

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 §**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.363
AS APPROVED AT THE MARCH 27, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.363, relating to ERCOT Budget and Fees. The proposed 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. Additional amendments are being proposed to conform this rule with current procedures the commission utilizes when interacting with ERCOT regarding governance, budget, and fees. Further changes are being proposed to remove reference to Procedural Rule §22.252 which is being repealed in Project Number 42227.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.

Slade Cutter, Rate Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Cutter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be greater accountability and cost control with respect to the ERCOT, which plays a critical role in the

efficient operation of the electricity grid in most of Texas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Cutter has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, on or before May 12, 2014. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 41949.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (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 permits 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 charge 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) – (3) (No change.)

(4) ERCOT shall not incur debt, ~~or~~ 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 ~~or~~, 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 fee-filing application approved by the commission and~~ 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.

~~ERCOT may not change its chart of accounts to be any less detailed than that required in the fee filing package without prior commission approval.~~

- (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) (No change.)

(2) Allowable expenses, to the extent they are reasonable and necessary, may include, but are not limited to, the following general categories:

(A) – (D) (No change.)

(E) Actual expenditures for public service announcements and community education efforts, ~~provided that the total sum of all such items allowed in the cost of service shall not exceed 0.05% of the annual ERCOT revenue requirement or \$50,000, whichever is less.~~

(3) (No change.)

(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)(d) **Commission review and action.** The ERCOT annual budget and any change in the system administration fee are subject to review either annually or biennially by the commission. 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, reject~~ 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. 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)(e) 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.— The commission may adopt performance measures to assess ERCOT's fiscal and operating performance.

(g)(f) **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, ~~without the filing of an application under §22.252 of this title (relating to Approval of ERCOT Fees and Rates).~~ 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 27TH DAY OF MARCH 2014 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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