

PROJECT NO. 50031

RULEMAKING RELATED TO	§	PUBLIC UTILITY COMMISSION
GENERATION COST RECOVERY	§	
RIDER (GCRR)	§	OF TEXAS

**ORDER ADOPTING NEW §25.248
AS APPROVED AT THE JULY 2, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.248, relating to Generation Cost Recovery Rider (GCRR), with changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 Tex. Reg. 1527). The new rule implements the provisions of Section Nos. 4 and 5 of House Bill No. 1397 of the 86th Legislature, Regular Session in 2019 (HB 1397). The new rule allows for a utility that operates solely outside of the Electric Reliability Council of Texas (ERCOT) to apply for a Generation Cost Recovery Rider (GCRR) to recover certain generation invested capital for a discrete generation facility. Project Number 50031 is assigned to this proceeding.

The commission received written comments and reply comments on the proposed rule from El Paso Electric Company (El Paso), Entergy Texas, Inc. (Entergy), Southwestern Electric Power Company (SWEPCO), and Southwestern Public Service Company (SPS), Office of Public Utility Counsel (OPUC), and Texas Industrial Energy Consumers (TIEC). No party requested a public hearing.

General comments on the proposed rule:

Support for the proposed rule

SPS and El Paso commented that they support the proposed rule as drafted.

*Comments on specific sections of the proposed rule:**Subsection (b) Definitions**Define “GCRR test year”*

TIEC commented that the rule should define the term “GCRR test year” and that other sections of the draft rule might be dependent upon such a definition. OPUC replied that, if the definition of the term “GCRR test year” provides more clarity and avoids confusion, then it would support inclusion of the definition.

Entergy and SWEPCO replied that such a definition is unnecessary. SWEPCO commented that it was not certain what sections TIEC thought were dependent, and it disputed that any section of the proposed rule depends upon the definition.

Commission Response

Because the statute provides for recovery of investment only for a discrete facility and not for a broad category of investment, the commission agrees with Entergy and SWEPCO that defining “GCRR test year” is unnecessary and retains the rule language as proposed.

Define “Commercial operation date”

In order to avoid confusion about when generation invested capital is placed into service, TIEC commented that the rule should clarify, in the definition of “Generation invested capital” in proposed paragraph (b)(2), that a generation facility begins providing service to

customers on its commercial operation date. OPUC similarly commented that the rule should define “commercial operation date” in subsection (b), and that the commercial operation date would be the effective date of the GCRR. OPUC also suggested that a utility should be required to provide proof of commercial operation of the new generation facility.

SWEPCO disagreed with the need for defining the term “commercial operation date” and rejected OPUC’s expanded criteria for determining the effective date. SWEPCO argued that the in-service date for a generation facility should be determined according to the facts and circumstances surrounding the facility, and SWEPCO used as an example the determination of the in-service date for its Turk plant in Docket No. 40443, *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*.

Commission Response

The commission disagrees with TIEC’s and OPUC’s suggestion that defining “commercial operation date” as the date on which the facility begins providing service to customers is necessary or clarifying. The commission notes that any disputes about what date the facility begins providing service can be addressed in the reconciliation of the GCRR, and the commission retains the rule language as proposed.

Subsection (b)(2) Generation invested capital

Entergy commented that the definition of “Generation invested capital” in (b)(2) should be expanded to include, in addition to the expenses in the FERC accounts specified in the

proposed rule, other “accounts with similar contents or amounts functionalized to the generation function.” Entergy argued that there are other FERC accounts that may include invested costs from certain financing arrangements. Entergy noted that its suggested language mirrors other commission rule language in the transmission cost of service (TCOS) rule in 16 Texas Administrative Code (TAC) §25.192(c). Entergy specifically requested the inclusion of FERC Account 114 (acquisition adjustment).

TIEC and OPUC opposed Entergy’s suggested language as overly broad and asserted that it could easily be interpreted to include items that are not properly part of investment in a discrete power generation facility. TIEC proposed language to allow a utility to apply for a good cause exception to include in generation invested capital the amounts in other FERC accounts that are properly functionalized as generation plant.

Commission Response

The commission disagrees with Entergy’s suggestion to expand the definition of “generation invested capital” because it goes beyond the provisions of the statute. The expansion of the definition would add unnecessary complexity and lead to less streamlined GRR proceedings, defeating the purpose of a simple interim cost recovery mechanism. Some requested accounts fall outside of the FERC accounts for generation assets, and the treatment of amounts in those accounts is appropriately addressed in a utility’s comprehensive base-rate case. Accordingly, the commission retains the rule language as proposed.

*Subsection (b)(3) Power generation facility**Investment at existing generation assets*

SWEPCO stated that, under its interpretation, the statute covers generation investment broadly, including key investments at existing generation stations. SWEPCO asserted that no change to the language in the proposed rule is necessary to allow for such investment but that the rule could be modified to explicitly cover such non-routine, sizable investments. SWEPCO commented that major upgrades and retrofits would meet the statute's requirement of having a specific in-service date. SWEPCO additionally noted that safeguards against overearning exist, including the threshold to file a comprehensive base-rate case in this rule and the commission's earnings monitoring process. SWEPCO noted that it reads TIEC's initial comments to agree that the rule should apply to significant retrofits.

OPUC replied that the rule should follow the statute and apply only to new investment in a discrete facility. OPUC cited changes in drafts of the HB 1397, particularly the change from "power generation investment" to a "power generation facility," as support that the bill was not intended as a catch-all for generation cost recovery.

Commission Response

The commission disagrees with SWEPCO's assertion that the statute, as well as the proposed rule as drafted, broadly cover generation investment outside of investment in a discrete generation facility. The commission declines to modify the rule language as suggested by SWEPCO. The commission explicitly notes that the rule is intended

to apply only to investment at one or more new, discrete generation facilities or to a significant retrofit at a facility, and that the rule is not intended to update all additions to generation investment since the utility's last base-rate case or to update routine investments at existing facilities.

Clarification that rider includes only investment in a discrete facility

TIEC commented that the rule should be clarified to include in a GCRR only investment in a discrete generation facility. TIEC stated that the proposed rule's use of the phrase "or facilities" in paragraph (b)(3) could invite utilities to apply to update additions and improvements to existing facilities. TIEC commented that multiple references in the statute to a single facility, when coupled with the notion of setting rates for the date a single facility is placed in service, justify changing the language in the rule. TIEC also suggested clarifying paragraph (c)(2) to apply to additional investment in a new, discrete facility, as considered below.

OPUC agreed with TIEC in reply comments. OPUC noted that applying the rule only to investment in a discrete generation facility is fundamentally tied to the other issues raised in comments. Examples of these issues raised in initial comments were SWEPCO's recommendation that the GCRR include incremental investment at existing facilities and Entergy's call for the GCRR to include updates to operations and maintenance expense.

Entergy disagreed that TIEC's suggested clarification is necessary. Entergy noted that TIEC's suggested edit might preclude investment in two or more discrete facilities under a

single GCRR application, increasing the administrative burden unnecessarily. Entergy stated its support for the language in the proposed rule.

Commission Response

The commission agrees that the rule applies only to investment in one or more discrete generation facilities, but the commission disagrees that deleting the phrase “or facilities” is clarifying and is concerned that its deletion could prevent a GCRR from covering investment at multiple discrete facilities. The commission retains the rule language as proposed.

Subsection (b)(5) Power generation facility net invested capital

General comments on the use of revenue offsets

OPUC and TIEC commented that the rule should be modified to provide offsets to generation rate base to protect ratepayers, including offsets for a load growth adjustment, for updated accumulated depreciation and tax impacts on all generation investment, for generation plant retirements, and for terminated or expired purchased power agreements (PPAs). TIEC commented that, in general, the provisions of PURA §36.053 speak to the commission setting the overall revenues of a utility, and that the GCRR should provide offsets and consider the overall generation rates for the utility. TIEC also noted that other interim cost recovery riders—including those approved by the commission in the last ten years—provide for appropriate and reasonable offsets to the revenue requirement. TIEC argued that the legislature expected the commission to use its discretion to provide appropriate offsets in implementing the rule. TIEC quoted Senator Nichols’s discussion

of HB 1397 during the Senate floor debate, in which he stated that “[the statute] was meant to give the Public Utility Commission flexibility to make whatever adjustments they think are appropriate.” TIEC stressed that, without offsets, the GCRR would likely lead to cumulative over-recovery of the generation function. TIEC requested that the rule provide for the commission to set the interim generation revenue requirement in a GCRR proceeding by considering the total generation revenue requirement and not merely a portion of it. OPUC expressed support for TIEC’s general analysis regarding the need for appropriate offsets.

SPS opposed the offsets recommended by OPUC and TIEC because the statute does not explicitly provide for the offsets and their inclusion would likely lead to an increased possibility of a contentious, rather than streamlined, proceeding. SPS noted that OPUC and TIEC are very concerned about over-recovery, but that it believes that under-recovery is more likely. SWEPCO noted that the commission already decided not to include such offsets in the proposed rule after OPUC and TIEC made similar suggestions at the stakeholder workshop and in informal comments. SWEPCO commented that the recommended offsets were inconsistent with investment in a single facility and would likely add contention that could prevent a streamlined proceeding. Finally, SWEPCO argued that the recommended offsets would increase the chance that a utility under-recovers its generation costs.

Entergy opposed all of TIEC’s and OPUC’s recommended offsets. Entergy stated that offsets are not necessary to set just and reasonable rates, as OPUC and TIEC asserted, and

that the recommended offsets would increase the likelihood of under-recovery. Entergy commented that all the recommended offsets are not provided for in the statute and suffer from asymmetry regarding the scope and direction of the offset. Entergy stated that the proposed rule already includes offsets appropriate for the scope of the rule, and Entergy noted that other rules that have offsets similar to those recommended by OPUC and TIEC cover broader investment categories than the limited GCRR does. Entergy urged symmetry in the offsets and investment allowed in the rule.

Commission Response

The commission considers parties' general comments on revenue offsets in its responses to the specific recommended adjustments below.

Load growth adjustment

All commenters expressed strong opinions on the appropriateness of including an offsetting "load growth adjustment" to account for increases in generation-related revenue from growth in customer base, demand, and usage. Specifically, OPUC and TIEC recommended that the GCRR rule have a load growth adjustment modeled on the purchased power cost recovery factor (PCRF) rule in 16 TAC §25.238(h).

OPUC argued that, without a load growth adjustment, a utility will almost certainly over-recover its generation costs and that the purpose of the statute was to mitigate regulatory lag, not allow for over-recovery. OPUC stressed that a load growth adjustment is necessary to ensure that a GCRR proceeding does not set the overall generation revenue requirement

higher than what would result from a base-rate proceeding. OPUC commented that the statute's silence on a load growth adjustment should not preclude the commission's inclusion of one in the rule, and OPUC cited the PCRFR rule as an example. OPUC and TIEC each provided a simple example to demonstrate how, without a load growth adjustment, a utility would very likely over-recover its total generation costs. In its reply comments, OPUC noted the interwoven nature of load growth and the need for new generation facilities, and OPUC stated that the rule should acknowledge this and include a load growth adjustment.

TIEC also commented that, in order to prevent partial double-recovery of the same generation costs, the rule should include an offset to the GCRR to account for load growth related to generation invested capital already being recovered. TIEC argued that the commission has consistently netted out load growth from similar incremental additions to base revenues for transmission and distribution asset classes. Additionally, TIEC noted that the commission has included a load growth adjustment in every other rider developed in the last decade. TIEC quoted Senator Nichols's discussion of the statute, as well as citing other commission interim rules, such as those for the PCRFR and distribution cost recovery factor (DCRF) in 16 TAC §25.243(d), in supporting its recommendation to include a load growth adjustment as an offset. OPUC referred to and agreed with TIEC's quote from Senator Nichols to demonstrate the legislature's intent to allow for the commission to include a load growth adjustment in the rule.

El Paso, Entergy, SPS, and SWEPCO all expressed opposition to the inclusion of a load growth adjustment in the GCRR. SWEPCO argued against TIEC's analysis regarding legislative intent by suggesting that the same logic should motivate TIEC to argue to include operations and maintenance expenses that, like the load growth adjustment, appeared in draft bills but not in the enacted legislation. El Paso, Entergy, and SWEPCO cited a recent Entergy transmission cost recovery factor (TCRF) proceeding in which the commission did not allow a load growth adjustment despite parties' requests. SWEPCO stated that OPUC's and TIEC's recommended offsets were selective and critiqued TIEC's simplified example of purported over-recovery.

Entergy disagreed with TIEC's and OPUC's assertions that a load growth adjustment was justified based on other riders and legislative history. Entergy commented that TIEC was incorrect in its claim that every other rider in the last decade included a load growth adjustment, because TIEC failed to consider 16 TAC §25.239, a rule addressing recovery of transmission costs for electric utilities operating outside the ERCOT service territory. Entergy disputed any assertion that Entergy suggested the commission lacked authority to implement a load growth adjustment. Entergy stated its belief that the commission, in this rulemaking, should follow its recent decision in a TCRF proceeding that disallowed a load growth adjustment.

El Paso commented that it opposes the load growth adjustment and supports the proposed rule as drafted. El Paso argued that the exclusion of a load growth adjustment in the proposed rule is appropriate because, unlike the DCRF and TCRF mechanisms that deal

with an entire category of costs, the GCRR applies only to a discrete power generation facility. El Paso commented that the purpose of the legislation is to allow for a streamlined interim proceeding outside of a base-rate case, and that a load growth adjustment and other selective offsets would invite cumbersome, lengthy, and costly litigation. El Paso also disputed TIEC's analyses regarding legislative intent and other riders and urged implementation of the proposed rule.

Commission Response

The commission disagrees with TIEC's and OPUC's suggestion to include a load growth adjustment because the statute does not provide for a load growth adjustment. Furthermore, a load growth adjustment would make a GCRR proceeding more complex and contentious, counter to the purpose of having a streamlined interim cost recovery mechanism. The commission retains the rule language as proposed.

Offsets for updated accumulated depreciation and tax impacts

TIEC and OPUC commented that the rule should include offsets to the GCRR to account for updated accumulated depreciation and tax impacts for all existing generation investment, not just for discrete facilities covered by the GCRR. TIEC provided an example of how a utility might over-recover for the total generation function without updates for depreciation and tax impacts. TIEC noted that PURA §36.053(a) provides that rates must be based on original cost, less depreciation, of plant used and useful in service, and it argued that, similar to the other interim cost recovery mechanisms, the rule should update accumulated depreciation and tax impacts for all generation investment. OPUC

argued that the updates to accumulated depreciation and accumulated deferred federal income taxes (ADFIT) are known and measurable accounting changes. Without updates to accumulated depreciation and ADFIT, OPUC asserted, customers would pay rates based on an inflated generation rate base and the utility would likely over-recover its generation costs.

SWEPCO replied that the recommended offset to accumulated depreciation and tax impacts was asymmetrical because it would apply to all generation invested capital, and thus it would be inconsistent with the statute that provided for recovery of investment in a single facility. SWEPCO also commented that the recommended offset might result in a normalization violation for updated tax amounts.

Commission Response

Because the statute provides for recovery of investment in a discrete facility and not for recovery of generation costs overall, the commission agrees that the GCRR rider should apply only to investment in a discrete facility and that updates to accumulated depreciation and tax impacts should not apply to generation investment in total. The commission retains the rule language as proposed.

Offset for plant retirements

TIEC commented that the rule should include an offset to the GCRR to account for retirements of generation investment included in base rates, as it could be likely that a new power generation facility displaces the need for an existing generation asset already

included in base rates. TIEC also asserted that there is a current trend for utilities to retire coal plants early. TIEC argued that, to be consistent with commission precedent establishing that utilities are entitled to a return of, but not a return on, the unamortized balance of a retired plant, the rule should remove retired generation assets as an offset to rate base.

SWEPCO replied that the commission should reject TIEC's suggestion and that the proposed rule correctly considered only depreciation with the discrete power generation facility. SWEPCO also disputed any assertion that it intends to retire its Pirkey and Flint Creek coal units early.

Commission Response

The commission disagrees with TIEC's suggestion because the statute does not provide for updates to generation investment generally, in the way that the statutes for other interim cost recovery mechanisms provide for updates to broad categories of investment (transmission or distribution). The commission retains the rule language as proposed.

Offset for terminated or expired purchased power agreements (PPAs)

TIEC commented that the rule should include an offset to the GCRR to account for terminated or expired PPAs included in existing rates. TIEC stated that it would be probable that a major new generation facility would decrease the utility's need for existing (and possibly sizable) PPAs already recovered in base rates. OPUC also commented that

the rule should include an offset for purchase power capacity costs included in base rates that are displaced or avoided by the new generation facility. TIEC asserted that the proposed rule provides asymmetric treatment when it allows for immediate rate increases while ignoring cost reductions in the current level of generation invested capital. OPUC stressed the likelihood of over-recovery if displaced purchase power costs embedded in current rates are not removed when the new generation facility obviates the need for them.

Entergy and SWEPCO replied to oppose an offset for terminated or expired PPAs in the GCRR. Entergy stated that TIEC's suggested offset would be asymmetrical because it would consider all PPAs across the generation function. Entergy also asserted that TIEC's recommended offset would open the door to increased litigation.

Commission Response

The commission disagrees with TIEC's and OPUC's suggestion because the statute does not provide for updates to generation investment generally. The commission retains the rule language as proposed.

Subsection (c)(2) GCRR Requirements

TIEC commented that the proposed rule's use of the phrase "and additional power generation facilities" in paragraph (c)(2) is potentially ambiguous. TIEC also suggested clarifying paragraph (b)(3) for similar reasons, and other stakeholders replied, as considered above.

Commission Response

The commission agrees that the rule applies only to investment in one or more discrete generation facilities, but the commission disagrees that deleting the phrase “and additional power generation facilities” is clarifying and is concerned that its deletion could prevent a GCRR from covering investment at multiple discrete facilities. The commission retains the rule language as proposed.

Subsection (d) Calculation of GCRR rates

The proposed rule prohibited the use of estimated costs in a GCRR in paragraph (d)(2). Entergy commented that the rule should be modified to include estimated or forecasted costs in the GCRR as a reasonable and permissible approach to recover investment. Entergy noted that the purpose of HB 1397 was to reduce regulatory lag, and one way to accomplish this goal would be to allow for the use of estimated costs in a GCRR. Entergy stated its belief that, because the statute allowed the commission to approve a GCRR before the facility begins providing service and because the statute provides for some reconciliation, the statute intended to allow for the use of estimated costs. Entergy stated that other stakeholders greatly exaggerate concerns over the use of estimated or forecasted costs. (Entergy’s related comment about providing, in subsection (g), for the use of an “anticipated purchase price” for a purchased facility is considered below.)

OPUC and TIEC argued against the inclusion of estimated costs, for many reasons, including the fact that the statute does not provide for estimated costs and that the inclusion of estimated costs would be a radical departure from the commission’s ratemaking

practices. OPUC and TIEC expressed strong support for the proposed rule's prohibition against estimated costs, commenting that the provision in the proposed rule to relate back the effective date of GCRR rates to the date the facility began providing service should obviate a utility's need to use estimated costs.

TIEC commented that, in a proceeding where a utility included estimated costs, the reasonableness of those estimated costs would likely be at issue and probably preclude an expedited, streamlined proceeding. All other interim mechanisms for the recovery of invested capital, TIEC noted, provide for reconciliation and do not allow for the use of estimated costs.

Commission Response

For reasons stated by OPUC and TIEC, the commission disagrees with Entergy's suggestion to use estimated costs. HB 1397 states that the commission may approve an application by a utility to recover the electric utility's "investment" in a power generation facility; the statute does not provide for recovery of estimated costs. The commission also notes that recovery of only capital-related costs is consistent with the commission's existing rules for streamlined recovery of both transmission and distribution investment. The commission agrees with TIEC that consideration of estimated costs would be contrary to the objective of an expedited, streamlined proceeding. Therefore, no changes to the proposed rule are necessary.

Subsection (d)(5)(C) Baseline values

SWEPCO provided a formula for updating jurisdictional and rate-class allocation factors as a suggested edit to the definition of the Texas retail jurisdiction production allocation factor (TRAF) in (d)(5)(C). SWEPCO also suggested related edits to subsection (e).

Commission Response

The commission considers this comment with the related comments to proposed subsection (e) below.

Subsection (e) Jurisdictional and class allocation factors

SWEPCO commented that the rule, for the purposes of calculating the GCRR, should require the applicant to use updated jurisdictional allocation factors (and SWEPCO provided a formula for doing so in a suggested edit to (d)(5)(C) in its comments). SWEPCO argued that, because the proposed rule requires the applicant to calculate the GCRR using updated class allocation factors, the rule should likewise require the applicant to use updated jurisdictional allocation factors to calculate the GCRR.

OPUC disagreed and expressed concern that SWEPCO's suggested formula could be used to inflate or deflate jurisdictional allocation factors. OPUC also questioned whether SWEPCO's suggested formula would produce accurate results at the jurisdictional level across rate classes. OPUC stated that jurisdictional allocation is a complex process and argued that jurisdictional factors should be updated only in a comprehensive base-rate proceeding.

Commission Response

The commission agrees with OPUC that SWEPCO's proposed formula could produce inaccurate results. Because of the complexity involved in jurisdictional allocation, the proper setting to update jurisdictional allocation factors is only in a comprehensive base-rate proceeding. The commission retains the rule language as proposed.

Subsection (f) Customer classification

OPUC commented that the rule should draw a distinction between firm and non-firm capacity, as the strawman for the stakeholder workshop had. OPUC argued that class allocation factors from the utility's last base-rate case may not be adequate to address new forms of generation not present during the last base-rate case. For example, a new generation facility might be a new wind facility for a utility that does not have wind generation assets in its base rates. OPUC commented that, if the rule does not draw a distinction between firm and non-firm capacity, the rule should explicitly provide that allocations used in a GCRR are not precedential for a generation resource not already used by the utility and that allocation factors are subject to reconciliation in the next base-rate proceeding.

TIEC disagreed and stated that any such distinction between firm and non-firm capacity should be handled in future proceedings addressing this novel issue, not prejudged in the rule. TIEC also argued against any retroactive application of allocation factors approved in a future base-rate proceeding.

Commission Response

The commission agrees with TIEC’s analysis and notes that using allocation factors from a utility’s most recent base-rate proceeding is sufficiently accurate for the purposes of a GCRR. The commission retains the rule language as proposed.

Subsection (g) GCRR application

Entergy suggested that, even if the rule otherwise prohibits the use of estimated costs in paragraph (d)(2), the rule should include in subsection (g) a provision to allow for the use of an “anticipated purchase price” for a facility that is purchased.

OPUC replied to Entergy’s request for a provision to allow for the use of an “anticipated purchase price” by stating that a GCRR should only use an actual price for a purchased generation facility, with the rates relating back to the in-service date. TIEC opposed Entergy’s request but also suggested clarified and limited language, should the commission adopt such a provision.

Commission Response

The commission declines to include Entergy’s suggested language for the same reasons it declines to provide for the use of estimated costs. The update provision in subsection (h) and effective date provision in paragraph (c)(3) of the rule adequately handle situations where a facility is purchased. The commission retains the language in the rule as proposed.

Subsection(g)(6) Action on application

Entergy commented that paragraph (g)(6) should be modified to require an expedited procedural schedule to allow review and approval within 90 days, in order to address situations where contested proceedings might take longer than 90 days. Entergy expressed concern that some parties could request a hearing in a GCRR proceeding as a delaying tactic, and Entergy referred to dockets for other types of proceedings where it believes significant delay occurred.

TIEC replied that Entergy's recommended expedited schedule would only be appropriate if the rule included formulaic offsets similar to other interim proceedings, as OPUC and TIEC suggested in their comments. TIEC also commented that Entergy's request for "review and approval" within 90 days is unreasonable and that the commission should not adopt this suggested language.

Commission Response

The commission disagrees with Entergy's suggestion for expedited review and approval of a GCRR within 90 days. The effective date provision in paragraph (c)(3) of the rule adequately mitigates the consequences of any delays that might occur. The commission retains the rule language as proposed.

Subsection (h) Update of generation invested capital

SWEPSCO commented that the time period for a utility to update its application should be 120 days rather than 60 days. SWEPSCO stated that 60 days may not be enough time for a

utility to incur and book the majority of trailing costs associated with building or buying a new generation facility.

OPUC replied that it supports the 60-day period in the proposed rule, that a 60-day period should be sufficient for a utility to file its update, and that a 120-day period would defeat the purpose of a streamlined proceeding.

Commission Response

The commission agrees with OPUC that a 60-day period should be sufficient to allow a utility to update its GCRR application while keeping the proceeding streamlined. The commission retains the rule language as proposed.

Comments on specific issues not in the proposed rule:

Inclusion of operations and maintenance expense

Entergy commented that, to reduce regulatory lag, the rule should be modified to include the operations and maintenance costs associated with generation investment in the GCRR. Without such a provision, Entergy envisioned a situation in which a utility might file a base-rate case and a GCRR application at the same time, in order to recover operations and maintenance expense and invested capital, respectively, on the same generation asset.

OPUC and TIEC argued that the statute provides only for the recovery of investment costs. Both OPUC and TIEC referenced the legislative history of HB 1397, in which early versions of the bill included a phrase providing for recovery of “[investment] and costs

associated with that investment.” Because that phrase was removed from the enacted bill, TIEC argued that the legislature did not intend for the GCRR to recover operations and maintenance expenses. OPUC and TIEC commented that no other interim cost recovery mechanism allows for an update of operations and maintenance costs.

OPUC stated that it would be difficult for utilities to break out common operations and maintenance expenses for the discrete generation facility, potentially resulting in over-recovery of amounts relating to the discrete generation facility. TIEC commented that it would be impossible to include an actual amount of annual operations and maintenance expenses for a newly built or acquired facility.

Commission Response

The commission agrees with OPUC’s and TIEC’s analyses regarding the practical difficulties of breaking out and quantifying actual amounts of expenses for a newly constructed facility. Furthermore, the commission notes that recovery of operations and maintenance costs is not provided for in the statute and that such recovery would increase the likelihood that a GCRR proceeding would be contentious and not streamlined, increasing the administrative burden for all parties and defeating the purpose of providing a simple interim cost recovery mechanism. The commission retains the rule language as proposed.

Prohibition of simultaneous GCRR and PCRF

TIEC recommended reinserting the prohibition on simultaneously having a PCRFB and GCRR that was present in the strawman for the stakeholder workshop in this rulemaking, in order to prevent potential double recovery of the same generation costs.

Commission Response

The commission disagrees with TIEC's suggestion. The commission's earnings monitoring process and the requirements for utility companies to file periodic, comprehensive base-rate cases serve as checks against the potential for double recovery. The commission retains the rule language as proposed.

Consideration of GCRR on risk in setting an electric utility's authorized rate of return

TIEC commented that, similar to rules for other interim proceedings such as an interim TCOS update or a DCRFB proceeding, the rule should expressly allow the commission to consider the effect of the GCRR when setting an electric utility's authorized rate of return. TIEC stated that the existence of the GCRR significantly lowers the financial and business risk of a utility, and TIEC suggested language for such a provision. OPUC agreed with the inclusion of this provision and stated that its presence in other rules supports its inclusion in the GCRR rule.

Entergy expressed opposition to TIEC's and OPUC's suggestion and stated that it was unnecessary. Entergy commented that the commission already has full authority to consider all aspects of a utility's risk when setting its authorized rate of return. Entergy stated that the utilities subject to this rule rarely earn their authorized rates of return.

Commission Response

The commission agrees with Entergy that the commission already has the authority to consider all aspects of a utility's risk when setting its authorized rate of return. Accordingly, the commission rejects TIEC's and OPUC's suggestion and retains the rule language as proposed.

Reporting requirement for a GCRR

OPUC commented that, as a matter of due diligence, the rule should add a reporting requirement to monitor the utility's earnings over the 12-month period following the effective date of the GCRR. If the report showed that the utility was earning more than its authorized rate of return, the utility's GCRR would be limited to a 12-month period. OPUC argued that this provision would prevent over-recovery and is necessary because the proposed rule did not include important offsets recommended by OPUC and TIEC. OPUC supplied suggested rule language addressing this point.

Entergy, SPS, and SWEPCO argued against the inclusion of a reporting requirement for the GCRR as envisioned by OPUC. All three utilities stated that the provision is unnecessary and would be duplicative of the commission's earnings monitoring report process. SPS further noted that the suggested provision would be administratively inefficient and go against the goal of a streamlined proceeding, and SWEPCO commented the suggested requirement went beyond the statute. Entergy and SWEPCO commented that the threshold to file a comprehensive base-rate proceeding is an additional protection

afforded to customers. SPS commented that no other interim cost recovery mechanism provides for a reporting requirement; SWEPCO commented that the DCRF rule has a requirement to include a copy of the utility's most recent earnings monitoring report, but that the requirement was included in the statute.

Commission Response

The commission rejects OPUC's suggestion because it proposes the creation of an unnecessary regulatory requirement that goes beyond the statute and would be duplicative of other commission functions, most notably the earnings monitoring process. The commission agrees with Entergy's, SPS's, and SWEPCO's analyses and retains the rule language as proposed.

In this rulemaking the commission fully considered all comments submitted under Project No. 50031, including any not specifically referenced herein. In adopting this section, the commission makes other modifications for the purpose of clarifying its intent.

The commission adopts this new rule under the Public Utility Regulatory Act, Texas Utilities Code Annotated §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. This new rule implements the provisions of PURA §36.213(g) into the Texas Administrative Code.

Cross Reference to Statutes: PURA §§14.002 and 36.213.

§25.248. Generation Cost Recovery Rider.

- (a) **Applicability.** This section provides a mechanism for an electric utility to request to recover investment in a power generation facility through a generation cost recovery rider (GCRR) outside of a base-rate proceeding. This section applies only to an electric utility that operates solely outside of the Electric Reliability Council of Texas.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless context indicates otherwise.
- (1) **GCRR billing determinant** -- Each rate class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the previous calendar year.
 - (2) **Generation invested capital** -- The parts of the electric utility's invested capital for a power generation facility that will be functionalized as generation plant properly recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 303 through 347, 352, and 353 when the generation facility is placed into service.
 - (3) **Power generation facility** -- A discrete facility or facilities constructed or purchased by an electric utility for use in generating electricity for public service by the electric utility, and the cost of which is not included in the electric utility's base rates. The term "facility" may encompass different parts of a single generation facility that begins providing service to the electric utility's customers on the same date.
 - (4) **Power generation facility invested capital** -- Generation invested capital associated with a power generation facility included in the electric utility's GCRR that will be placed into service before or at the time the GCRR becomes effective under subsection (g) of this section.
 - (5) **Power generation facility net invested capital** -- Power generation facility invested capital that is adjusted for accumulated depreciation and any changes in accumulated deferred federal income taxes, including changes to excess accumulated deferred federal income taxes, associated with all power generation facilities included in the electric utility's GCRR.

- (6) **Weather-normalized** -- Adjusted for normal weather using weather data for the most recent ten-year period prior to the year from which the GCRR billing determinants are derived.
- (c) **GCRR Requirements.** The GCRR rate for each rate class, and any other terms or conditions related to those rates, will be specified in a rider to the utility's tariff.
- (1) An electric utility must not have more than one GCRR.
 - (2) An electric utility with an existing GCRR may apply to amend the GCRR to include the electric utility's actual capital investment in a power generation facility and additional power generation facilities.
 - (3) Any GCRR established under this section will take effect on the date the power generation facility begins providing service to the electric utility's customers. Any amendment to an existing GCRR for an additional power generation facility will take effect on the date that the additional power generation facility begins providing service to the electric utility's customers.
 - (4) As part of the next base-rate proceeding for the electric utility, the electric utility must request to move all investment being recovered in a GCRR into base rates and the GCRR will be set to zero.
- (d) **Calculation of GCRR Rates.** The GCRR rate for each rate class must be calculated according to the provisions of this subsection and subsections (e) and (f) of this section.
- (1) The GCRR rates will not take into account changes in the number of the electric utility's customers and the effects that energy consumption and energy demand have on the amount of revenue recovered through the electric utility's base rates.
 - (2) The GCRR rates must not include estimated costs.
 - (3) The GCRR rate for each rate class will be calculated using the following formula:

$$\text{GCRR}_{\text{CLASS}} = \text{RR}_{\text{CLASS}} / \text{BDC}_{\text{CLASS}}$$
 - (4) The values of the terms used in this subsection will be calculated as follows:
 - (A) $\text{RR}_{\text{CLASS}} = \text{RR}_{\text{TOT}} * \text{ALLOCC}_{\text{CLASS}}$

- (B) $RR_{TOT} = TRAF * ((PGFIC * ROR_{RC}) + PGFDEPR + PGFFIT + PGFOT)$
- (C) $ALLOC_{C-CLASS} =$
 $ALLOC_{RC-CLASS} * (BD_{C-CLASS} / BD_{RC-CLASS}) / \Sigma (ALLOC_{RC-CLASS} * (BD_{C-CLASS} / BD_{RC-CLASS}))$
- (5) The terms used in this subsection represent or are defined as follows:
- (A) **Descriptions of calculated values.**
- (i) **GCRRC_{CLASS}** -- GCRR rate for a rate class.
 - (ii) **RR_{CLASS}** -- GCRR class revenue requirement.
 - (iii) **RR_{TOT}** -- Total GCRR revenue requirement.
 - (iv) **ALLOCC_{CLASS}** -- GCRR class allocation factor for a rate class.
- (B) **GCRR billing determinants and power generation facility values.**
- (i) **BD_{C-CLASS}** -- GCRR billing determinants that are weather-normalized.
 - (ii) **PGFIC** -- Power generation facility net invested capital.
 - (iii) **PGFDEPR** -- Power generation facility depreciation expense.
 - (iv) **PGFFIT** -- Federal income tax expense associated with the return on the power generation facility net invested capital, reduced by any tax credits related to the power generation facility that are not returned to customers as a credit or other offset to eligible fuel expense.
 - (v) **PGFOT** -- Other tax expense associated with the power generation facility.
- (C) **Baseline values.** The following values are based on those values used to establish rates in the electric utility's most recent base-rate proceeding, or if an input to the GCRR calculation from the electric utility's last base-rate proceeding is not separately identified in that

proceeding, it will be derived from information from that proceeding:

- (i) **TRAF** -- Texas retail jurisdiction production allocation factor value used to establish rates in the electric utility's last base-rate proceeding determined under the provisions of subsection (e) of this section.
 - (ii) **BDRC-CLASS** -- Rate class billing determinants used to establish generation base rates in the last base-rate proceeding. Energy-based billing determinants will be used for those rate classes that do not include any rate demand charges, and demand-based billing determinants will be used for those rate classes that include rate demand charges.
 - (iii) **ROR_{RC}** -- After-tax rate of return approved by the commission in the electric utility's last base-rate proceeding.
 - (iv) **ALLOCR_C-CLASS** -- Rate class allocation factor value determined under the provisions of subsection (e) of this section.
- (e) **Jurisdictional and class allocation factors.** For calculating GCRR rates, the baseline jurisdictional and rate-class allocation factors used to allocate generation invested capital in the last base-rate proceeding will be used.
- (f) **Customer classification.** For the purposes of establishing GCRR rates, customers will be classified according to the rate classes established in the electric utility's most recently completed base-rate proceeding.
- (g) **GCRR application.** An electric utility may file an application for a GCRR before the electric utility places a power generation facility in service. An electric utility may include only one discrete power generation facility in an application for a GCRR. An electric utility may file an application to amend its GCRR to include another discrete power generation facility even if it has another application to amend its GCRR pending before the commission. The proceeding for a GCRR application must conform to the requirements of this subsection.

- (1) **Scope of proceeding.** The issues of whether generation invested capital included in an application for a GCRR complies with PURA and is prudent, reasonable, and necessary will not be addressed in a GCRR proceeding.
- (2) **Notice.** The applicant must notify all parties in the applicant's last base-rate proceeding that an application was filed. The notice must be provided by first-class mail and mailed the same day the application is filed. The notice must specify the docket number assigned to the application and a copy of the application must be included with the notice.
- (3) **Parties and intervention.** Requests to intervene must be filed no later than 10 calendar days after the date the application is filed. Objections to a request to intervene must be filed no later than five working days after the request is filed. All requests to intervene must be ruled upon no later than 21 calendar days after the application is filed.
- (4) **GCRR forms.** If the commission adopts a form for GCRR applications, an electric utility must file its application using that form.
- (5) **Sufficiency of application.** A motion to find the application materially deficient must be filed no later than 10 calendar days after the application is filed. A motion to find an amended application deficient, when the amendment is in response to an order issued under this paragraph, must be filed no later than five working days after the amended application is filed. The motion must specify the nature of any alleged deficiency and, if the commission has adopted a form for a GCRR application, the particular requirements of the form for which the application is alleged to be out of compliance. The applicant's response to such motion must be filed no later than five working days after the motion is filed. Within five working days of the applicant's response, the presiding officer must issue an order finding the application sufficient or deficient, and if deficient must specify the deficiencies and the time within which the applicant must amend its application to cure the deficiencies. If the presiding officer has not issued a written order within 35 calendar days of the filing of the application, or

25 calendar days of the filing of an amended application, concluding that material deficiencies exist in the application, the application is sufficient.

- (6) **Action on application.** If the requirements of §22.35 of this title are met, the presiding officer must issue a notice of approval within 60 calendar days of the date an application is found to be sufficient by order or rule. The presiding officer may extend this time if a party demonstrates that additional time is needed to review the application or the presiding officer needs additional time to prepare the notice of approval. Further, if the presiding officer determines that the application should be considered by the commission, the presiding officer must issue a proposed order for consideration by the commission at the next available open meeting.
- (h) **Update of generation invested capital.** Within 60 calendar days after a power generation facility included in a GCRR begins providing service to the electric utility's customers, the electric utility may file an application to update the GCRR to reflect the electric utility's actual capital investment in the power generation facility. An application to update the GCRR under this subsection is subject to the requirements in subsection (g) of this section. Any update to the GCRR made under this subsection must include carrying costs on the amount of investment in excess of the investment initially approved for recovery under subsection (g) of this section. Carrying costs will accrue monthly from the date the power generation facility began providing service to the electric utility's customers through the date the adjustment is approved and must be calculated using the rate of return approved by the commission in the electric utility's most recent base-rate proceeding.
- (i) **Reconciliation.**
- (1) Amounts recovered through a GCRR approved under this section are subject to reconciliation in the first base-rate proceeding for the electric utility that is filed after the effective date of the GCRR. The reconciliation will true up the total amount actually recovered through the GCRR approved under this section with the total revenue requirement that the approved GCRR was designed to recover. As part of the reconciliation, the

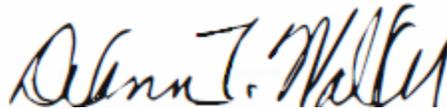
commission will determine if the amounts recovered through the GCRR are reasonable and necessary.

- (2) Any amounts recovered through the GCRR that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. Carrying costs will be determined as follows:
 - (A) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the electric utility's base rates set in the base-rate proceeding in which the GCRR is reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the investments included in the GCRR.
 - (B) For the time period beginning with the effective date of the electric utility's rates set in the base-rate proceeding in which the GCRR is reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the electric utility's rate of return authorized in that base-rate proceeding.
- (j) **Threshold to initiate base-rate proceeding.** If a GCRR approved under this section includes cumulative incremental recovery for a power generation facility or power generation facilities where the amount of generation invested capital is greater than \$200 million on a Texas jurisdictional basis, the electric utility must initiate a base-rate proceeding at the commission not later than 18 months after the date the GCRR takes effect.

This agency hereby certifies that the rule, as adopted, 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 §25.248, relating to Generation Cost Recovery Rider, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the 7th day of July 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER