

PROJECT NO. 48377

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND 16 TAC § 25.247 TO	§	
ESTABLISH A FILING SCHEDULE	§	OF TEXAS
FOR NON-INVESTOR-OWNED	§	
TRANSMISSION SERVICE	§	
PROVIDERS OPERATING WITHIN	§	
ERCOT	§	

**ORDER ADOPTING AMENDMENT TO §25.247
AS APPROVED AT THE NOVEMBER 8, 2018 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.247, relating to rate review schedule, with changes to the proposed text as published in the July 13, 2018 issue of the *Texas Register* (43 TexReg 4622). The amended rule establishes a schedule requiring periodic filings for rate proceedings by non-investor-owned transmission service providers (non-IOUs) operating within the Electric Reliability Council of Texas (ERCOT). Project Number 48377 is assigned to this proceeding.

The commission received comments on the proposed amendment from Brazos Electric Power Cooperative, Inc. (Brazos); Brownsville Public Utilities Board (Brownsville); East Texas Electric Cooperative, Inc. (ETEC); LCRA Transmission Services Corporation (LCRA TSC); Texas Public Power Association (TPPA); Office of Public Utility Counsel (OPUC); South Texas Electric Cooperative, Inc. (STEC); Texas Electric Cooperatives, Inc. (Texas EC); and Texas Industrial Energy Consumers (TIEC). No party requested a public hearing.

Comments related primarily to the issue of periodic filing requirements

Brownsville commented that all transmission costs are ultimately paid by the ratepayers of load serving entities, and these costs therefore warrant periodic review to ensure the reasonableness of the amounts. Brownsville asserted, however, that the tremendous range of sizes of the various municipally owned utilities (MOUs) in ERCOT warrants a nuanced approach to the matter. Brownsville and TPPA commented that Docket No. 47777, which was the commission's most recent proceeding addressing the total amount of wholesale transmission costs in ERCOT, included 12 MOUs with a commission-established transmission cost of service (TCOS), and that, collectively, those 12 public power systems account for approximately 11% of the \$3.6 billion total ERCOT TCOS. TPPA further commented that close to two thirds of this amount comes from the two largest MOUs, and both TPPA and Brownsville noted that the six smallest MOUs account for only 0.39% of the total TCOS amount. Brownsville and TPPA also stated that the annual amounts of TCOS for MOUs range in size from approximately \$170 million to just under \$22,000.

Texas EC commented that its members include 74 electric cooperatives operating in Texas, and 25 of these provide transmission service in ERCOT and are affected by the proposed rule. Texas EC stated that, of this group of non-IOUs, there are only two electric cooperatives—Brazos and STEC—with an ERCOT TCOS of more than \$50 million. Texas EC commented that the vast majority of its members affected by this rule are much smaller distribution cooperatives that rely generally on other transmission providers to expand transmission infrastructure as needed. Texas EC also noted that the average TCOS of smaller cooperative systems is \$1,715,124, and that five cooperative transmission providers in ERCOT have a TCOS of less than \$100,000. Texas EC stated that MOU systems and LCRA TSC are also impacted by the proposed rule, and that, as is

the case with cooperatives, there are two MOUs—CPS Energy (San Antonio) and Austin Energy—with an ERCOT TCOS of \$50 million or more. Texas EC commented that all the rest of the MOUs (ten systems) are much smaller, with an average TCOS of \$15,301,106. Texas EC commented that small systems, which it defined as having a TCOS of less than \$50 million, make up only 5% of the total ERCOT TCOS, and that an exemption for small systems would recognize the disproportionate cost impact to such systems (and the potential for increased total costs) that is overlooked by the blanket approach set out in the published rule. Texas EC stated that a framework for periodic rate review that allows greater latitude for small systems would reduce the cost implications present in the published rule.

Brownsville, STEC, and Texas EC commented that the commission should consider ratepayer costs and benefits of scheduled filing requirements, given that ratepayers ultimately pay the costs of required filings and reporting. Brownsville averred that it is not unreasonable to assume that an MOU will determine for itself whether a TCOS filing would be financially advantageous to its system, and the commission should either develop a cost and benefit analysis for the smaller non-IOUs to determine whether they must file a TCOS proceeding, or, as a proxy for the cost and benefit determination, set a floor of some percentage of the total market TCOS below which the smaller non-IOUs would not be required to file a TCOS case. Brownsville commented that because of the difficulties in creating objective cost and benefit criteria (i.e., criteria that weigh the cost of filing a TCOS against the value of the TCOS) that will survive the test of time, using a proxy for the cost and benefit determination would be the most workable solution. To this end, Brownsville proposed that if a non-IOU's TCOS is less than one percent of the total TCOS for the ERCOT market, then that non-IOU should only be encouraged—not required—to file its updated

TCOS in accordance with the schedule set out in the rule. Brownsville suggested that using a threshold of one percent of the total market TCOS is a reasonable proxy for a *de minimis* amount of TCOS, and that this level reasonably approximates the universe of non-IOUs whose costs of filing for a TCOS review would exceed the benefits of such a filing.

TPPA expressed agreement with Brownsville's suggestions and similarly commented that while it understands the value of periodic rate filings, it also recognizes that interim TCOS updates are not without costs. TPPA stated that this problem is particularly concerning for smaller MOUs with relatively minor amounts of TCOS and more limited resources, and that in some cases the costs of an interim update to both the MOU and commission might exceed the "rounding error" effect on overall transmission rates. TPPA urged the commission to consider the impact of costs and the limited potential benefits of implementing filing requirements for these smaller entities, and recommended that, in the interest of administrative efficiency, the commission consider a TCOS threshold below which small systems would be exempt or placed on a longer timeframe for review.

Texas EC and Brazos likewise commented that setting a fixed schedule for a non-IOU to file a TCOS case causes the utility to incur the costs of a rate proceeding regardless of whether there are any savings to be achieved. Texas EC commented that rate case expenses may vary significantly from case to case, but that generally, a comprehensive TCOS review involves more issues and requires more time, effort, and expense than an interim update filing. Texas EC submitted that, based on ten relatively recent cases, the average cost of a comprehensive TCOS review for a non-IOU is approximately \$122,000. Texas EC commented that the cost of interim TCOS updates is

not available in commission records, but estimated a range of \$20,000 to \$30,000. Texas EC further stated that interim TCOS updates almost always involve hiring outside lawyers and consultants to prepare and prosecute the filing, and that a small non-IOU when filing an interim TCOS case may well incur rate case expenses in the tens of thousands of dollars. Texas EC commented that while such amounts may be dwarfed when compared to the costs incurred in IOU cases, the dollars can be significant for small non-IOUs, and that for many small non-IOUs the cost of preparing and prosecuting a TCOS case may outweigh any benefit that might be gained from the review process. Texas EC submitted that mandatory periodic filings, as proposed in this rulemaking, will expend utility and commission resources and will in some instances result in increased transmission charges for consumers.

Texas EC further commented that it does not oppose periodic review of a transmission service provider's TCOS in circumstances where it makes sense. Texas EC stated that, given that the commission has the ability to routinely monitor a non-IOU's transmission cost of service and can initiate a more thorough inquiry based on its review, the ideal regulatory approach would be one in which small non-IOUs would update their TCOS once, with ongoing monitoring by the commission going forward. Texas EC submitted that this approach would seem to meet the commission's objectives at less cost than mandatory periodic TCOS reviews. Texas EC stated that while it is not proposing a specific threshold for exemption from the periodic filing requirement, entities contributing a minimal amount to total ERCOT TCOS could reasonably be excluded from the filing schedule, with the understanding that the commission has the ability to review TCOS on an ongoing basis, and non-IOUs with TCOS amounts above the minimum threshold could remain subject to a tiered filing schedule.

Texas EC additionally commented that although an initial rate review followed by ongoing monitoring of small systems would likely have cost advantages in comparison to the approach described in the published rule, if the commission intends to place non-IOWs on a filing schedule regardless of a *de minimis* exemption, Texas EC proposed—and TPPA and ETEC agreed with—the concept of a tiered approach with specified thresholds. Texas EC recommended a threshold of \$50 million, proposing that if a non-IOW's TCOS is \$50 million or more, then it would file a TCOS application every 48 months; and if a non-IOW's TCOS is less than \$50 million, it would file a TCOS application every 96 months. Texas EC submitted that applying a less frequent requirement for smaller systems would reasonably balance the cost implications and burdens on small systems with the potential for TCOS reduction, and that it would accomplish the commission's goals as described in the preamble of the published rule. Brazos and Brownsville expressed agreement with these points, although Brownsville stated that even after 96 months, the cost of filing a TCOS may still exceed the benefit of recovering the costs of the transmission assets that were constructed subsequent to the most recent commission action to set the related transmission rates.

OPUC expressed support for Texas EC's suggestions that a *de minimis* exception should be applied for the very smallest non-IOWs, such as the 12 entities that have TCOS levels less than \$300,000. OPUC stated that it agrees with Texas EC that a different, perhaps simplified approach may be warranted for these smallest of companies, and that, as Texas EC suggested, TCOS recovery for these smaller entities may be more effectively monitored by alternate means, such as through their respective earnings reports. OPUC also stated that it agreed in concept with Brownsville's comments concerning the significant size disparity among non-IOW, and that the cost-versus-

benefits assessment of such a review may be different for the smallest companies and warrant a different frequency, level of compliance, or other standard.

STEC commented that, in contrast to a “one size fits all” approach to non-IOU filings, Texas EC has taken a more reasoned approach by proposing a tiered system that considers the magnitude of the possible excess revenue and the possible costs of a proceeding. STEC stated that Texas EC’s tiered approach recognizes that there is a cost of preparing and processing an interim update and that the relatively low TCOS revenue of the non-IOUs justifies a longer time between required filings. STEC stated that while it continues to question the need for a schedule for filings by non-IOUs, it is willing to accept Texas EC’s proposal if an exemption is allowed for smaller non-IOUs for both the initial and scheduled TCOS filings. STEC commented that even though it would be placed in the higher tier proposed by Texas EC, it has been filing interim updates on a regular basis and anticipates that it will need to continue to file interim updates periodically regardless of whether the commission establishes a schedule.

STEC further commented that although Texas EC did not suggest a specific threshold that would apply to determine which entities are subject to an exemption, the exemption should recognize the small impact that the smaller cooperatives have on the total ERCOT TCOS. STEC stated that the total average four coincident peak (4CP) for 2017 was 67,273,101.1 kilowatts (kW), and that in order to reduce the total postage stamp rate by \$0.10 per kW, the commission would need to reduce TCOS by \$6,727,310. STEC suggested that an exemption based upon an individual cooperative having a total TCOS of less than \$7 million would be an appropriate threshold, and that recognizing that a TCOS review would not eliminate the total amount of a cooperative’s TCOS,

the ultimate result of the proceeding would be less than a \$0.10 decrease in the TCOS rate (unless the cooperative justified an increase in its rate). STEC stated its belief that this threshold is reasonable and appropriate and that it would allow the commission to focus its TCOS reviews on the larger entities that have a greater impact on TCOS, and that such a threshold would also relieve the commission and the cooperatives of the costs imposed by unneeded reviews implemented through an arbitrary schedule.

STEC also pointed out that the commission has recognized exemptions in other instances in its rules; for example, the commission's market power rule (16 Texas Administrative Code (TAC) §25.504) establishes an exemption for generation entities by providing that "a single generation entity that controls less than 5% of the installed generation capacity in ERCOT...is deemed not to have ERCOT-wide market power." STEC noted that Texas EC recognized that there should be an exemption from periodic TCOS filings for small non-IOUs, and that under Texas EC's proposal, although the small non-IOUs would not be subject to a schedule, they would still be subject to the commission's authority and any individual non-IOU could be required to make an interim update filing if the commission felt that the particular non-IOU was overearning. STEC asserted that this would enable the commission to continue to review all non-IOUs while not imposing additional costs and workload on both non-IOUs and the commission.

ETEC expressed agreement with other commenters recommending that the commission consider the significant differences in size of the non-IOUs when crafting the proposed rule. ETEC stated that its TCOS from the most recent wholesale transmission matrix (Docket No. 47777) was \$73,207, and, based on this figure, the \$122,000 amount of rate case expense as estimated by Texas

EC for a comprehensive TCOS review and the estimated range of \$20,000 to 30,000 for an interim TCOS update may be a disproportionate burden on both ETEC and the ERCOT market, particularly if such expenses are required every few years. ETEC stated that because non-IOUs vary significantly in size, a more tailored rule would ensure greater efficiency for both the affected non-IOUs as well as the ERCOT market. ETEC also stated that it supports a *de minimis* exception for the smallest non-IOUs, and that the exception should balance the expected costs with the expected benefits of periodic TCOS filings. ETEC stated that these recommendations would allow the commission to review 95% of the total ERCOT TCOS while avoiding an unnecessarily frequent review of applications by 34 non-IOUs (ETEC commented that these 34 entities make up 69% of the total number of transmission service providers). ETEC commented that, all else being equal, the commission could receive 95% of the benefit by incurring 31% of the cost; stated another way, the commission would have to more than triple the number of applications it reviews—increasing from 15 to 49—and thus triple the cost in order to obtain the remaining 5% of benefit.

TIEC commented that it welcomes the creation of a requirement for non-IOUs in ERCOT to file regular interim TCOS updates. TIEC stated that because transmission costs are uplifted and socialized among loads within ERCOT, it is imperative to have cost reductions (such as in depreciation expense) timely reflected in wholesale transmission rates. TIEC commented that more frequent updates will help ensure that ratepayers are not overpaying for transmission service, and TIEC expressed its belief that the commission should modify the published rule by reducing the time between required interim TCOS updates from 48 months to 24 months. TIEC argued that a 24-month requirement is not a significant burden for either the transmission service providers or

the commission, given that interim TCOS filings consist of a five-schedule Excel spreadsheet with information on current rate base and depreciation levels. TIEC also commented that the filings are eligible for informal disposition under (Procedural Rule) 16 TAC § 22.35(b)(1) and can be resolved in a matter of weeks after the commission staff reviews the application to ensure that it is not materially deficient. TIEC commented that interim TCOS updates thus require minimal resources to execute and are typically not controversial; TIEC additionally asserted that an interim TCOS proceeding is much less involved than a comprehensive TCOS rate case and does not require outside consultants, lawyers, or significant rate case expenses. TIEC commented that, given the relatively minimal time and resources required to file and process interim TCOS updates, the benefits of more timely filings far outweigh the administrative costs and, as such, the commission should reduce the time period for the filing requirement from 48 months to 24 months.

TIEC further contended that the commission should not exempt any class of non-IOUs from this rule. TIEC commented that while some parties argue that the commission should not require transmission service providers with small amounts in TCOS to file regular updates because the cost of those filings could outweigh the potential savings to ratepayers, the relatively small size of a transmission service provider is not an excuse for failing to appropriately reflect changes in its cost of service in TCOS rates that are socialized to other ERCOT customers. TIEC stated that all transmission service providers should be prepared to comply with reasonable TCOS update requirements, and that creating an exemption for tiny non-IOUs would undermine the rule's basic purpose, which is to satisfy the commission's obligation to ensure that all transmission service providers' rates remain just and reasonable over time. TIEC commented that relying on the earnings monitoring process or some undefined "cost benefit criteria" to determine when small

transmission service providers must file interim updates will leave those transmission service providers in exactly the position they were in before this rulemaking, and that although the impact of allowing individual small transmission service providers to go long periods of time without updating their rates may be small, in the aggregate they contribute to inflated TCOS charges throughout ERCOT and are worthy of being addressed. TIEC also asserted that the commission should reject claims that filing an interim TCOS update would pose a burden for the smallest transmission service providers, stating that if a transmission service provider is not financially or technically capable of filing for an interim TCOS update every few years, then the commission should question whether that entity can satisfy its obligation to provide safe and reliable transmission service.

TIEC further commented that the commission should reject Texas EC's request to allow non-IOWs with as much as \$50 million in TCOS to go up to eight years between TCOS updates, and that Texas EC attempts to justify this proposal by speculating that the cost of requiring these transmission service providers (most of which are electric cooperatives) to file regular TCOS updates could outweigh the benefits to ratepayers. TIEC contended that Texas EC's own comments demonstrate that the cost of regular interim TCOS updates is minimal and dwarfed by the amount that ratepayers stand to save. TIEC questioned whether Texas EC's highest estimate for the cost of filing an interim TCOS update of \$30,000 is a reasonable estimate; TIEC stated that, even using Texas EC's number, filing regular interim TCOS updates would cost a non-IOW just \$15,000 per year under TIEC's proposed 24-month schedule for interim updates, or \$7,500 per year under the published rule. TIEC contended that even if the commission required each of the 33 non-IOWs with less than \$50 million in TCOS to file an interim update every two years, the

total cost of those filings would be approximately one quarter of one percent (or 0.25%) of the nearly \$200 million that those 33 entities collectively have in TCOS. TIEC argued that under its proposal to require an interim update every 24 months, the filings for non-IOUs with less than \$50 million in TCOS will pay for themselves if they result in even a 0.26% reduction in those entities' TCOS, and it is reasonable to expect that adjusting for depreciation alone will reduce transmission rates by an order of magnitude more than that. TIEC contended that it will therefore be cost effective in the aggregate and in the public interest to require non-IOUs with less than \$50 million in TCOS to file interim TCOS updates every two years, as TIEC proposed, and that there is no reason to adopt Texas EC's tiered approach.

Brazos expressed its disagreement with the points raised by TIEC and commented that TIEC offered no data to support its proposition that there is no burden to file interim TCOS proceedings. Brazos and TPPA noted that, based on the data presented by Texas EC in its comments, many small non-IOU transmission service providers could incur costs to prepare and file an interim TCOS update that would equal or exceed any change in the entity's TCOS revenue requirement. Texas EC commented that, as an example, Southwest Texas Electric Cooperative, Inc. has a TCOS amount of \$21,471, and that it would not be surprising if the cost of an interim TCOS case equaled or exceeded that amount. Texas EC further stated that if a non-IOU is to recover its rate case expenses, it will have to initiate a comprehensive TCOS review—a type of proceeding that, as Texas EC pointed out in its initial comments, would add, on average, approximately \$122,000 of rate case expenses. Texas EC contended that it is difficult to comprehend how the costs associated with filing an interim update can be considered insignificant, as asserted by TIEC, when the cost of the filing may exceed the utility's annual TCOS recovery.

TPPA stated that it is important to note that the part of the filing process that involves considerable time and expense is the generation of the information and data that go into the Excel spreadsheets. TPPA argued that TIEC is therefore incorrect when it asserts that these filings “do not involve litigation or require a transmission service provider to retain additional consultants or attorneys.” TPPA agreed with Texas EC’s comment that interim updates “almost always involve hiring outside lawyers and consultants to prepare and prosecute the filing.” TPPA stated that its member systems also report that the actions of preparing and processing TCOS filings at the commission often, if not always, involve outside consultants and attorneys, and that this is certainly the case for non-IOUs below Texas EC’s proposed \$50 million TCOS threshold for less frequent rate filings. TPPA commented that a standing rate department and a standing group of in-house lawyers would be cost-prohibitive for medium and small non-IOUs, and that TIEC’s proposal to reduce the filing timeline between interim updates to 24 months would result in unnecessary rate case expenses and strain the resources of the commission, with little or no benefit to customers. TPPA further commented that TIEC’s recommendation for a 24-month schedule regardless of the transmission service provider’s size would result in nearly continuous preparation and processing of TCOS proceedings.

STEC commented that the only reason TIEC offers for its expedited schedule is that interim updates are more limited in scope than a full rate case and “do not involve litigation or require a transmission service provider to retain additional consultants or attorneys.” STEC noted that, as an example, TIEC cited to Docket No. 47591, a 2017 interim update by Sharyland Utilities, L.P., and noted that the filing was only 83 pages long. STEC stated that there is no indication, however,

of the costs involved in preparing and processing the interim update, and that even a cursory review of Docket No. 47591 reveals that the application was filed by an outside law firm and supported by pre-filed testimony from outside consultants. STEC argued that the fact that the application consisted of “only” 83 pages does not demonstrate that attorneys and consultants are not necessary, and that the presence of the outside attorneys and consultants who are familiar with commission proceedings may have helped to focus the presentation on only those matters relevant to the commission’s review. STEC stated that, accordingly, TIEC’s reference to Docket No. 47591 does not demonstrate that outside attorneys and consultants are not needed in the preparation and processing of an interim update.

Brownsville responded to TIEC’s concern about fully depreciated assets lingering under an inappropriately higher rate by stating that, although that phenomenon may be true for some transmission service providers, many of the smaller non-IOUs have a minimal amount of transmission costs that, in the context of the wholesale market’s total transmission costs, would be nearly lost in rounding. Brownsville contended that TIEC’s concern ignores the fact that most, if not all, non-IOUs must generally increase their transmission infrastructure over time, but because the smaller non-IOUs must balance the cost of the process of seeking an update of their transmission costs against the value of recovering those transmission costs, some small non-IOUs have built transmission facilities without seeking to recover those additional costs from the wholesale market. Brownsville stated that for these smaller non-IOUs, filing a TCOS update has not been worth it, even if that meant leaving some costs unrecovered, and that with a rule requiring all non-IOUs to seek recovery of their TCOS amounts, many of the smaller non-IOUs would be forced to seek recovery of the transmission costs that they had not previously sought from the

market. Brownsville opined that this means that, contrary to TIEC's assertion that transmission rates would go down, the smaller non-IOWs would likely be filing TCOS proceedings and increasing the market's total transmission costs, albeit at a minimal level because of the small size of their TCOS amounts.

Texas EC commented that the commission should reject TIEC's recommendations because they impose unnecessary costs and are based on assertions that are plainly false. Texas EC stated that while it agrees that an interim TCOS update is generally less complex than a comprehensive TCOS proceeding, to say that an interim TCOS case does not require outside consultants, lawyers, or significant rate case expense is demonstrably false. Texas EC stated that in 2015, 2016, and the first nine months of 2017, there were 14 interim TCOS cases filed by non-IOWs, and every one of those cases involved a lawyer representing the applicant; additionally, half of those cases involved an outside consultant testifying on behalf of the applicant, and the other half relied upon in-house personnel to provide testimony or relied on both in-house personnel and outside consultants. Texas EC stated that non-IOWs have individually and collectively concluded that it is necessary to have lawyers and consultants to assist them in complying with the commission's rules and procedures, and that such a conclusion is logical, given that the commission staff participates in every case and is represented by counsel and a cadre of experts who evaluate the merits of the cases and are available to testify if they identify any issues. Texas EC argued that if a non-IOW is to be on an equal footing, it needs counsel and usually one or more consultants, and that TIEC's argument that interim filings do not require outside consultants or lawyers has no basis in fact.

Texas EC also argued that, relative to the requirements of the published rule, requiring a TCOS filing every 24 months would double the utility and commission resources expended on the reviews, and that transmission service providers are already required to file an earnings report every year. Texas EC argued that TIEC provided no evidence of commensurate benefits to justify a TCOS filing every two years, and that TIEC's recommendation should be rejected on that basis. Texas EC further commented that TIEC's proposal makes no attempt to weigh the costs against the benefits, and that a mandatory filing schedule forces all non-IOUs to incur the cost of a TCOS case; moreover, even if the case is likely to result in no change or an increase in TCOS and no benefits are achieved, the utility will still incur the cost of filing and prosecuting an interim or comprehensive TCOS case. Texas EC further argued that TIEC assumes there will be benefits because depreciation should be reducing rate base; Texas EC noted, however, that there may be a number of offsetting factors, including transmission plant additions, increased operations and maintenance expenses, and changes in authorized rate of return, and that it is not at all clear that TIEC's assumptions are correct. Texas EC commented that the TCOS amounts of some non-IOUs will increase and others will decrease as a result of TCOS reviews; moreover, the most recent earnings reports show that four electric cooperatives are actually earning a negative rate of return, and the earnings reports for 2017 also show that 20 out of the 24 electric cooperatives with ERCOT transmission assets are earning less than their authorized rate of return. Texas EC stated that it provided this information to ensure that the commission is fully aware that establishing a mandatory filing schedule may increase wholesale transmission charges in ERCOT.

STEC stated that under TIEC's proposal to shorten the time period for interim updates from 48 months to 24 months and to expedite the implementation period from five years to two years, non-

IOUs would be subject to more frequent reviews of their TCOS rates than the commission's recently adopted scheduling rule requires for IOU transmission providers. STEC contended that TIEC's comments totally ignore the relative impact of non-IOUs versus IOUs on the level of TCOS charged in ERCOT, given that the cooperatives, in total, have a TCOS amount of \$239,349,530, or less than 7% of the \$3,584,848,889 TCOS amount included in the transmission matrix in Docket No. 47777. STEC additionally noted that the calculated postage stamp rate based on the cooperatives' TCOS is \$3.353979 per kW, also less than 7% of the \$53.582825 postage stamp rate calculated in Docket No. 47777. Based on this information, STEC pointed out that more than \$50.00 of the total postage stamp rate is caused by entities other than cooperatives, and that TIEC offers no reasoned justification for subjecting the \$3.35 of TCOS caused by the cooperatives to more frequent scrutiny than the more than \$50.00 of TCOS caused by all other entities.

STEC further responded to TIEC's comments concerning the fact that some non-IOUs have not had a TCOS review for many years. STEC expressed its disagreement with the need for an initial filing by those non-IOUs and stated that TIEC's comments fail to consider the relative impact that those transmission service providers have upon TCOS amounts. STEC used information from Docket No. 47777 and provided data on the cooperatives that have not updated their TCOS since prior to January 1, 2012, and stated that, looking solely at those cooperatives, their total TCOS is \$17,639,502, or less than 0.5% of the total TCOS found by the commission in Docket No. 47777. STEC stated that the total postage stamp rate for these cooperatives would be \$0.182047 per kW, less than 0.4% of the \$53.582825 postage stamp rate calculated in Docket No. 47777 and less than half of the \$38,890,476 TCOS increase recently granted in November 2017 to CenterPoint Energy

Houston Electric in Docket No. 47610. STEC also noted that the recent transmission matrix docket's rates for the cooperatives are very low, none higher than \$0.05 per kW, while the IOUs all have rates exceeding \$1.00 per kW, topped by the \$12.889478 per kW of Oncor Electric Delivery Company. STEC commented that, in view of these differences between these cooperatives and the much larger IOUs, it is more reasonable to focus the commission's resources—and the transmission service providers' resources—on the larger IOUs rather than these 17 cooperatives that have minimal impact on TCOS. STEC argued that there is no justification for requiring these 17 cooperatives to file separate TCOS proceedings just to determine if the postage stamp rate could be reduced by some fraction of the total \$0.18 per kW that these cooperatives cumulatively add to TCOS (approximately \$0.01 per kW per cooperative TCOS proceeding).

STEC also stated that TIEC's comments imply that some cooperatives have not been subject to review by the commission for many years, but that this is not correct. STEC noted that cooperatives, like all other transmission service providers, are subject to an annual earnings review by commission staff to determine whether any of the entities should be required to file a proceeding for a more in-depth review, and that, for each year since 2006, cooperatives that provide transmission service have filed their earnings monitoring reports for review by the commission staff. STEC commented that since 2006, the commission staff has either been silent on the results of its review or has expressly concluded that no further action was required for the cooperatives and other non-IOUs. STEC stated that for any cooperative that did not file an interim TCOS update during this period, the cooperative had access to the same information as the commission staff and

likely reached the same conclusion as the staff that, after considering the revenue involved in comparison to the potential costs of a proceeding, no update was necessary.

STEC further stated that although the commission staff has not recommended a filing by a cooperative in recent years, it has done so in the past. STEC noted that as part of the review of the 2001 earnings reports, the commission staff identified three cooperatives (Grayson-Collin Electric Cooperative, San Miguel Electric Cooperative, and Southwest Texas Electric Cooperative) and one MOU (Greenville Electric Utility System) as potentially overearning, and that the commission staff intended to initiate rate cases against each of these non-IOU entities to reduce their then-current TCOS rates. STEC stated that the commission staff indicated that reducing the cooperatives' rates would result in approximately a one million dollar reduction in TCOS, but that these cases resulted in a total reduction of only \$46,399, rather than the \$1,060,804 estimated by staff. STEC suggested that the commission's experience in those dockets probably influenced the commission staff's actions in the recent earnings reviews noted previously, in which the staff recommended no further action in "consideration of the relative magnitude of possible excess revenue in comparison to the potential costs of comprehensive rate proceedings."

LCRA TSC stated that it supports the published rule as a reasonable means of accomplishing the goal of establishing the regular filing and the review of non-IOU rate updates, and that the published rule balances the comments and concerns that LCRA TSC and other parties expressed in previous projects regarding the provisions of 16 TAC §25.247.

Commission Response

The majority of parties' comments in this project focus on the central issue of whether an all-inclusive, uniform filing schedule is in the public interest from the standpoint of overall costs and benefits. Historically, neither statutory provisions nor commission rules have required non-IOUs to make periodic rate-review filings on a specified schedule. Because the regulatory environment has evolved, however, and given that over two decades have passed since some non-IOUs under the commission's rate-setting authority have undergone any type of update with regard to their costs of providing wholesale transmission service in ERCOT, the commission concludes that establishing a scheduling framework for the periodic review of a non-IOU's rates for transmission service is reasonable and consistent with the statutory directive of ensuring just and reasonable rates. As discussed in greater detail below, after consideration of the views expressed by the majority of the commenting parties, the commission in its adoption of the rule retains the basic structure of the published rule, but revises the uniform nature of the published rule's scheduling provisions to take into account the significant differences in size between the various non-IOUs.

As a preliminary matter, the commission agrees with the comments of many of the parties that, for small non-IOUs, the cost of filing a rate proceeding is one of the most important factors in the overall assessment of whether a given framework for periodic filing requirements is beneficial and cost-effective. In addressing this basic point, Texas EC, for example, commented that the cost to a non-IOU of filing a comprehensive rate case is approximately \$122,000; Texas EC additionally estimated that the cost of filing a more limited-scope interim TCOS proceeding is in the range of \$20,000 to \$30,000. Related to this

issue, TPPA stated that, for the preparation of interim TCOS filings, the key factor that involves time and incurs expense is the basic process of generating the information and data that go into the Excel spreadsheets.

With regard to the parties' comments addressing these points, the commission finds noteworthy the fact that much of the information that each non-IOU provides annually in its earnings report is the very same information required for part of the filing of an interim TCOS update. For example, the schedules in the commission's filing form for non-IOU earnings reports require the reporting entity to provide various data from its last comprehensive rate proceeding—data such as the amounts of various types of expenses (e.g., operations and maintenance expense, depreciation expense, revenue-related tax expense, etc.) and the non-IOU's authorized rate of return. The commission observes that, for all of these items, the amounts from a non-IOU's last comprehensive rate case are not updated in an interim TCOS update; they are part of the transmission revenue requirement that the non-IOU reflects in its current rates and would *continue to reflect* after a commission order in an interim TCOS proceeding. Thus, for these components of a non-IOU's authorized revenue requirement, there should be no need for the non-IOU in its preparation of an interim TCOS update to incur costs for developing new information or, for that matter, for researching old information. This is true even for those non-IOUs whose rates have not changed in over 20 years. With regard to an interim TCOS update's most important item—the amount of rate base, which consists primarily of plant in service and other invested capital—the amount that a non-IOU reports for rate base in its yearly earnings report would be generally consistent with the amount it would seek in a rate proceeding, regardless of

whether that proceeding was a comprehensive rate review or an interim TCOS update. Moreover, some information, even though not explicitly provided in the earnings-report form, can be derived from the reported data; for example, the rate of depreciation that a non-IOU applies to its transmission investments can be derived from other information in the earnings report.

Accordingly, the commission finds it reasonable to conclude that a substantial part of the work requirements—and therefore the related costs—for a non-IOU's interim TCOS update are not materially different or substantially greater incrementally than what the non-IOU is already bearing for the preparation of its annual earnings report, given that much of the required information is the same. The commission therefore does not find compelling certain parties' comments that requirements for the filing by non-IOUs of periodic interim TCOS updates would be definitively cost-prohibitive or cost-ineffective.

Nonetheless, in establishing a periodic filing schedule for non-IOUs, the commission agrees in principle with the majority of commenting parties that it is prudent to consider the size of a non-IOU's TCOS amount both on an absolute basis as well as relative to the statewide total, and to incorporate into the rule the necessary provisions to reflect such consideration. Commenting parties suggested a number of alternatives with regard to establishing an appropriate threshold below which smaller entities would have different filing requirements; generally, these alternatives rely on some comparison of the TCOS amount for a given provider relative to the total statewide TCOS amount, with the comparison expressed either in percentage terms or in dollar terms. As a general matter, the commission believes that a

size threshold based on percentages is preferable to one based on nominal dollars, given that the relative amount of a dollar-based threshold could change materially over time as costs change in the ERCOT transmission grid.

Accordingly, consistent with the central recommendation made by the majority of the commenting parties, the commission in its adopted rule revises the requirements for ongoing, periodic rate-case filings by establishing a size threshold of one percent of the amount of total statewide transmission costs, as determined each year in the commission's transmission "matrix" proceeding that establishes transmission costs in ERCOT. The adopted rule language provides that, for non-IOUs above this threshold, the ongoing, periodic filing requirement is every 48 months, and for non-IOUs below this threshold, the filing requirement is every 96 months. This fundamental modification to the published rule incorporates a variation of Texas EC's recommended tier-based approach along with a threshold level recommended by Brownsville, and takes into account the concerns expressed by a majority of the commenting parties regarding the relative costs and benefits of rate proceedings by the smaller non-IOUs, while still establishing a definitive schedule for the commission's periodic review of the rates of each non-IOU in ERCOT.

With regard to the one-percent threshold, the commission concludes that such a level is a reasonable balance of a number of different considerations that take into account not only the effects of the size differences between non-IOUs and the amounts of each non-IOU's TCOS relative to the total amount of transmission costs in ERCOT, but also the related impact of the smaller non-IOUs' costs of filing a rate proceeding. For example, based on the

most recent transmission matrix docket in which the commission established the total amount of ERCOT transmission costs, only seven of the 38 non-IOUs currently exceed the one-percent threshold; viewed from another perspective, the 31 non-IOUs that do not individually meet the one-percent threshold constitute *collectively* a total of only about 3.2% of the total statewide TCOS. Hence, the commission finds that, for these smaller companies, a longer time period between required rate filings is a reasonable middle ground between the status quo (with no filing requirements at all) and a filing schedule with practical requirements reflecting the substantial size differences between the non-IOUs.

The commission additionally notes that Texas EC acknowledged in its comments that even small non-IOUs should have at least an initial update to their rates; related to this point, Texas EC went on to express its view that ongoing monitoring of the companies' earnings reports would be sufficient thereafter. The commission agrees with the first part of these comments by Texas EC—that the rule should require even small non-IOUs to file an initial update within a specified transition period; similarly, the commission agrees with TIEC's basic arguments that for the companies that have not had any kind of rate review in many years—in some cases, in over two decades—a requirement for an initial filing during a transition period is not only reasonable, it is prudent. With regard, however, to the second part of Texas EC's comments—that for time periods subsequent to the transition-period filings, the rule need not include a filing schedule for smaller non-IOUs because the commission can rely on annual earnings reports to assess filing needs—the commission finds that although for many years the earnings-report process has served its purpose well (and continues to serve its purpose well), the establishment of a periodic filing schedule can

enhance the overall regulatory oversight of non-IOUs and provide to the commission an additional tool in ensuring just and reasonable rates. The commission thus concludes that a requirement for non-IOUs to make ongoing, periodic filings—albeit for small non-IOUs, on a less frequent basis than contemplated in the published rule—is reasonable and appropriate for purposes of ensuring that wholesale transmission rates in ERCOT are accurate and up to date.

In adopting the scheduling amendments to this rule, the commission notes its authority to require, at any time, a filing by a non-IOU for either an interim or comprehensive rate proceeding. To the extent that the commission deems a non-IOU's level of earnings as unacceptable or determines on the basis of other reasons that a non-IOU should file an application for a rate review, the commission in its discretion may order a filing by the non-IOU irrespective of this rule's scheduling requirements.

Comments related primarily to the issue of filing requirements during a transition period

LCRA TSC noted that, based on the length of time that has passed since the commission approved a non-IOU's rates, subsection (e) of the published rule establishes filing requirements for non-IOUs during a five-year transition period following passage of the rule, and LCRA TSC opined that the five-year period reasonably balances the impact of the rule changes on commission staff and utility resources.

Brazos expressed its belief that there are inconsistencies in the application of subsections (d) and (e) of the proposed rule. To illustrate its assertion, Brazos provided an example in which a non-

IOU previously submitted a filing for a comprehensive update of its transmission rates and received its final order on October 1, 2015. Brazos pointed out that if the proposed rule amendments are approved by a commission order with an effective date of September 30, 2018, that non-IOU would be required to follow subsection (d)(1) for its initial filing under the proposed rule instead of subsection (e) because it had received its last commission order within 36 months of the effective date of the proposed rule, making subsection (e) not applicable. Brazos stated that, consequently, the non-IOU would be required to file an interim update on or before October 1, 2019 (the end of the 48-month period from the date of its prior commission order on October 1, 2015). Brazos commented that, in comparison, the rule application would lead to a different result if the proposed rule amendments are approved by a commission order with an effective date of October 2, 2018. Brazos stated that under this assumption, that same non-IOU would now be required to follow subsection (e) for its initial filing instead of subsection (d)(1) because the non-IOU had received its last commission order more than 36 months prior to the effective date of the rule and, as a result, the non-IOU would not be required to file its interim update required under the proposed rule until on or before October 2, 2023. Brazos commented that, as this illustration demonstrates, a two-day difference in the issuance of a commission order making the proposed rule amendments effective can result in a four-year difference in the requirement for when a non-IOU must make an interim TCOS rate filing. Brazos stated its belief that the commission does not intend for such an inconsistent and illogical result, and provided alternative rule language reflecting its comments. Brownsville stated that it does not oppose the suggestions proposed by Brazos.

Texas EC, Brazos, TPPA, and TIEC commented that a non-IOU should have the ability to choose whether to file a full TCOS case or an interim update to maintain compliance with the scheduling requirements. Texas EC stated that, as written, the published rule restricts the non-IOU to filing only interim updates, and that filing a full TCOS case would not seem to satisfy the requirements of the published rule, even though a full TCOS case provides a thorough review.

OPUC expressed its concern that if a non-IOU has a choice of filing a comprehensive TCOS proceeding or an interim update, the non-IOU would select a comprehensive filing only if it believed that an increase in its commission-approved TCOS would result from the filing. OPUC recommended that if the commission determines that non-IOUs should have the option of filing either an interim update or a comprehensive TCOS on the scheduled date, then the commission should amend the schedule to require periodic comprehensive TCOS proceedings as well, such as after every second interim update, not unlike requirements in other commission rules, such as the rule pertaining to the establishment of a distribution cost recovery factor (DCRF). OPUC stated that requiring a comprehensive TCOS filing is consistent with the commission's stated goal of ensuring that rates being charged by these non-IOUs in ERCOT are reasonable and appropriate, and that interim update filings under the commission's rules are truncated proceedings that only review certain portions of the transmission cost of service and, by design, do not address the reasonableness or necessity of an investment or any load growth that occurred. OPUC stated that including periodic comprehensive TCOS filings in the required schedule, at least for larger non-IOUs, would provide a means for addressing these issues.

TIEC stated that the commission should shorten the transition periods in subsection (e) of the published rule, which, as proposed, would unnecessarily delay the benefits of the rule and allow many non-IOUs to continue collecting unjust and unreasonable rates based on outdated revenue requirements. TIEC stated that, in many cases, these stale revenue requirements do not account for years or even decades of depreciation, and that given the ministerial nature of TCOS update filings, there is no justification for including transition periods that would significantly extend the time that the non-IOUs are allowed to charge their current rates. TIEC provided an example that assumed if this rule goes into effect at the end of this year, a non-IOU that resolved its last TCOS filing in January of 2013 would have until the end of 2023, or a ten-year gap, before it is required to make its first TCOS filing under this rule; even worse, a non-IOU that resolved its last TCOS case in April of 2011 would have until the end of 2022, or nearly eleven years between filings, and a non-IOU that resolved its last case in January of 2006 would have until the end of 2021, or 16 years. TIEC asserted that, given the amount of time that these entities have already gone without updating their TCOS rates, these transition periods are too long and should be shortened.

TIEC submitted that the commission should simplify and reduce the proposed transition period by: (1) requiring all non-IOUs that last received a commission order in a rate proceeding under 16 TAC § 25.192 before January 1, 2009, to make an interim TCOS filing within one year of the effective date of this rule; and (2) requiring all other non-IOUs to file an interim update within two years of the effective date of the rule.

LCRA TSC commented that TIEC's recommended change in the transition period from 48 to 24 months could initially result in more than 35 non-IOU rate proceedings being processed within a

two-year period (at the same time when another six IOU comprehensive rate proceedings would also be processed); additionally, other rate applications might be filed voluntarily, outside of the schedules implemented by the rule, by both IOUs and non-IOUs during the same period. LCRA TSC stated that TIEC's suggested two-year transition period and 24-month filing frequency thereafter both appear to disregard the demands that will be placed on commission and market participant resources, without any concomitant advancement of the goals the commission has identified to be achieved through this rulemaking project. LCRA TSC commented that such a burden on commission and market participant resources is unreasonable and unnecessary, and that the commission should reject TIEC's recommendation.

Commission Response

The commission agrees with TIEC that, under the provisions of the published rule, the transition periods for some of the non-IOUs are too long and should be shortened. Allowing for time periods of up to 16 years between rate orders for a non-IOU perpetuates issues related to outdated revenue requirements and is contrary to the basic objectives of the rule. Thus, consistent with TIEC's recommendations, the commission adopts modifications to the filing schedule during the transition period by requiring non-IOUs to make their initial filings over a two-year period rather than the published rule's five-year period. Additionally, the adopted language specifies that subsection (e) of the rule does not apply to non-IOUs for which the commission has issued orders for changes to transmission rates subsequent to January 1, 2017, or to non-IOUs with rate proceedings pending at the time the rule becomes effective. For these companies, the next TCOS filing will be either 48 months or 96 months from the last change in transmission rates, depending upon the size of the non-IOU. These

provisions reduce the number of non-IOUs required to make filings in the 24-month transition period by approximately one third—a result that addresses LCRA TSC’s concerns regarding the possibility of more than 35 non-IOU rate proceedings in a two-year period. Further regarding these concerns as expressed by LCRA TSC, the commission notes that, given the comparatively small size of many of the non-IOUs, the processing of these transition period filings should not unduly affect commission and stakeholder resources.

The commission also modifies the rule language to address the timing concerns expressed by Brazos with regard to possible “inconsistencies” in the application of the rule. The adopted rule language clarifies that the ongoing, periodic filing requirement of 48 months or 96 months under subsection (d) applies after a non-IOU makes its initial transition-period filing as required by the provisions of subsection (e). The commission’s modifications in the adopted rule resolve the potential problems voiced by Brazos by ensuring that the filing requirements during the transition period are addressed before the ongoing, periodic filing requirements begin.

With regard to the ongoing filing requirement, the commission agrees with parties’ comments that the rule should allow a non-IOU to choose whether to file a comprehensive TCOS proceeding or an interim update, and the commission in its adoption of the rule accordingly modifies the relevant language. The commission declines, however, to revise the rule to require periodic comprehensive filings as OPUC suggested. The commission’s published rule did not propose a requirement for comprehensive rate-case filings, and the commission in its adopted rule again declines to include such a requirement. OPUC cited

other commission rules such as the DCRF rule that apply to investor-owned utilities and require periodic comprehensive rate proceedings after a given number of filings to recover specific types of cost (such as investments for distribution infrastructure). The commission notes, however, that the scale of costs involved in such IOU rate proceedings is far larger than in the majority of non-IOU rate proceedings, and for the comparatively small number of non-IOUs that have amounts of infrastructure investment comparable to those of IOUs, the commission concludes that earnings-report reviews, as the commission discussed previously, can address the need for rate-case filings more efficiently than a rule that would require periodic comprehensive TCOS filings by all non-IOUs.

In this rulemaking the commission fully considered all comments submitted on record in the project, including any not specifically referenced herein. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted under Public Utility Regulatory Act, Tex. Util. Code Ann. §14.001 (West 2007 and Supp. 2017) (PURA), which grants the commission authority to regulate and supervise the business of each public utility within its jurisdiction including those powers specifically designated or implied that are necessary and convenient to exercise such authority, PURA §14.002, which provides the 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 the commission to price wholesale transmission services within ERCOT based on the postage stamp method and further grants the commission authority to approve wholesale transmission rates, including those of non-investor-owned electric utilities.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002 and 35.004.

§25.247. Rate Review Schedule.

- (a) **Application.** This section applies to investor-owned electric utilities and non-investor-owned transmission service providers operating inside the Electric Reliability Council of Texas (ERCOT).

- (b) **Filing requirements for investor-owned electric utilities.**
 - (1) Each investor-owned electric utility in the ERCOT region must file for a comprehensive rate review within 48 months of the order setting rates in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case. For an investor-owned transmission and distribution utility, the filing must include information necessary for the review of both transmission and distribution rates.
 - (2) On a year-to-year basis, the commission shall issue an order extending the filing requirements under paragraph (1) of this subsection by one year if the following conditions are met:
 - (A) for an investor-owned electric utility providing transmission-only service, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to

conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each investor-owned transmission-only utility operating in ERCOT; or

- (B) for an investor-owned transmission and distribution utility, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each investor-owned transmission and distribution utility operating in ERCOT with at least 175,000 metered customers.
- (3) The commission may extend the scheduled filing deadline under paragraphs (1) and (2) of this subsection for good cause shown or because of resource constraints of the commission.
- (4) An investor-owned electric utility qualifying for an extension under paragraph (2) of this subsection shall submit notice in the same project as the filing of its most recent earnings monitoring report at least 180 days before the fourth anniversary of the order in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case.

- (5) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in an investor-owned electric utility's earnings monitoring report.

(c) **Transition issues for investor-owned electric utilities.**

- (1) If an investor-owned electric utility has a comprehensive rate proceeding pending on the effective date of this rule, the electric utility is required to file, after the commission's final order in that pending proceeding, a comprehensive rate proceeding in accordance with subsection (b) of this section. If the pending proceeding is withdrawn, dismissed, or otherwise resolved without a final order, the investor-owned electric utility shall be subject to the transition timelines in paragraph (2) of this subsection unless the commission orders otherwise.
- (2) All investor-owned electric utilities shall make their initial filings under subsection (b) of this section on or before the later of:
- (A) 48 months from the order in the investor-owned electric utility's last comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case; or
- (B) the following dates:

Texas-New Mexico Power Company	August 31, 2018
AEP Texas, Inc.	May 1, 2019

CenterPoint Energy Houston Electric, LLC	July 1, 2019
Wind Energy Transmission Texas, LLC	October 1, 2019
Cross Texas Transmission, LLC	February 3, 2020
Sharyland Utilities, LP and Sharyland Distribution & Transmission Services, LLC	July 1, 2020
Lone Star Transmission, LLC	September 1, 2020
Electric Transmission Texas, LLC	February 1, 2021
Oncor Electric Delivery Company, LLC	October 1, 2021

(d) **Filing requirements for non-investor-owned transmission service providers.**

(1) After complying with applicable provisions under subsection (e) of this section, and on an ongoing basis thereafter, each non-investor-owned transmission service provider is required to submit a complete application for either a comprehensive transmission cost of service review under §25.192(g) of this title (relating to Transmission Service Rates) or an interim update under §25.192(h) of this title within:

(a) 48 months of the date of the provider's order for its most recently approved change in transmission service rates under §25.192 of this title if the provider's approved wholesale transmission service revenue requirement is equal to or greater than one percent of the amount of the total ERCOT wholesale transmission charges determined by the commission in the most recent annual update, as of the date of the provider's order, of the ERCOT four coincident peak (4CP) demand in accordance with §25.192(b) of this title; or

- (b) 96 months of the date of the provider's order for its most recently approved change in transmission service rates under §25.192 of this title if the provider's approved wholesale transmission service revenue requirement is less than one percent of the amount of the total ERCOT wholesale transmission charges determined by the commission in the most recent annual update, as of the date of the provider's order, of the ERCOT four coincident peak (4CP) demand in accordance with §25.192(b) of this title.
- (2) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in a non-investor-owned transmission service provider's earnings monitoring report.
- (e) **Transition period for filings by non-investor-owned transmission service providers.** As of the effective date of this subsection, for a non-investor-owned transmission service provider that has not since January 1, 2017, had a commission-approved change to its transmission service rates under §25.192 of this title or does not have a rate proceeding pending under §25.192 of this title, the following deadlines apply for submitting a complete application for either a comprehensive transmission cost of service review under §25.192(g) of this title or a complete application for an interim update under §25.192(h) of this title:

Date of Commission Order in Non-Investor-Owned Transmission Service Provider's Last Rate Change under §25.192	Filing Deadline for Rate Proceeding under §25.192
Prior to January 1, 2009	One year after effective date of this rule
January 1, 2009 to January 1, 2017	Two years after effective date of this rule

This agency hereby certifies that the rule, as amended, 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 amendments to §25.247, relating to rate review schedule, are hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of November 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER