

PROJECT NO. 41949

**RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
AMEND P.U.C. SUBST. R. §25.363 §
RELATING TO ERCOT BUDGET AND § OF TEXAS
FEES §**

**ORDER ADOPTING AMENDMENT TO §25.363
AS APPROVED AT THE JUNE 20, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.363, relating to ERCOT Budget and Fees, with changes to the proposed text as published in the April 11, 2014 issue of the *Texas Register* (39 TexReg 2725). The amendment modifies the commission substantive rule relating to the ERCOT budget process to conform to changes made by the Legislature in House Bill (HB) 1600 (also referred to as the Sunset Bill). Additional amendments conform this rule with current procedures the commission utilizes when interacting with ERCOT regarding governance, budget, and fees. Further changes remove reference to Procedural Rule §22.252, which is being repealed in Project Number 42227. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 41949 is assigned to this proceeding.

A public hearing on the amendment was not requested and therefore no hearing was held.

The commission received comments on the proposed amendment from the Electric Reliability Council of Texas, Inc. (ERCOT) and the REP (Retail Electric Provider) Coalition, consisting of Alliance for Retail Markets (ARM) (consisting of Champion Energy Services, LLC, Direct Energy, LP, and Green Mountain Energy Company), NRG Retail Texas (consisting of Reliant

Energy Retail Services, LLC, Green Mountain Energy Company, Everything Energy, LLC, US Retailers, LLC, Energy Plus Holdings, LLC, and Cirro Energy Group, Inc.), the Texas Energy Association of Marketers (TEAM) (consisting of Accent Energy d/b/a IGS Energy, Cirro Energy Group Inc., DPI Energy d/b/a Trusmart, Entrust Energy, Just Energy, Stream Energy, and TriEagle Energy), and TXU Energy Retail Company LLC.

General Comments

ERCOT stated that it appreciated the opportunity to comment on the proposed amendment to the substantive rule governing ERCOT's budget and fees and fully supports the changes proposed. ERCOT commented that the Sunset Bill specified that the review and approval of ERCOT's proposed budget, or a proceeding to authorize or set the range for the amount of a System Administration Fee, is not to be considered a contested case. In addition, ERCOT stated that the Sunset Bill authorizes the commission to request ERCOT to prepare either annual or biennial budgets, and requires the commission to authorize ERCOT to charge a reasonable and competitively neutral System Administration Fee, within a range determined by the commission, as a means for ERCOT to collect the revenues to fund its approved budget. ERCOT stated that the proposed amendments accurately set forth the roles of ERCOT and the commission in ERCOT's budget and fee processes as set forth by the Sunset Bill.

The REP Coalition generally appreciated the straightforward implementation of the ERCOT provisions in the Sunset Bill and the commission's recognition of the effect of a fee change on market participants and consumers.

Commission response

The commission agrees with parties' comments that the proposed amendment to the rule accurately reflects the legislative intent in passing the Sunset Bill.

Subsection (e)

The REP Coalition stated that the ERCOT System Administration Fee, in the past, was set and remained constant throughout the budget year and that for a significant period of time this fee also remained constant. The REP Coalition commented that this kind of stability has been beneficial to market participants and customers because changes to the System Administration Fee can potentially result in changes to retail and wholesale contracts. The REP Coalition further stated that frequent changes to the System Administration Fee could both engender customer confusion and pose potential financial risks to REPs. The REP Coalition requested that changes be made to subsection (e) because of concern that this subsection, as proposed, increases the possibility that the System Administration Fee may change more frequently as the language of subsections (d)(1) and (e) contemplates the possibility of the fee changing within the authorized range during the budget cycle as collections deviate from revenues required to fund the budget. Because of this, the REP Coalition requested that any System Administration Fee changes approved by the commission or made within the budget cycle be noticed through standard ERCOT market processes at least 45 days prior to taking effect. The REP Coalition argued that notice helps provide market participants time to implement any changes to their systems, pricing, and forecasts.

Commission response

The commission agrees with the REP Coalition and amends the rule accordingly. The Sunset Bill gives the commission authority to require ERCOT to prepare either an annual or biennial budget with actual revenues generated by the System Administration Fee and other sources of revenues closely matching revenues necessary to fund the budget. The Sunset Bill also specifies that the commission and ERCOT take into account the effect of fee changes on market participants and consumers. The commission concurs with the REP Coalition that there are market benefits of a stable System Administration Fee for both market participants and consumers. Therefore, the commission agrees that any System Administration Fee changes approved by the commission or made within the budget cycle be noticed through standard ERCOT market processes. The commission recognizes that notice helps provide market participants time to implement any changes to their systems, pricing, and forecasts. Therefore, the commission has added language to the rule requiring notice in such instances.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (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, PURA §39.151, which grants the commission the authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants, and which additionally authorizes the commission to delegate to an independent organization responsibilities for establishing or enforcing such rules. Upon delegation, the commission maintains oversight and review authority over the independent organization. Section 39.151 also provides that an independent organization is directly responsible and accountable to the commission; provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs its functions and duties; and requires an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters. This section also provides that an independent organization certified by the commission shall develop proposed performance measures to track the organization's operations and provides the commission authority to review the organization's performance as part of the budget review process. In addition, this section authorizes the commission to prescribe a system of accounts for an independent organization; conduct audits of an independent organization relating to the performance of its functions or its revenues, expenses, and other financial matters; and review the proposed budgets of an independent organization. This section also authorizes the commission to approve and authorize charges for a reasonable and competitively neutral rate to cover the independent organization's costs. This section directs the

commission to investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and permits it to require an independent organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or the effectiveness or efficiency of the organization.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§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;
 - (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 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.

This agency hereby certifies that the adoption 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 §25.363 relating to ERCOT Budget and Fees is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of June 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER