

PROJECT NO. 39657

RULEMAKING TO IMPLEMENT SB	§	PUBLIC UTILITY COMMISSION
943, RELATING TO ELECTRIC	§	
ENERGY STORAGE EQUIPMENT OR	§	OF TEXAS
FACILITIES	§	

**ORDER ADOPTING AMENDMENTS TO §25.5 AND §25.109
AS APPROVED AT THE NOVEMBER 10, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.5, relating to Definitions, with no changes to the proposed text as published in the September 23, 2011 issue of the *Texas Register* (36 TexReg 6230), and §25.109, relating to Registration of Power Generation Companies and Self-Generators, with changes to the proposed text as published in the September 23, 2011 issue of the *Texas Register* (36 TexReg 6230). The amendments will add references to energy storage equipment and facilities as required by Senate Bill 943 of the 82nd Legislature, Regular Session in 2011 (SB 943). The amendments are adopted under Project Number 39657.

The commission received comments from the Texas Energy Storage Alliance and Chamisa CAES at Tulia LLC (Chamisa). The comments of the Texas Energy Storage Alliance supported the amendment and asked that the commission address in Project Number 39764 the remaining policy issues that have effectively created a barrier to entry for energy storage resources.

Section 25.109

Chamisa recommended a clarification to the registration requirement, stating that Chamisa is concerned that the use of the terms “equipment” and “facilities” may create confusion regarding the need to register equipment that is already part of a facility.

Commission Response

SB 943 applies to “electric energy storage equipment or facilities.” Therefore, that language was used in the rule. While both the terms “equipment” and “facility” are used in the rule, the commission does not intend that a person would register both a facility that contained equipment and the individual equipment at a facility.

Section 25.109(e)

Chamisa believed that §25.109(e)(7) should refer to “electric energy storage equipment or facility” in order to conform to the amendment in §25.109(a).

Commission Response

The commission agrees that the subsection should include the term “electric energy storage equipment or facility,” and modifies the subsection accordingly.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2011) (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 §31.002(10) which includes electric energy storage equipment or facilities in the definition of “power generation company,” and PURA Chapter 35, Subchapter E, which allows the owner or operator of such equipment or facilities to interconnect, obtain transmission service, and use the equipment or facilities to sell electricity or ancillary services at wholesale.

Cross Reference to Statutes: PURA §14.002, §31.002(10), and Chapter 35, Subchapter E.

§25.5. Definitions.

(1) – (81) (No change.)

(82) **Power generation company (PGC)** -- A person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(83) – (144) (No change.)

§25.109. Registration of Power Generation Companies and Self-Generators.**(a) Application.**

- (1) A person that owns an electric generating facility, or electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies, in Texas and is either a power generation company (PGC), as defined in §25.5 of this title (relating to Definitions), or a qualifying facility (QF) as defined in §25.5 of this title, and generates electricity intended to be sold at wholesale, must register as a PGC.
- (2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.
- (3) A person that owned such generating facility prior to September 1, 2000 shall register after September 1, 2000 and before January 1, 2001. A person that becomes subject to this section after September 1, 2000 must register on or before the first date of generating electricity.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.

- (1) **Generating facility** -- All generating units located at, or providing power to the electricity-consuming equipment at an entire facility or location.
- (2) **Nameplate rating** -- The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

- (3) Net dependable capability -- The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.
 - (4) Person -- Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.
- (c) **Capacity ratings.** For purposes of this section, the capacity of generating units shall be reported as follows:
- (1) Renewable resource generating units shall be rated at the nameplate rating;
 - (2) All other generating units having a nameplate rating of ten MW or less shall be rated at the nameplate rating; and
 - (3) All other generating units having a nameplate rating greater than ten MW shall be rated at the summer net dependable capability. Self-generation units that are not required to calculate net dependable capability by the reliability council in which they operate or by the independent organization for the power region in which they operate shall be rated at the nameplate rating.
- (d) **Registration requirements for self-generators.** To register as a self-generator, a person shall provide the following information:
- (1) The legal name of the registering party.
 - (2) The Texas business address and principal place of business of the registering party.

- (3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications relating to the self-generator should be addressed.
 - (4) For each generating facility that is located in the state, the following information:
 - (A) Name;
 - (B) Location by county, utility service area, control area, power region, and reliability council; and
 - (C) Capacity rating in megawatts.
- (e) **Registration requirement for power generation companies.** To register as a PGC, a person shall provide the following information:
- (1) The legal name of the registering party as well as any trade or commercial name(s) under which the registering party intends to operate.
 - (2) The registering party's Texas business address and principal place of business.
 - (3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications should be addressed.
 - (4) The names and types of business of the registering party's corporate parent companies, along with percentages of ownership.
 - (5) A description of the types of services provided by the registering party that pertain to the generation of electricity.
 - (6) The name and corporate relationship of each affiliate that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric or municipally owned utility in Texas.

- (7) For each generation facility or electric energy storage equipment or facility that is located in the state, the following information:
 - (A) Name;
 - (B) Location by county, utility service area, control area, power region, and reliability council; and
 - (C) Capacity rating in megawatts.
- (8) For any application filed with the Federal Energy Regulatory Commission (FERC) after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed in connection with the FERC registration, and any order issued by the FERC pursuant thereto. Such registrations shall include, for example, determination of exempt wholesale generator (EWG) or QF status.
- (9) An affidavit by an authorized person attesting that the registering party:
 - (A) Generates electricity that is intended to be sold at wholesale;
 - (B) Does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title; and
 - (C) Does not have a certificated service area.
- (f) **Registration procedures.** The following procedures apply to the registration of PGCs and self-generators.
 - (1) Registration shall be made by completing the form approved by the commission, which shall be verified by oath or affirmation and signed by an owner, partner, or

officer of the registering party. Registration forms may be obtained from the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each registering party shall file its registration form with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).

- (2) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete form, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.
 - (3) The registering party may designate answers or documents that it believes to contain proprietary or confidential information. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to registration information for PGCs and self-generators.
- (g) **Post-registration requirements for self-generators.** Self-generators shall report any material change during the preceding year in the information provided on the registration form by February 28 of each year.

- (h) **Post-registration requirements for power generation companies.** PGCs shall report any material change in the information provided on the registration form within 45 days of the change. A material change would include, for example, a merger or consolidation with another owner of electric generation facilities that offers electricity for sale in this state. PGCs shall comply with the reporting requirements of the commission's rules implementing the Public Utility Regulatory Act (PURA) §39.155(a).
- (i) **Suspension and revocation of power generation company registration and administrative penalty.** Pursuant to PURA §39.356, registrations of PGCs pursuant to this section are subject to suspension and revocation for significant violations of PURA or rules adopted by the commission. The commission may also impose an administrative penalty for a significant violation at its discretion. Significant violations may include the following:
- (1) Failure to comply with the reliability standards and operational criteria duly established by the independent organization that is certified by the commission;
 - (2) For a PGC operating in the Electric Reliability Council of Texas (ERCOT), failure to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT;
 - (3) Providing false or misleading information to the commission;
 - (4) Engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;
 - (5) A pattern of failure to meet the conditions of this section, other commission rules, regulations or orders;

- (6) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (7) Failure to operate within the applicable legal parameters established by PURA §39.351; and
- (8) Failure to respond to commission inquiries or customer complaints in a timely fashion.

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 §25.5, relating to Definitions, is hereby adopted with no changes to the text as proposed and §25.109, relating to Registration of Power Generation Companies and Self-Generators, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the _____ day of NOVEMBER 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER