

PROJECT NO. 48377

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| 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 | § | |

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO § 25.247
AS APPROVED AT THE JUNE 28, 2018 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.247, relating to rate review schedule. The proposed amendment will establish a schedule requiring periodic filings for rate proceedings by non-investor-owned transmission service providers operating within the Electric Reliability Council of Texas (ERCOT). Project Number 48377 is assigned to this proceeding.

Darryl Tietjen, Director of the Rate Regulation 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 amendment.

Mr. Tietjen has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of adopting the amendment will be to ensure regularly scheduled commission reviews of the reasonableness and appropriateness of rates charged by non-investor-owned transmission service providers operating in ERCOT.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Tietjen 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 the Administrative Procedure Act (APA), Tex. Gov't Code Ann. §2001.022 (West 2016).

Mr. Tietjen has also determined that for each year of the first five years that the proposed amendment is in effect, the following statements will apply: (1) the proposed amendment will not create or eliminate a government program; (2) implementation of the proposed amendment will not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed amendment will not require an increase or decrease in fees paid to the agency; (5) the proposed amendment will create a new regulation; (6) the proposed amendment will expand an existing regulation; (7) the proposed amendment will not increase the number of individuals subject to the proposed rule's applicability; and (8) the proposed amendment will not positively or adversely affect this state's economy.

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with the APA §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 18, 2018. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed amendment may be filed with the Commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 30 days after publication. Sixteen copies of such comments are required by 16 TAC §22.71(c) to be submitted when filed. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 48377.

This amendment is proposed under Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §35.004, which 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 §§14.002 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 only to an electric utility, other than a river authority, that operates solely 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 ~~a~~ 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 a-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) (No change.)
- (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 ~~subject to subsection (a) of this section~~ 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 ~~subject to subsection (a) of this section~~ 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) (No change.)

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

(1) Except as provided for under subsection (e) of this section, each non-investor-owned transmission service provider is required to submit a complete application

for an interim update under §25.192(h) of this title (relating to Transmission Service Rates) within 48 months of its most recently approved change in transmission service rates under §25.192 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 issues for non-investor-owned transmission service providers.** For a non-investor-owned transmission service provider that has not had a commission-approved change to its transmission service rates under §25.192 of this title within 36 months prior to the effective date of this rule, the following deadlines apply for submitting an initial application for an interim update under §25.192(h) of this title:

| <u>Date of Commission Order in Non-Investor-Owned Transmission Service Provider's Last Rate Change under §25.192</u> | <u>Filing Deadline for Interim Update under §25.192(h)</u> |
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| <u>Prior to January 1, 1999</u> | <u>One year after effective date of this rule</u> |
| <u>January 1, 1999 to January 1, 2006</u> | <u>Two years after effective date of this rule</u> |
| <u>January 2, 2006 to March 30, 2011</u> | <u>Three years after effective date of this rule</u> |
| <u>April 1, 2011 to January 1, 2013</u> | <u>Four years after effective date of this rule</u> |
| <u>January 2, 2013 to 36 months before effective date of this rule</u> | <u>Five years after effective date of this rule</u> |

This agency 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 29th DAY OF JUNE 2018 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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