frequent fuel factor modifications - as often as once every four months, except for the month of December, and not subject to a set schedule. The proposed amendment also establishes a procedure for the approval of the proposed fuel factors on an interim basis for utilities that use a commission-approved, utility-specific formula.

The proposed amendment is anticipated to facilitate a more timely recovery of fuel expenses, reduce the size of over- and -under-recovery balances passed on to customers, and provide more accurate price signals to customers. The commission anticipates that, by utilizing an established, utility-specific fuel factor formula, issues that may occur in a prescribed filing package proceeding and that are likely to result in a hearing can be eliminated. Therefore,

the option to utilize a commission-approved, utility-specific formula streamlines the administrative review process, limits the issues the commission may have to address in a proceeding and may result in timelier processing of fuel factor modification requests.

Procedurally, the proposed amendment also requires a utility to serve its complete petition package on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. This will enable interested parties to begin review of the requested fuel factor revisions at an earlier time and will help to expedite such proceedings. Project Number 34914 is assigned to this proceeding.

Larry Reed, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reed 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 amendment will be that utilities will be able to more accurately reflect actual fuel expenses in their fuel factor and thereby reduce the over- and under-collections passed on to customers, in addition to providing customers with more accurate price signals. Additionally, the amendment will allow more expedited and efficient processing of fuel factor revisions, reducing regulatory burdens on all parties involved.

Mr. Reed has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Mr. Reed has also determined that there is no anticipated economic cost to persons who are required to comply with the amendment as proposed. Therefore, no regulatory flexibility analysis is necessary.

Mr. Reed has also determined that for each year of the first five years the proposed amendment 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 Tuesday, April 29, 2008, at 10:00 a.m. A written request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendment to §25.237 may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, not later than 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed. Reply comments must be submitted not later than 45 days after publication. Comments should be organized in a manner consistent

with the organization of the proposed amendment. All comments should refer to Project Number 34914.

The amendment to §25.237 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2007) (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 PURA §36.203, which authorizes the commission to adopt rules that provide for the timely adjustment of a utility's fuel factor.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §36.203.

**§25.237. Fuel Factors.**

(a) **Use and calculation of fuel factors.** An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

(1) ~~An electric utility may determine its fuel factor in dollars per kilowatt-hour pursuant to either subparagraph (A) or (B) of this paragraph. Fuel factors are determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt hour sales for the period in which the fuel factors are expected to be in effect.~~ Fuel factors must account for system losses and for the difference in line losses corresponding to the ~~type of~~ voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.

~~(A) Fuel factors may be determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect.~~

~~(B) Fuel factors may be determined using a commission-approved, utility-specific fuel factor formula. Fuel factor formulas may be approved or~~

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revised only in a general rate change proceeding or a proceeding to consider an application to establish a fuel factor formula with notice and an opportunity for a hearing.

- (2) An electric utility may initiate a change to its fuel factor as follows:
- (A) Pursuant to subsection (a)(1)(A) of this section, an~~A~~ electric utility may petition to adjust its fuel factor as often as once every six months according to the schedule set out in subsection (d) of this section.
- (B) Pursuant to subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than three months after the issuance of a final order approving its most recent fuel factor adjustment.
- (C)~~(B)~~ Notwithstanding subsection (a)(2)(A) of this section, an~~A~~ electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.
- (D)~~(C)~~ An electric utility's fuel factor may be changed in any general rate proceeding.
- (3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:
- (A) 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, and any ~~disallowed~~unreasonable

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costs ~~resulting from a reconciliation proceeding~~ incurred will be reflected ~~in~~ refunded to the calculation of the utility's recoverable fuel and over/(under) collections ~~electric utility's customers.~~

- (B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor. ~~An electric utility may petition for a surcharge if, but requests by the electric utility to make refunds or surcharges may only be made at the times allowed by this paragraph. An electric utility may petition to make refunds or surcharges at the specified times that these rules allow an electric utility to change its fuel factor irrespective of whether the electric utility actually petitions to change its fuel factor at that time. An electric utility shall petition for a surcharge at the next date allowed for setting a fuel factor by the schedule set out in subsection (d) of this section when~~ it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. An electric utility shall petition to make a refund ~~if at any time that~~ it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is

greater than or equal to 4.0% of the annual ~~actual~~estimated fuel cost ~~figures on a rolling 12-month basis, figure most recently adopted by the commission,~~ as reflected in the utility's monthly fuel cost reports as filed by the utility~~shown by the electric utility's fuel filings~~ with the commission.

(b) **Petitions to revise fuel factors.**

~~(1) An electric utility using the fuel factor methodology set forth under subsection (a)(1)(A) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(A) of this section during~~ During the first five business days of the months specified in subsection (d) of this section, ~~each electric utility using one or more fuel factors may file a petition requesting revised fuel factors.~~ A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on filing shall also be delivered to the Office of Regulatory Affairs and the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include~~petition must be accompanied by~~ the commission-prescribed~~commission-prescribed~~ fuel factor application, a tariff sheet reflecting the proposed fuel factors and supporting testimony that includes the following information:

~~(A)(+)~~ For each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available,

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~~(i)~~(A) the revenues collected pursuant to fuel factors by customer class;

~~(ii)~~(B) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses;

and

~~(iii)~~(C) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.

~~(B)~~(2) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the ~~type of~~ voltage at which the electric service is provided.

(2) An electric utility using the fuel factor formula methodology set forth under subsection (a)(1)(B) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(B) of this section at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include:

(A) a tariff sheet reflecting the proposed fuel factors;

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- (B) workpapers supporting the calculation of the revised fuel factors;
- (C) calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided; and
- (D) any computer generated documents must be provided in their native electronic format with all cells and internal formulas disclosed.

(c) **Fuel factor revision proceeding.** Burden of proof and scope of proceeding are as follows:

- (1) In a proceeding to revise fuel factors pursuant to subsection (a)(1)(A) of this section, an electric utility has the burden of proving that:
  - (A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;
  - (B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and
  - (C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the ~~type of~~ voltage at which the electric service is provided.
- (2) The scope of a fuel factor revision proceeding under subsection (a)(1)(B) of this section is limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors~~estimated eligible fuel~~

~~expenses and load. In a proceeding to revise fuel factors pursuant to subsection (a)(1)(B) of this section, an electric utility has the burden of proving that:~~

- ~~(A) the electric utility has calculated its proposed fuel factors in compliance with the commission-approved fuel factor formula; and~~
- ~~(B) the proposed fuel factors utilize a commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided.~~

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- (d) **Schedule for filing petitions to revise fuel factors.** A petition to revise fuel factors ~~or to initiate or revise a fuel factor formula~~ may be filed with any general rate proceeding.

- ~~(1)~~ Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors ~~pursuant to subsection (a)(1)(A) of this section~~ may only be filed ~~during the first five business days of the month~~ in accordance with the following schedule:

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- ~~(A)(1)~~ ~~February, January~~ and ~~August, July~~: El Paso Electric Company and ~~Central Power and Light Company;~~
- ~~(2)~~ ~~February and August: Texas Utilities Electric Company;~~

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- ~~(B)(3)~~ March and September: ~~West Texas Utilities Company and Entergy~~  
Gulf States, Inc.;

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~~(C)(4)~~ April and October: ~~Southwestern Public Service~~~~Houston Lighting & Power~~ Company;

~~(D)(5)~~ May and November: Southwestern Electric Power Company, ~~Southwestern Public Service Company, and Lower Colorado River Authority~~; and

~~(E)(6)~~ ~~July and January: June and December: Texas New Mexico Power Company, and~~ any other electric utility not named in this subsection that uses one or more fuel factors.

(2) Petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(B) of this section may be filed in any month except December.

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(e) **Procedural ~~schedules~~schedule.**

(1) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(A) of this section~~in a separate proceeding~~, the presiding officer shall

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set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

~~(A)(1)~~ within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and

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~~(B)(2)~~ within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

(2) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(B) of this section, the presiding officer shall set a procedural schedule as follows:

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(A) the presiding officer shall issue an order approving the proposed fuel factors on an interim basis no later than 12 days after the date the petition was filed, if no objection to interim approval is filed within 10 days after the date the petition was filed;

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(B) if no hearing is requested within 30 days after the petition was filed, the presiding officer shall, after submission of proof of notice by the electric utility, issue an order approving the fuel factors without hearing or action by the commission; and

(C) if a hearing is requested within 30 days after the petition was filed, the hearing will be held no earlier than the first business day after the 45th day after the petition was filed and a final order will be issued within 90 days after the petition was filed, subject to submission of proof of notice by the electric utility.

- (f) **Emergency revisions to the fuel factor.** If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information

required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

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 22<sup>nd</sup> DAY OF FEBRUARY 2008 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**