

The Public Utility Commission of Texas (commission) adopts new §25.265, relating to Securitization by River Authorities and Electric Cooperatives, with changes to the proposed text as published in the December 3, 1999 *Texas Register* (24 TexReg 10687). The rule implements Senate Bill 7 (SB 7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2602, 2608 (Vernon) (codified as amendments to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §40.003 and §41.003) and will govern the procedures for the securitization of stranded costs for river authorities and electric cooperatives. This rule is adopted under Project Number 21077.

A public hearing on the proposed rule was held at commission offices on January 12, 2000. Attendees at the hearing included representatives from the Lower Colorado River Authority (LCRA); the Association of Wholesale Customers (AWC); R. J. Covington Consultants; Clark, Thomas & Winters; McGinnis, Lochridge & Kilgore; and Cap Rock Electric and Pedernales Electric Cooperatives. Representatives from the LCRA and AWC provided comments at the meeting indicating their intention to work towards reaching agreement on specific issues of mutual interest. No other parties provided comments at the public hearing.

In addition to comments on the proposed rule, the commission requested parties' responses to specific questions related to the rule. The commission received comments and responses from the AWC,

Brazos Electric Power Cooperative, Inc. (Brazos), the LCRA, City Public Service of San Antonio (CPS), and South Texas Electric Cooperative, Inc. (STEC). Also, the LCRA and AWC subsequently made additional filings indicating their areas of agreement and disagreement.

The following are the ten questions posed by the commission with the proposed rule and the parties' responses thereto, along with parties' additional comments on specific sections of the rule.

1. *Is the proposed definition of stranded costs in this rule appropriate?*

Brazos and STEC responded affirmatively to this question. Brazos noted that the legislature used the terms "stranded cost" and "stranded investment" interchangeably to mean "stranded investment" as defined in PURA §41.001(3). STEC stated that it may be appropriate for the commission to set out with specificity how stranded costs are to be calculated under the definitions to ensure uniformity in the calculations made by the different entities.

AWC commented that the definition should be modified slightly to clarify that stranded-cost determinations for river authorities should be based on the *combined* market and book values of *all* of a river authority's generation assets. Otherwise, a river authority may claim that it has the right to isolate a single asset and claim it is uneconomic; this would be treatment different from that afforded by Senate Bill 7 to investor-owned utilities and cooperatives. Further, a river authority benefiting from single-asset securitization will not face the same competitive pressure as other suppliers to reduce costs and operate

as efficiently as possible because it will have been able to secure a cost reduction merely by shifting costs into a nonbypassable transition charge. In its supplemental joint filing with the AWC, the LCRA agreed to this modification of the definition of stranded costs.

With regard to STEC's comments, the statute affords broad discretion to electric cooperatives in determining stranded costs; the statute does not require that the commission prescribe with specificity how the determination of stranded costs should be made for electric cooperatives or river authorities. The commission incorporates into the rule the modification suggested by AWC and LCRA.

2. *What entity is responsible for determining (a) whether a river authority has stranded costs, and (b) the amount of stranded costs eligible for securitization?*

Brazos stated that the board of directors of an electric cooperative has exclusive jurisdiction to reasonably determine the amount of a cooperative's stranded investment and the recovery level (up to 100%, under rules and procedures established by the commission) and terms of the rate order.

STEC stated that, ultimately, it is the governing body of the river authority that determines whether it has stranded costs and the amount thereof, though the commission has the power to affect the governing body's decision by setting out in detail the procedures that are to be followed in making the determination.

AWC stated that the existence and amount of stranded costs for river authorities should first be determined by the river authority's governing body and then be subject to review and approval by the commission. Review proceedings conducted by the commission should be open to participation by any affected party. Section 40.003 provides that the commission establish rules and procedures for securitization by river authorities, and therefore the "appropriate" level of recovery is within the scope of the commission's rules defining stranded costs. In its supplemental joint filing with the AWC, the LCRA accepted AWC's position.

The commission incorporates into the rule the modification suggested by AWC and LCRA relating to commission review and approval of the amount of river authorities' stranded costs. No other change is necessary.

