

**PROJECT NO. 34038**

**RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION**  
**AMEND PUC SUBSTANTIVE RULES §**  
**RELATING TO NOTIFICATION OF § OF TEXAS**  
**TRANSACTIONS AFFECTING THE §**  
**OWNERSHIP OF ELECTRIC UTILITIES §**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.74 AND  
REPEAL OF §25.75 AS APPROVED AT THE MARCH 29, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.74, relating to Reports on Sale of Property and Mergers, and the repeal of §25.75, relating to Reports on Sale of 50% or More of Stock. The proposed amendment and repeal will require an electric utility to provide notice to the commission in advance of certain transactions. The amendment and repeal will enable the commission to better regulate and supervise the business of each electric utility. Project Number 34038 is assigned to this proceeding.

Jess Totten, Director of the Electric Industry Oversight Division, has determined that for each year of the first five-year period the proposed amendment and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Totten has determined that for each year of the first five years the proposed amendment and repeal are in effect the public benefit anticipated as a result of enforcing the amendments will be that customers that rely on the services provided by electric utilities will be better protected from potential adverse consequences of certain transactions. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no

anticipated economic cost to persons who are required to comply with the section as proposed. Transactions of the kind addressed by the amendment to §25.74 are required to be reported today. This amendment will require them to be reported before a transaction occurs.

Mr. Totten has also determined that for each year of the first five years the proposed amendment and repeal are 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 at a time to be determined. The request for a public hearing must be received within 24 days after publication.

Comments on the proposed amendment and repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 24 days after publication. Sixteen copies of comments on the proposed amendment and repeal are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 35 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendment and repeal. 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 amendment and repeal. All comments should refer to Project Number 34038.

The amendment and repeal are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (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 §14.001, which gives the commission the general power to regulate and supervise the business of each electric utility; PURA §14.201, which requires the commission to keep itself informed as to the manner and method in which each electric utility is managed and its affairs are conducted; PURA §14.101, which requires the commission to review certain transactions of electric utilities; and PURA §37.154, which requires the commission to review the transfer of a certificate of convenience and necessity of an electric utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§ 14.001, 14.002, 14.101, and 37.154.

**§25.74. Report~~Reports~~ on Sale of Property, ~~Merger and Mergers,~~ Loan, Purchase or Sale of Stock, or Transfer of Certificate of Convenience and Necessity~~CCN~~.**

(a) An electric utility shall not sell, acquire, lease, or rent any plant as an operating unit or system in the State of Texas for a total consideration ~~of more than~~in excess of \$100,000 unless the electric utility reports such transaction to the commission not later than six months prior to the earliest date that the transaction could occur~~while pending or within 30 days after closing~~.

(b) An electric utility shall not merge, ~~or~~ consolidate, or otherwise combine with another electric utility or public utility operating in the State of Texas unless the electric utility reports such transaction to the commission not later than six months prior to the earliest date that the transaction could occur~~while pending or within 30 days after closing~~.

(c) An electric utility~~Electric utilities~~ shall not purchase voting stock in another electric utility or public utility doing business in the State of Texas, unless the electric utility reports such purchase to the commission not later than six months prior to the earliest date that the transaction could occur~~while pending or within 30 days after closing~~.

(d) An electric utility~~Electric utilities~~ shall not loan money, stocks, bonds, notes, or other ~~evidence~~evidences of indebtedness to any ~~corporation or~~ person who owns or holds directly or indirectly owns or holds any stock of the electric utility unless the electric utility reports such transaction to the commission not later than six months prior to the earliest date that the loan could occur~~while pending or within 30 days after closing~~. A properly filed tariff change with respect to energy conservation loans available to customers, who may or may not be

shareholders as described in this subsection, will be considered adequate reporting to the commission.

(e) ~~The direct or indirect transfer of a controlling interest in an electric utility or the electric utility's direct or indirect owner, including the sale of 50% or more of the stock of the electric utility or the electric utility's direct or indirect owner, shall not occur unless the electric utility reports such transaction to the commission not later than six months prior to the earliest date that the transaction could occur. An electric cooperative or municipal utility shall report to the commission any sale, acquisition, lease, or rental of any generating facilities in the State of Texas for a total consideration in excess of \$100,000, during the pendency of the transaction or within 30 days after closing.~~

(f) ~~An electric utility shall not directly or indirectly transfer a certificate of convenience and necessity unless the electric utility reports such transaction to the commission not later than six months prior to the earliest date that the transfer could occur. The circumstances in which a transfer of an electric utility's certificate of convenience and necessity occurs include, but are not limited to, a transaction described in subsection (b) or (e) of this section.~~

(g) ~~A transaction addressed in subsection (f) of this section shall not occur before the commission completes its review of the transaction as proposed, regardless of the amount of time that has transpired since the report of the transaction to the commission was made.~~

(h) For purposes of this section, a direct or indirect owner of an electric utility is limited to an entity that directly or indirectly controls the electric utility, and therefore does not include an entity that has a non-controlling interest in the electric utility or the electric utility's parent.

(i) This section applies to all transactions addressed by this section that have not yet occurred, including transactions for which reports to the commission have been made pursuant to this section.

~~§25.75. Reports on Sale of 50% or more of Stock.~~ **REPEAL**

~~—All transactions involving the sale of 50% or more of the stock of an electric utility shall be reported to the commission while pending or within 30 days after closing.—~~

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 30th DAY OF MARCH 2007 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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