

PROJECT NO. 39465

**RULEMAKING RELATED TO § PUBLIC UTILITY COMMISSION
PERIODIC RATE ADJUSTMENTS § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF NEW §25.243
AS APPROVED AT THE JULY 8, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.243, relating to Distribution Cost Recovery Factor (DCRF). The rule provides for the adjustment of an electric utility's rates for changes in certain distribution costs, pursuant to Senate Bill 1693 of the 82nd Legislature, Regular Session in 2011 (SB 1693). Project Number 39465 is assigned to this proceeding.

Darryl Tietjen, Director of the commission's Rate Regulation Division, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Tietjen has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be compliance with SB 1693. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required.

Mr. Tietjen has also determined that for each year of the first five years the rule 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 APA, 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 August 15, 2011. The request for a public hearing must be received by August 8, 2011.

Comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Initial comments on the rule are due August 8, 2011 and reply comments are due August 12, 2011. Comments should be organized in a manner consistent with the organization of the rule. All comments should refer to Project Number 39465.

The new rule section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, SB 1693 §1 (to be codified as PURA §36.210), which requires the commission to adopt rules to implement the section; and PURA §36.052, which requires the commission to consider applicable factors in establishing a reasonable return on invested capital.

Cross Reference to Statutes: PURA §§14.002 and 36.052 and SB 1693 §1 (to be codified as PURA §36.210).

§25.243. Distribution Cost Recovery Factor (DCRF).

(a) **Purpose and application.** This section implements Public Utility Regulatory Act (PURA) §36.210. This section applies to electric utilities, including transmission and distribution utilities (TDUs), that provide wholesale or retail distribution service.

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

(1) **Capitalized operations and maintenance expenses** — Incurred expenses that have been deferred as a regulatory asset or liability.

(2) **Distribution invested capital** — The parts of the electric utility's invested capital, as described in PURA §36.053, that are categorized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks properly recorded in Federal Energy Regulatory Commission Uniform (FERC) System of Accounts 303, 352, 353, 360 through 374, 391, and 397. Distribution invested capital includes only costs that comply with PURA §36.053 and are prudent, reasonable, and necessary. Distribution invested capital does not include: generation-related costs; transmission-related costs, including costs recovered through rates set pursuant to §25.192 of this title (relating to Transmission Service Rates), §25.193 of this title (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)), or §25.239 of this title (relating to Transmission Cost Recovery Factor for Certain Electric Utilities); indirect corporate costs; capitalized operations and maintenance expenses; and distribution invested capital recovered through a separate rate, including a surcharge, tracker, rider, or other mechanism.

- (3) **Indirect Corporate Costs** — Corporate support costs, except for those costs recorded as construction overhead in accordance with FERC guidelines.
- (4) **Weather-normalized** – Adjusted for normal weather using weather data for the most recent ten years.
- (c) **Application for DCRF or DCRF update.**
- (1) **General requirements.** An electric utility may apply for inclusion of a DCRF in its tariff for distribution service. An electric utility may have no more than one DCRF or DCRF update become effective each calendar year. An electric utility may change its rates pursuant to a DCRF no more than four times between comprehensive base-rate proceedings. To implement a DCRF or DCRF update, an electric utility shall file an application for the DCRF or DCRF update simultaneously with all regulatory authorities having original jurisdiction over the electric utility's distribution service area. A municipality's governing body with original jurisdiction over an application for the DCRF or DCRF update shall make a final decision on the application within 60 days after the application was filed. If the governing body does not make a final decision within 60 days after the application was filed, the application is deemed denied by the governing body. The electric utility shall appeal the governing body's final decision to the commission no later than 30 days after the decision, regardless of whether the governing body approves or denies the application. The electric utility's appeal automatically suspends the governing body's final decision. An electric utility shall not apply for a DCRF or DCRF update while a comprehensive base-rate

proceeding for the electric utility is pending. In addition, the presiding officer shall dismiss an electric utility's application for a DCRF or DCRF update if the electric utility or commission initiates a comprehensive base-rate proceeding during the pendency of the DCRF or DCRF update proceeding.

- (2) **Requirements applicable to TDUs.** A TDU may file an application for a DCRF or DCRF update only during the period April 1 through April 8. A TDU shall not file an application for a DCRF or DCRF after April 8 of a year even if April 8 is not a working day, as defined by §22.2(44) of this title (relating to Definitions).
- (3) **Requirements applicable to other electric utilities.** An electric utility that does not offer customer choice may file an application for a DCRF or DCRF update proceeding at any time other than in April and May.

(d) **Calculation of DCRF.**

- (1) **DCRF formula.** The DCRF for each rate class shall be calculated using the following formula:

$$\frac{[(\text{DIC}_C - \text{DIC}_{RC}) * \text{ROR}_{AT}) + (\text{DEPR}_C - \text{DEPR}_{RC}) + (\text{FIT}_C - \text{FIT}_{RC}) + (\text{OT}_C - \text{OT}_{RC})] * \text{ALLOC}_{CLASS} - [(\text{BD}_{C-CLASS} - \text{BD}_{RC-CLASS}) / \text{BD}_{RC-CLASS}] * (\text{FIT}_{RC-CLASS} + \text{OT}_{RC-CLASS} + \text{DEPR}_{RC-CLASS} + \text{ROIC}_{RC-CLASS})}{\text{BD}_{C-CLASS}}$$

Where:

DIC_C = Current Net Distribution Invested Capital.