3. *Does §40.001 of SB 7 specifically exempt river authorities from the definition of stranded costs found in §39.251?*

STEC stated that it does not believe that the commission is prohibited by PURA §40.001 from using the definition of stranded costs found in PURA §39.251. The commission has the authority to define stranded costs in its rules and procedures governing securitization by river authorities. Moreover, STEC believes the same basic definition for stranded costs should apply to all parties in a competitive market.

The definition of stranded costs in §25.265(b)(2) of the proposed rule is based upon §39.251 of Senate Bill 7, and this provides consistency between the definition of stranded costs for river authorities and investor-owned utilities. Therefore, no change is required.

4. *What is the scope of the commission's authority over a cooperative's or river authority's wholesale customers?*

Brazos stated that the commission has no authority over a cooperative's wholesale customers. The board of directors has exclusive jurisdiction to sell energy and capacity at wholesale, regardless of whether the cooperative participates in customer choice.

AWC stated that for municipal and electric cooperative systems that are wholesale customers of river authorities, the commission has only that jurisdiction identified in §40.004 and §41.004.

The LCRA stated that the commission has jurisdiction over a river authority's transmission and wholesale transformation charges (pursuant to Chapter 35). The commission can use this authority to assure that a river authority's transition charges are nonbypassable, and thus have the effect of PURA Chapter 39, Subchapter G. Any argument that the commission lacks the authority to assure recovery must presume that the legislature engaged in an idle act when it enacted §40.003.

STEC stated that the commission normally has no authority over municipalities or electric cooperatives as wholesale customers. However, in this instance, STEC believes the scope of the commission's indirect authority over such wholesale customers is broad. The commission's rules have the force of law and the legislature expressly provided for the commission to establish rules and procedures for river authorities and cooperatives to use securitization to recover stranded costs.

The commission agrees that it has limited authority over a cooperative's or river authority's wholesale customers if they are municipal utilities or electric cooperatives, but by virtue of its obligation to adopt rules concerning securitization, it has the authority to prescribe rules that allow for the imposition on those customers of transition charges from securitization.

5. *Does the existence of a wholesale power contract between a river authority and its customer affect the river authority's or cooperative's ability to securitize?*

Brazos responded "No" to this question, but opined that the interest rate on the transition bonds may be affected.

AWC responded affirmatively, stating that without a contract, there is no continuing obligation for a wholesale customer to purchase power from a river authority. Without such an obligation, there is no basis for a river authority to continue collecting a nonbypassable transition charge imposed in connection with securitization. AWC stated that this is appropriate, as a customer without a contract elected not to

tie itself to that supplier, and to now saddle that customer with a nonbypassable transition charge would deprive it of the benefits of its previous decision, and would in essence impose a contractual obligation to which the customer never agreed.

The LCRA stated that a wholesale requirements contract does not eliminate the possibility of a river authority having stranded costs, and does not affect the river authority's ability to securitize. The wholesale contracts are expected to remain valid after a decision to offer choice, but the requirements served pursuant to those contracts could change dramatically. SB7 allows municipally and cooperatively owned utilities to choose to offer customer choice, and that decision subjects the river authority's assets to market forces, regardless of the existence of a contract. The legislature balanced the ability of municipals and cooperatives to offer customer choice with the assurance that stranded costs could be recovered and, in the case of river authorities, fully securitized.

STEC responded affirmatively to this question, stating that depending upon the language defining the rights and obligations of the parties to the contract, this could affect the river authority's or cooperative's ability to securitize. STEC suggested that the rule state that none of the provisions of the rule shall be interpreted so as to interfere with or abrogate the rights and obligations of the parties to a contract.

The commission believes that river authorities may impose a transition charge on existing wholesale customers for the life of the transition charge, irrespective of the life of the contract. The statutory concept of securitization implies that there will be a firm obligation on customers to pay transition

charges. However, payment of the transition charge should not be a condition of access to the transmission system nor should the commission rule, at this time, address payment by the ultimate retail customer. The commission has incorporated into the rule the language indicating that a river authority's ability to collect debt service on securitization bonds is not dependent upon the continued existence of a wholesale power contract and is nonbypassable. Without such requirements, the issuance of securitized bonds would not be viable.

6. *Does the commission have the authority to impose a nonbypassable charge on the customers of a cooperative or river authority, or to add such a charge to the rates of a securitizing Chapter 40 or 41 entity? If the commission does not have such authority, does this affect the feasibility of issuing securitized bonds?*

Brazos stated that the commission does not have the authority to impose a nonbypassable charge on the customers of a cooperative or to add such a charge to the rates of a securitizing Chapter 41 entity. However, this does not affect the feasibility of issuing securitized bonds. Pursuant to §39.302(7), transition charges are approved by the commission and are nonbypassable amounts charged for electric services. In the same manner, pursuant to §41.003(b), cooperatives may adopt a rate order having the same effect of a financing order of the commission, and §41.062 prohibits a retail customer in multiply-certificated areas from avoiding stranded cost recovery by switching suppliers. Section 41.003(c) requires that transition charges incorporated in the rate order shall otherwise conform in all material respects to the transition charges provided by Chapter 39, Subchapter G, including §39.306, which

requires that a financing order include terms ensuring that the imposition and collection of transition charges authorized in the order "shall be nonbypassable."

AWC stated that in the case of a river authority such as the LCRA, the commission does not have the authority to impose a nonbypassable transition charge. Such an action would constitute an action affecting rates and the commission is precluded from taking such action by §32.051. Although the absence of such authority may affect the feasibility of issuing securitized bonds by river authorities not having long-term wholesale contracts with their customers, it should not affect the feasibility of those bonds when contracts of a reasonable remaining duration are in place.

LCRA stated that the commission does have such authority. Through its authority to condition access to the transmission system of the river authority, the commission can assure that the river authority's stranded costs become a nonbypassable wires charge. If the commission determines that it has no such authority, river authorities' ability to issue securitized bonds will not only be affected, it will be eliminated. This is not the result envisioned by the legislature.

STEC stated that it does not believe the commission has the authority to directly impose a nonbypassable transition charge on the customers of a cooperative or river authority. This does not affect the feasibility of issuing securitized bonds because the legislature provided the governing bodies of the river authorities and cooperatives the authority to do so.

Senate Bill 7 provides that securitization for electric cooperatives and river authorities shall have the effect of the provisions of PURA Chapter 39, Subchapter G. Senate Bill 7 also grants explicitly to electric cooperatives and implicitly to river authorities the authority to adopt transition charges. No change in the rule is necessary.

7. *Does the governing body of a Chapter 40 or 41 entity have the authority to impose a nonbypassable charge upon its wholesale customers?*

Brazos stated that yes, §41.055 gives a cooperative's board of directors the exclusive jurisdiction to establish non-discriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time. Brazos Electric, as a wholesale-only generation and transmission (G&T) cooperative, has no retail customers from whom to recover its stranded investment. Because Brazos has the statutory right to securitize its stranded investment, and because its board of directors may issue a rate order that imposes a nonbypassable transition charge, it must necessarily impose the charge on its wholesale customers. Otherwise, the legislative intent will have been frustrated.

AWC responded affirmatively to this question, stating that it is true for those customers with whom a river authority has wholesale power contracts and pursuant to rules established by the commission. Absent a contract, there is no right to do so.

STEC stated that, with the exception of where it is prohibited by contract, it believes that the governing bodies of river authorities and cooperatives have the authority to impose a nonbypassable transition charge on their wholesale customers. Most river authorities serve only wholesale customers. If the legislature did not intend for them to have the authority to recoup their stranded costs from their wholesale customers, there would have been no need for the Legislature to address the ability of river authorities to securitize stranded costs. For cooperatives, the Legislature did not distinguish between electric distribution cooperatives serving retail customers and G&T cooperatives serving wholesale customers. Moreover, at no point in Chapter 41 does the Legislature limit the collection of transition charges to only retail customers.

Senate Bill 7 does not provide explicit authority for the imposition of transition charges by the governing body of a river authority. However, these entities have, by implication, the authority to impose a nonbypassable transition charges on their customers. No specific change in the rule is necessary.

8. *If nonbypassable transition charges can be imposed upon wholesale customers of a river authority, can those charges continue to be imposed upon wholesale customers once their contract with the river authority expires?*

Brazos stated that to the extent that existing wholesale contracts have a term extending longer than the 15-year limit for securitization, this question has no applicability. The nonbypassable transition charges should be as nonbypassable for wholesale customers as for a retail customer, and should not have a

different result if the charge were to be imposed by a cooperative or an investor owned utility (IOU). The nonbypassability does not depend upon the existence of a contract, because most retail customers have no contract or have contracts whose terms are less than 15 years.

AWC responded negatively to this question. AWC stated that, consistent with the fact that no charge may be imposed upon customers without a contract, no charge may be imposed once a contract expires. To do so would be a modification of the contract terms, which the customer neither bargained for nor agreed to. This would interfere with rights or obligations under existing contracts and is prohibited under PURA §§39.108, 40.101, and 41.101.

STEC believes that the contract between the wholesale customer and the river authority may control whether the river authority can continue to impose the nonbypassable transition charge on the wholesale customer after their contract expires. If the river authority had no expectations that the contract would be renewed, it should have taken this fact into account when planning for its generation reserves. Under these circumstances, the river authority should not be allowed to impose a nonbypassable transition charge on the wholesale customer once the contract has expired. If, however, the river authority had every expectation that the contract would be renewed, it should be able to impose such a charge because the river authority would have considered the resource need reflected in the contract when planning for its generation sources.

The commission believes that river authorities may impose a transition charge on existing wholesale customers for the life of the transition charge, irrespective of the life of the contract. Securitization requires the creation of a nonbypassable charge that will be paid irrespective of changing conditions. It is essential to the securitization process that a fixed and virtually certain payment stream be secured for the payment of the debt service on the bonds. When the legislature empowered cooperatives and river authorities to securitize stranded costs, it necessarily envisioned the creation of an obligation to pay nonbypassable charges. A payment obligation that is dependent on the continuation of a contract does not create a payment stream that is any more fixed or nonbypassable than the existing contractual obligation to pay. It is reasonable to conclude, therefore, that securitization creates a firmer obligation than the existing contractual obligation. On the other hand, LCRA's suggestion that the payment obligation be a condition of access to its transmission system would lead to perverse results. If the commission did make payment of the transition charges a condition of access to the transmission system, LCRA could arguably treat the nonbypassable charges as a transmission cost that would be recovered from utilities to which it provided only transmission service. Apart from the fact that there was insufficient notice of this possibility in the proposed rule, the commission does not believe that this was intended by the legislature when it gave the LCRA the ability to securitize. Under Chapter 39, securitization is limited to generation-related assets, so customers taking only transmission service should not bear these costs. Consequently, payment of the transition charge should not be a condition of access to the transmission system. The commission has incorporated into the rule the language indicating that a river authority's ability to collect debt service on securitization bonds is not dependent upon the continued existence of a wholesale power contract and is nonbypassable.

9. *Can those charges be imposed upon wholesale customers who were once, but are no longer, served by the river authority?*

Brazos responded affirmatively and referred to its response to question number eight above.

AWC responded negatively, and referred to the reasons set forth in the responses to question numbers five and eight above. AWC stated that proposed §25.265(h)(3)(C) should be deleted accordingly.

STEC stated that if there are wholesale customers who were once served by river authorities or cooperatives, but who are not now served by them, those customers leaving the system prior to May 1, 1999 should not be obligated to pay a transition charge.

As previously discussed, the commission believes that river authorities may impose a transition charge on existing wholesale customers for the life of the transition charge, irrespective of the life of the contract. The commission has incorporated into the rule the language indicating that a river authority's ability to collect debt service on securitization bonds is not dependent upon the continued existence of a wholesale power contract and is nonbypassable.

10. *If a cooperative or river authority securitizes stranded costs and adopts a nonbypassable charge that it collects from its wholesale customers, do these customers have a means of recovering these costs from their retail customers?*

Brazos responded affirmatively, stating the nonbypassable charge that a cooperative collects from its wholesale customers can then be collected by the wholesale customers through a nonbypassable charge associated with their distribution service to the consumer.

AWC responded affirmatively, stating that this can be done if the commission reviews and approves the river authority's determination as to the existence and amount of stranded costs as set forth in response to number two above.

STEC stated that only those customers taking firm service from the river authority or electric cooperative should be assessed the nonbypassable transition charge because these are the customers whose load growth prompted the building of generation facilities. Such wholesale customers are usually municipally owned utilities or distribution cooperatives. Pursuant to §40.003(a)(1) and §41.055(4), these wholesale customers have express authority to establish a transition charge to be collected from their retail customers.

By virtue of the grant of authority to securitize stranded costs, river authorities and electric cooperatives may have the authority to impose a nonbypassable transition charge on retail customers. Senate Bill 7,

however, does not provide clear authority to the commission to obligate retail customers of unregulated entities to pay transition charges. It could be argued that if the river authorities and cooperatives have such authority, the commission does as well, by virtue of its authority to adopt rules concerning securitization. However, the commission does not believe this aspect has been adequately considered in this rulemaking proceeding, so the commission declines to expressly address the issue at this time. Distribution cooperatives and municipal authorities do have broad authority to set rates to recover their costs. There does not appear to be any impediment to their recovery of these costs from their customers. This would permit them to include such costs in a non-discriminatory charge for the use of their distribution systems. Consequently, no change in the rule is necessary.

General Comments

AWC stated that §25.265(h)(11) of the rule purports to give conclusive effect to findings made by a river authority's governing body "under the rules and procedures described in this section." AWC stated that it is unclear whether this refers to the rules and procedures set forth in subsection (h) related to financing orders or whether it refers to §25.265 in its entirety. Because the commission should have certain review authority as described above (in connection with determinations as to the amount and existence of stranded costs of river authorities), the conclusive effect should not relate to the rule as a whole. Limiting the conclusive effect to financing orders would be consistent with §40.003(e). In its supplemental joint filing with the AWC, the LCRA accepted AWC's position.

The commission incorporates into the rule the modification suggested by AWC and LCRA.

The LCRA stated that the proposed rule is generally workable. However, LCRA stated that it is essential that the rule provide a mechanism for collection of river authorities' stranded costs that is unquestionably nonbypassable. If the rule does not do this, the effects of PURA Chapter 39, Subchapter G cannot be attained, and the fundamental purpose of the legislative authorization for river authorities cannot be achieved. The proposed rule authorizes charges to wholesale customers receiving generation service as of May 1, 1999, but this approach does not go far enough. Instead, the commission needs to ensure that the transition charges are ultimately collected from the *load* within the river authority's existing area of service. It is this load that consumes river authority electricity, not wholesale customers, and it is this load that caused the river authority to construct its generating system. The load for which the generation was constructed might not in the future purchase electricity from an entity that was a river authority wholesale customer on May 1, 1999. The link between generation and the load the generation was constructed to serve can be maintained by collecting the charges from wholesale customers that have not elected to provide customer choice, and from all retail electric providers (REPs) serving in the area of wholesale customers that have elected to provide customer choice. LCRA believes it conceivable that, over time, one or more of its wholesale requirements customers may evolve into wires-only entities with no more load, or requirements, served under the existing contracts. In that case, considering transition charges to be included in the rates of the wholesale contracts provides little security, because the river authority would not be providing any electricity under the contract and transmission services would be provided pursuant to tariffed rates

approved by the commission. Finally, in order for river authority transition bonds to be truly secure and to have the effect of the provision of PURA Chapter 39, Subchapter G, the entity collecting the charges from end-use load must have absolute assurance that it can do so without challenge. In other words, if the river authority adopts a financing order pursuant to the commission's rules, the wholesale customers of the river authority must be able to pass through the transition costs to end users.

The commission concludes that river authorities may impose a transition charge on existing wholesale customers for the life of the transition charge, irrespective of the life of the contract and irrespective of the load that the existing wholesale customers take in the future. Distribution cooperatives and municipal authorities have broad authority to set rates to recover their costs. There does not appear to be any impediment to their recovery of these costs from their customers. This would permit them to include such costs in a non-discriminatory charge for the use of their distribution systems. The commission finds that it is appropriate to impose on the service area of existing customers the obligation to pay the transition charges. This finding is conceptually consistent with retail stranded-cost securitization. No change in the rule is necessary.

Subsequent Filings

Subsequent to the public hearing on January 12, LCRA and AWC made a joint filing wherein they agreed to the following points:

1. The definition of "stranded costs" should be clarified to ensure that the quantification of stranded costs is performed on a combined generation asset basis, rather than on an asset-by-asset basis;
2. The financing order adopted by the LCRA board of directors must be reviewed and approved by the commission before securitized bonds may be issued; and
3. The conclusive effect of a river authority's findings shall relate only to financing orders adopted under the rule.

These changes were discussed in the parties' responses to the questions above. As previously noted, the commission incorporates into the rule the modifications suggested by AWC and LCRA.

LCRA and AWC stated in their subsequent filings that they were unable to agree on two remaining issues: 1) the ability to collect securitization bonds payments independent of a wholesale power agreement, and 2) the mechanism for collecting those payments. Both parties reiterated the positions contained in their responses to questions one through ten above.

LCRA stated in its subsequent filing that, "Frankly, LCRA does not need commission rules or authority to collect costs pursuant to a contract. Instead, LCRA needs commission rules and authority to collect costs through a transmission system surcharge pursuant to a tariff approved by the commission. Through such a tariff, LCRA can be assured that it can collect revenues to service securitization bonds regardless of which REP is ultimately serving retail load currently served by LCRA's wholesale customers and regardless of who ultimately owns the distribution systems currently owned by those

customers." LCRA submitted proposed language which would assure that the LCRA's ability to collect debt service on securitization bonds is not dependent on the continued existence of a wholesale power agreement and is nonbypassable.

As noted above, the commission believes that river authorities may impose a transition charge on existing wholesale customers for the life of the transition charge, irrespective of the life of the contract. The commission has incorporated into the rule the language suggested by LCRA indicating that LCRA's ability to collect debt service on securitization bonds is not dependent upon the continued existence of a wholesale power contract and is nonbypassable.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically Senate Bill 7 (SB 7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2625 (Vernon) (as required by uncodified section 65 of SB 7), which requires the commission to establish rules and procedures for the securitization of stranded costs for river authorities and electric cooperatives not later than the 180th day after the effective date of SB 7.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 40.003, 41.003 and section 65 of Senate Bill 7.

§25.265. Securitization by River Authorities and Electric Cooperatives.

- (a) **Application.** This section applies to securitization transactions carried out by a river authority or electric cooperative. A river authority or electric cooperative may adopt and use securitization provisions having the effect of the provisions provided by the Public Utility Regulatory Act (PURA), Chapter 39, Subchapter G, to recover its stranded costs in accordance with this section.
- (b) **Definition of stranded costs.**
- (1) For electric cooperatives, the term "stranded costs" when used in this section shall mean "stranded investment" as defined in PURA §41.002(3).
 - (2) For river authorities, the term "stranded costs" when used in this section shall mean the positive excess of the combined net book value of generation assets over the combined market value of the assets, taking into account all of the river authority's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets.
- (c) **Quantification of stranded costs.** Only those river authorities and electric cooperatives having positive stranded costs as determined by this section may securitize such costs.

- (1) For electric cooperatives, the board of directors has the exclusive jurisdiction to reasonably determine the amount of the electric cooperative's stranded investments.
 - (2) For river authorities, the governing body shall determine the amount of stranded costs using an administrative model or other reasonable methodology, and such determinations shall be subject to review and approval by the commission.
- (d) **Demonstration of tangible and quantifiable benefits to ratepayers.** A river authority or electric cooperative may not utilize securitization financing to recover stranded costs unless it demonstrates that securitization provides tangible and quantifiable benefits to ratepayers greater than would have been achieved absent the issuance of transition bonds. Such demonstration shall be performed on an asset-by-asset basis.
- (e) **Limit on amount of qualified costs to be securitized.** The amount securitized may not exceed the sum of:
- (1) the present value, calculated using a discount rate equal to the proposed interest rate on the transition bonds, of the revenue requirement over the life of the proposed transition bonds associated with the stranded costs sought to be securitized, and
 - (2) the costs of issuing, supporting, and servicing the transition bonds and any costs of retiring and refunding existing debt of the river authority or electric cooperative.

- (f) **Use of proceeds.** The proceeds of the transition bonds shall be used solely for the purpose of reducing the amount of recoverable stranded costs as determined pursuant to this section, through the refinancing or retirement of debt of the river authority or electric cooperative.

- (g) **True-up in the event of sale.** A river authority or electric cooperative shall not overrecover its stranded costs. If the recovery of an asset has been securitized through a sale of transition bonds, and the asset is subsequently sold in a bona fide third-party transaction, then that asset shall be subject to true-up. To the extent the total net value received from the sale of such asset exceeds its remaining book value, the river authority or electric cooperative shall make refunds of the entire overcollected amounts, with interest, to its ratepayers through an appropriate mechanism.

- (h) **Recovery of stranded costs.** An electric cooperative or river authority may recover its securitized stranded costs and the reasonable costs of issuing, supporting, and servicing the transition bonds through a transition charge.
 - (1) **Electric Cooperatives.** An electric cooperative may recover its stranded costs through transition charges from all existing or future customers, including the facilities, premises and loads of those customers taking service from the cooperative as of May 1, 1999. An electric cooperative's board of directors has the exclusive jurisdiction to establish non-discriminatory transition charges reasonably designed to recover the stranded costs over an appropriate period of time consistent with this section.

- (2) **River Authorities.** A river authority may recover its qualified costs, as defined in PURA, Chapter 39, Subchapter G, including its stranded costs as defined herein, through transition charges reasonably designed to recover the stranded costs over an appropriate period of time consistent with this section. Payment of transition charges shall be made by customers taking service from the river authority as of May 1, 1999 or those customers' successors or assigns. Transition charges of a river authority in a financing order adopted pursuant to this section shall be collected by the river authority, and such charges shall not be subject to challenge provided that a river authority's determination as to the existence and amount of stranded costs has been approved under subsections (b) and (c) of this section.
- (3) **Transition charges for both electric cooperatives and river authorities.**
- (A) The transition charge shall be sufficient to recover the stranded costs at the level, up to 100%, deemed appropriate by the electric cooperative or river authority.
- (B) Any transition charges adopted in accordance with this section shall constitute property rights, as described in PURA, Chapter 39, Subchapter G, and otherwise conform in all material respects to the transition charges provided by PURA, Chapter 39, Subchapter G.
- (C) A river authority or electric cooperative may recover a transition charge notwithstanding the expiration of a wholesale contract.

- (i) **Financing order.** A cooperative or river authority which chooses to adopt and use securitization provisions shall adopt a financing order consistent with this section.
- (1) The financing order shall contain a finding that the present value total amount of revenues to be collected under the financing order is less than the present value of the revenue requirement that would be recovered over the remaining life of the stranded costs using conventional financing methods.
 - (2) The financing order shall have the effects of the provisions provided by PURA, Chapter 39, Subchapter G. The effects shall be detailed in the financing order and shall include, but are not limited to, provisions regarding property rights, set-off, security interests, no bypass, true-up, true sale, and security interests.
 - (3) The financing order shall detail the stranded costs to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years.
 - (4) The financing order shall detail how the proceeds from the transition bond are being used to refinance or retire river authority or cooperative debt as prescribed by subsection (f) of this section.
 - (5) The financing order shall contain findings detailing the tangible and quantifiable benefits as prescribed by subsection (d) of this section.
 - (6) The financing order shall contain a finding that the amount to be securitized does not exceed the limit on qualified costs as prescribed in subsection (e) of this section.

- (7) The financing order shall detail the allocation of the stranded costs to applicable classes and the corresponding design of transition charges.
- (8) The financing order shall provide for a structure and pricing of the transition bonds that results in the lowest transition charges consistent with market conditions.
- (9) The financing order shall include a mechanism requiring that transition charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the transition bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the transition bonds.
- (10) The financing order shall become effective in accordance with its terms, and the financing order, together with the transition charges, shall thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the cooperative, river authority or the commission, except for periodic true-ups as specified in this section.
- (11) Findings made by the governing body of the electric cooperative or river authority under the rules and procedures described in this section shall be conclusive, subject to the provisions of subsection (c)(2) of this section.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that rule §25.265 relating to Securitization by River Authorities and Electric Cooperatives is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 10th DAY OF FEBRUARY 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman