

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter O. UNBUNDLING AND MARKET POWER.

DIVISION 2. INDEPENDENT ORGANIZATIONS.

§25.363. ERCOT Budget and Fees.

- (a) **Scope.** This section applies to the budget of and all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under PURA §39.151.
- (1) A fee or rate that was in effect on the effective date of this section shall remain in effect and shall not be changed, except as provided in this section.
 - (2) ERCOT shall not implement any new or modified budget, rate or fee without commission approval, except as otherwise provided by this section.
 - (3) ERCOT shall not incur expenses or capital outlays in any year that exceed the amounts approved by the commission, except in the case of an emergency that impairs its ability to conduct its functions.
 - (4) ERCOT shall not incur debt, defer scheduled principal repayments of debt, or refinance existing debt without commission approval. ERCOT shall seek approval of any loan or agreement to provide a line of credit from a bank or other institution, the issuance of bonds or notes, and any arrangements that would permit it to issue bonds or permit the issuance of bonds on its behalf at a later date. The commission may approve, disapprove, or modify a proposal made pursuant to this paragraph. This paragraph does not require approval of a contract to lease equipment or other property used in normal operations, approval of a loan or draw on an existing line of credit or other credit arrangement that has been approved by the commission, or renewal of an existing working capital line of credit that has been approved by the commission.
- (b) **System of accounts and reporting.** For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the long-term operations plan prescribed by §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance). The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each major activity conducted by ERCOT.
- (c) **Allowable expenses.** Expenses and capital outlays in the budget shall be based upon ERCOT's expected cost of performing its required functions as described in PURA §39.151(a) and this chapter. To determine whether the costs are reasonable and necessary, the commission may consider the budget justification provided by ERCOT, the ERCOT long-term operations plan, costs incurred by market participants and other independent system operators for similar activities, costs incurred in prior years, capital projects identified in the budget, and to any other information and data considered appropriate by the commission.
- (1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151 and this chapter shall be included in allowable expenses.
 - (2) Allowable expenses, to the extent they are reasonable and necessary, may include, but are not limited to, the following general categories:
 - (A) Operating expenses, which include salaries and related benefits, direct advertising for the specific purpose of recruiting employees, legal and consulting services, hardware and software maintenance and licensing, insurance, employee training and travel, and depreciation;
 - (B) Facility and equipment costs, and other long-lived investments;

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- (C) Debt service (interest plus principal reduction) and other reasonable and necessary costs of capital to fund investments in property and facilities, and other capital expenditures that are used and useful in performing the functions of an independent organization;
 - (D) Expenses associated with fees and dues charged by organizations setting electric or energy business practices and communications standards (*e.g.*, North American Electric Reliability Council, North American Energy Standards Board, and ISO/RTO Council) of which ERCOT is a member; and
 - (E) Actual expenditures for public service announcements and community education efforts.
- (3) The following are not allowable as a component of expenses:
- (A) Legislative advocacy expenses, whether made directly or indirectly;
 - (B) Funds expended in support of political candidates, movements or causes;
 - (C) Funds expended promoting religious causes;
 - (D) Funds expended in support of or in acquiring membership in social, recreational, or fraternal clubs or organizations;
 - (E) Funds expended for advertising, marketing, or other promotions, which includes, but is not limited to:
 - (i) promotional goods;
 - (ii) efforts to increase name recognition;
 - (iii) radio, television, newspaper or other media advertising; except as otherwise expressly authorized; and
 - (F) Any expenditure found by the commission to be unreasonable, unnecessary, not in the public interest, or not sufficiently supported by the fee-filing package and accompanying evidence.
- (d) **Budget Submission.** ERCOT shall submit its proposed budget for commission review as specified in the commission order approving its previous budget. As part of its application for approval of its proposed budget, ERCOT shall include all information necessary for the commission to evaluate the proposed budget, including all information required under this section. The commission shall provide public notice of ERCOT's proposed budget and allow a reasonable opportunity for the public to comment on the ERCOT's proposed budget. The review and approval of a proposed budget or a proceeding to authorize and set the range for the amount of the fee under this section is not a contested case for purposes of Chapter 2001 of the Texas Government Code.
- (e) **Commission review and action.** The ERCOT annual budget and any change in the system administration fee are subject to review by the commission either annually or biennially, at the commission's discretion. Prior to the submission of a proposed budget or change in the system administration fee to the governing board for its approval, ERCOT shall consult with commission staff designated by the executive director in connection with the development of the budget and shall provide to the staff information concerning budget strategies, staffing requirements, categories of expenses, capital outlays, exceptional expenses and capital items, and proposals to incur additional debt. ERCOT shall file with the commission its board-approved budget, budget strategies, and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The commission may approve, disapprove, or modify any item included in the proposed budget and budget strategies. After approving ERCOT's budget, the commission shall authorize ERCOT to charge a system administration fee, within a range determined by the commission, that is reasonable and competitively neutral to fund ERCOT's budget. ERCOT shall closely match actual revenues generated by the system administration fee and other sources of revenue with revenue necessary to fund the budget, taking into account the effect of a fee change on market

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participants and consumers, to ensure that the budget year does not end with a surplus or insufficient funds. Any change to the fee approved by the commission or made during the course of an annual or biennial budget cycle will be noticed through standard market processes at least 45 days before implementation. ERCOT shall file with the commission, upon request, a report comparing actual expenditures with budgeted expenditures. Such reports shall be filed at least once per year.

- (f) **Performance measures.** ERCOT shall develop proposed performance measures to track its operations. Such measures shall be submitted for commission review and approval at the time ERCOT submits its proposed budget. ERCOT shall provide an explanation for any performance measure whose value for any of the preceding three calendar years was not within 5% of the commission-approved target. The commission will review ERCOT's performance as part of the budget review process. The commission shall prepare a report evaluating ERCOT's performance at the time the commission approves ERCOT's budget and shall submit the report to the Lieutenant Governor, the Speaker of the House of Representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

- (g) **User Fees.** ERCOT may charge reasonable user fees for services provided by ERCOT to any market participant or other entity. User fees do not include the system administration fee and the ERCOT nodal implementation surcharge. A new or revised user fee may be approved by the ERCOT governing board. Any affected entity, including the commission staff and the public counsel, may file an appeal of the establishment or revision of a user fee, in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct), except that the provisions of §22.251(c) of this title (which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), or Section 21 of the Protocols (Process for Protocol Revision), or other Applicable ERCOT Procedures) shall not apply.