DIC_{RC} = Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

ROR_{AT} = After-tax Rate of Return as defined in paragraph (2) of this subsection.

DEPR_C = Current Depreciation Expense, as related to Current Net Distribution Invested Capital, calculated using the currently approved depreciation rates.

DEPR_{RC} = Depreciation Expense, as related to Net Distribution Invested Capital, from last comprehensive base-rate proceeding.

FIT_C = Current Federal Income Tax, as related to Current Net Distribution Invested Capital, including the change in federal income taxes related to the change in return on rate base and synchronization of interest associated with the change in rate base resulting from additions to and retirements of distribution plant as used to compute Net Distribution Invested Capital.

FIT_{RC} = Federal Income Tax, as related to Net Distribution Invested Capital from last comprehensive base-rate proceeding.

OT_C = Current Other Taxes (taxes other than income taxes and taxes associated with the return on rate base), as related to Current Net Distribution Invested Capital, calculated using current tax rates and the methodology from the last comprehensive base-rate proceeding, and does not include municipal franchise fees.

OT_{RC} = Other Taxes, as related to Net Distribution Invested Capital from last comprehensive base-rate proceeding, and does not include municipal franchise fees.

$ALLOC_{CLASS}$ = Rate Class Allocation Factor from last comprehensive base-rate proceeding, calculated as: total distribution net plant allocated to rate class, divided by total net distribution plant. For situations in which data from the last comprehensive base-rate proceeding are not available to perform the described calculation, the Rate Class Allocation Factor shall be calculated as the total distribution revenue requirement allocated to the rate class (less any identifiable amounts explicitly unrelated to Distribution Invested Capital) divided by the total distribution revenue requirement (less any identifiable amounts explicitly unrelated to Distribution Invested Capital) for all classes as approved by the commission in the electric utility's last comprehensive base-rate case.

$BD_{C-CLASS}$ = Rate Class Billing Determinants (weather-normalized and adjusted to reflect the number of customers at the end of the period) for the 12 months ending on the date used for purposes of determining the Current Net Distribution Invested Capital. For customer classes billed primarily on the basis of kilowatt-hour billing determinants, the DCRF shall be calculated using kilowatt-hour billing determinants. For customer classes billed primarily on the basis of demand billing determinants, the DCRF shall be calculated using demand billing determinants.

$BD_{RC-CLASS}$ = Billing Determinants (weather-normalized and adjusted to reflect the number of customers at the end of the period) for the rate class used to set rates in the last comprehensive base-rate proceeding. For customer classes billed primarily on the basis of kilowatt-hour billing determinants, the DCRF shall be calculated using kilowatt-hour billing determinants. For customer classes billed primarily on the basis of demand billing determinants, the DCRF shall be calculated using demand billing determinants.

$FIT_{RC-CLASS}$ = Federal Income Taxes for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

$OT_{RC-CLASS}$ = Other Taxes for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding, and does not include municipal franchise fees.

$DEPR_{RC-CLASS}$ = Depreciation Expense for the rate class, as related to Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

$ROIC_{RC-CLASS}$ = Return on Net Distribution Invested Capital for the rate class from the last comprehensive base-rate proceeding.

- (2) **Return on invested capital.** The electric utility's rate of return is the rate of return approved by the commission in the electric utility's last comprehensive base-rate proceeding if the final order (which may be an order on rehearing) approving the rate of return was filed less than three years before the application for a DCRF or DCRF update was filed. If the final order approving the rate of return was filed three years or more before the application for a DCRF or DCRF update was filed, the rate of return is the lesser of the rate of return in the final order or the alternative rate of return calculated as follows: The alternative rate of return shall be calculated using a 10% cost of equity, the capital structure approved by the commission in the electric utility's most recent base-rate proceeding, and the cost of debt as reported in the electric utility's most recent Earnings Monitoring Report filed pursuant to §25.73 of this title (relating to Financial and Operating Reports).
- (e) **Procedures for DCRF or DCRF update proceeding.**
- (1) **Filing requirements.** To file an application for a DCRF or DCRF update, an electric utility shall use the commission-prescribed form and include a sworn statement from an appropriate employee of the electric utility that the application complies with the electric utility's tariff and this section and is true and correct to the best of the employee's knowledge, information, and belief.

- (2) **Notice and intervention deadline.** By the day after it files its application, the electric utility shall provide notice of its application to all parties in the electric utility's last comprehensive base-rate proceeding and, if applicable, last DCRF or DCRF update proceeding, and shall include in the notice the docket number for the new proceeding. The intervention deadline is 30 days from the date service of notice is completed.
- (3) **Parties.** The Office of Public Utility Counsel and affected parties may participate as parties in a DCRF or DCRF update proceeding.
- (4) **Denial due to earnings.** The commission shall deny an electric utility's application for a DCRF or DCRF update if, at the time the DCRF or DCRF update application is filed, the most recent earnings monitoring report filed by the electric utility pursuant to §25.73(b) of this title shows that the electric utility is earning more than its authorized rate of return using weather-normalized data. In making this determination, the commission shall correct the rate of return calculation in the earnings monitoring report to the extent that the calculation does not comply with §25.73(b) of this title and any form adopted to implement that subsection.
- (5) **Scope of proceeding.** The issues of whether distribution invested capital included in an application for a DCRF or DCRF adjustment complies with PURA §36.053 and is prudent, reasonable, and necessary shall not be addressed in a proceeding for a DCRF or DCRF update unless the presiding officer finds that good cause exists to address these issues.
- (6) **Commission processing of application.**

- (A) **Sufficiency of application.** A motion to find an application materially deficient shall be filed no later than 30 days after service of notice is completed. The motion shall be served on the electric utility by hand delivery, facsimile transmission, or overnight courier delivery, or by e-mail if agreed to by the electric utility or ordered by the presiding officer. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The electric utility's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within ten working days after the deadline for filing a motion to find an application materially deficient, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application is deemed sufficient.
- (B) **Discovery.** Each party, other than commission staff, may serve no more than 20 requests for information and requests for admissions of fact pursuant to §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), except where the presiding officer finds good cause for a party to serve additional requests. A request shall not include subparts or multiple questions, and requests shall be sequentially numbered, regardless of whether the requests are served at the same time or on different parties. A response to a request shall be served no later than ten working days after receipt of the discovery request. An objection to a request shall

be filed no later than five working days from receipt of the request. A request for which an objection is filed does not count towards a party's request limit. A party may request a technical conference by the intervention deadline, and shall identify the topics that it wants to discuss. An electric utility shall hold the technical conference in Austin, Texas five working days after the intervention deadline, unless the electric utility and the parties who requested the technical conference agree to a different date. The technical conference shall be held at the location designated by the electric utility, unless the commission staff designates a location. The electric utility shall have appropriate persons attend the technical conference to answer questions. A party may take a deposition only if authorized by the presiding officer.

- (C) **Consolidation of appeals.** The presiding officer shall consolidate the electric utility's appeal pursuant to subsection (c)(1) of this section of the final decision of a municipality's governing body on the application for a DCRF or DCRF update with the application over which the commission has original jurisdiction.
- (D) **System-wide rates and effective date of DCRF or DCRF update.** The presiding officer shall approve the DCRF or DCRF on a system-wide basis and set the effective date of the DCRF or DCRF update for a TDU as September 1 unless good cause exists for a later date. The presiding officer shall make a final decision on a DCRF or DCRF update application made by a TDU at least 46 days before the effective date of the approved rates, even

if this requirement results in an effective date after September 1. For an electric utility that does not offer customer choice, the presiding officer shall set the effective date of the DCRF or DCRF update to be 145 days after the application was filed unless good cause exists for a later date.

(E) **Review of application.** A DCRF or DCRF update proceeding is eligible for disposition pursuant to §22.35(b)(1) of this title (relating to Informal Disposition).

(F) **Notice of approved rates.** Unless otherwise ordered, a TDU shall serve notice of the approved rates and the effective date of the approved rates the day after the presiding officer's final decision, to retail electric providers that are authorized by the registration agent to provide service in the TDU's distribution service area.

(f) **DCRF reconciliation.** The commission shall reconcile investments recovered through a DCRF in the electric utility's next comprehensive base-rate proceeding to the extent such reconciliation did not already occur in a DCRF or DCRF update proceeding pursuant to subsection (e)(5) of this section. The reconciliation shall be limited to the issues of the extent to which the investments complied with PURA §36.053 and this section and were prudent, reasonable, and necessary. To the extent that the commission determines that the investments did not comply with PURA §36.053 and this section or were not prudent, reasonable, and necessary, the electric utility shall refund all revenues related to the investments that it improperly recovered through rates, and shall also pay its customers carrying charges on these revenues. The carrying charges shall be determined as follows.

For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the new base rates, carrying costs shall be calculated using the same rate of return that was applied to the investments in the DCRF proceedings that resulted in the over-recovery. For the time period beginning with the effective date of the new base rates, carrying costs shall be calculated using the electric utility's rate of return authorized in the comprehensive base-rate proceeding.

- (g) **DCRF's effect on electric utility's financial risk and rate of return.** In setting the rate of return for an electric utility with a DCRF, the commission may expressly consider the effect of the DCRF on the electric utility's financial risk and rate of return.
- (h) **Reports.** An electric utility with a DCRF shall file reports that will permit the commission to monitor its DCRF revenues, in accordance with any filing requirements and schedules prescribed by the commission pursuant to §25.73 of this title or this section.
- (i) **Expiration.** This section expires upon the expiration of PURA §36.210. Any DCRF in effect at that time shall remain in effect until the electric utility's next comprehensive base-rate proceeding.

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 8th DAY OF JULY 2011 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

Q:\CADM\TXR-Rules Management\Rules\Rulemaking Projects\Electric\39xxx\39465\39465pub.docx