

**PROJECT NO. 24462**

**PERFORMANCE MEASURES FOR  
THE RETAIL ELECTRIC MARKET**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**ORDER ADOPTING NEW §25.88  
AS APPROVED AT THE APRIL 2, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.88, relating to Retail Market Performance Measure Reporting, with changes to the proposed text as published in the February 14, 2003 issue of the *Texas Register* (28 TexReg 1313). The new rule establishes reporting requirements for the Electric Reliability Council of Texas (ERCOT), retail electric providers (REPs), and transmission and distribution utilities (TDUs). The reporting requirements will allow the commission to obtain information to evaluate the performance of the retail electric market. These requirements focus on key indicators related to both competitive activity and the technical systems that are necessary to enable customers to enroll with alternative providers. The new section outlines penalties for failure to timely file an accurate performance measures report or for continued failure of an entity to meet reasonable standards of performance. The commission also established a standard format for reporting in accordance with Procedural Rule §22.80 of this title (relating to Commission Prescribed Forms).

The commission received comments on the proposed new section from LCRA Transmission Services Corporation (LCRA); Reliant Resources, Incorporated (Reliant); American Electric Power Texas North Company and American Electric Power Texas Central Company (AEP Companies); TXU Energy Retail Company and Oncor Electric Delivery Company (TXU Companies); and City of Austin doing business as Austin Energy and San Antonio City Public

Service Board (collectively, AE-CPS). No interested party requested a public hearing pursuant to Texas Government Code §2001.029.

This rule differs from the rule originally published on October 11, 2002 (27 TexReg 9525) and withdrawn on February 14, 2003 (28 TexReg 1373). First, the rule does not apply to competitive affiliates of a municipally owned utility (MOU) or electric cooperative (Coop) that have chosen to participate in customer choice pursuant to the Public Utility Regulatory Act (PURA) §40.051(b) or PURA §41.051(b) and are providing electric energy at retail to consumers in Texas outside their certificated retail service areas. Second, the rule requires reporting entities to file as confidential any information relating specifically to any other entity, unless the commission has determined that such information is not competitively sensitive or the disclosing entity has given the reporting entity express written permission to release such information publicly. Third, the rule prohibits reporting entities from failing to complete at least 98% of all its technical market transactions in each transaction category within the parameters set forth in the ERCOT Protocols or the Standard Tariff for Retail Delivery Service pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities). Finally, the commission may evaluate the reporting requirements as necessary to determine if modifications to the performance measures are required in response to changing market conditions and the evaluation process shall include notice and opportunity for public comment.

In addition, the reporting requirements in the form differ from those originally published in four main aspects. First, TDUs are mandated to report data concerning meter read transactions. Second, TDUs are mandated to report the number of safety net move-ins executed in which the electronic data interchange (EDI) transaction is still outstanding. Third, TDUs are required to report inter-company invoices, or the total number of 810\_02 transactions, including the percentage of 810\_02 cancel transactions as a percentage of the total number of 810\_02s sent. Fourth, REPs are required to report information on billing.

AE-CPS and AEP Companies both noted that paragraph 1.b. of the filing package, which is the Application subsection in the General Instructions, is inconsistent with the Application subsection in proposed §25.88(b)(2). AE-CPS and the AEP Companies requested that paragraph 1.b. of the filing package be revised to conform to §25.88(b)(2).

The commission agrees with the parties and amends the filing package accordingly.

LCRA commented that, because it is a wholesale transmission provider in ERCOT that does not serve any retail load, the filing requirements of the proposed rule do not apply to LCRA or any other transmission provider that does not serve retail load. LCRA requests that the commission add language to §25.88(b)(3) to explicitly exclude transmission providers that do not serve retail load.

The commission agrees that the rule applies only to those transmission and distribution utilities that serve retail load and amends the rule and filing package accordingly.

AEP Companies pointed out that Measure B-2 in the proposed filing package does not appear to allow the TDU to challenge data provided by ERCOT, and requests that Measure B-2 be revised to restore the TDU's right to challenge this data.

The commission agrees with the AEP Companies and amends the rule accordingly to allow the TDU to challenge the data provided by ERCOT in Measure B-2.

Reliant argued that the 810\_02 transactions are point to point transactions between two parties and most processing problems can be resolved by a joint effort between the two parties. Reliant noted the ability to generate customer bills has been affected by problems with 810\_02 transactions, but stated that it has experienced a less severe problem with 810\_02 transactions, compared to the problems experienced with successfully obtaining initial and periodic consumption files (867\_03s and 867\_04s). Reliant maintained that TDUs have a meaningful incentive to promptly create and deliver 810\_02 transactions, since this is the mechanism through which their revenues are received. In addition, Reliant argued that the TDU tariff provision regarding the imposition of late fees provides incentive for REPs to timely complete the remittance process in response to 810\_02 invoices. Reliant argued that the current market structure offers a mechanism for market participants to escalate and resolve problems through either ERCOT or the commission in the event of an unsuccessful one-on-one resolution. Reliant

argued that the increased resource burden resulting from this reporting effort would be neither beneficial nor necessary for insight into market performance and that time and resources could be better employed to ensure future operational success of the customer billing process.

The commission declines to accept Reliant's proposal not to require reporting on 810\_02 transactions. There have been significant problems with the timely receipt of the 810\_02 transactions, resulting in delays in customer billing. The commission believes that reporting in this area is necessary.

In addition, Reliant filed new comments regarding proposed subsection (c)(3), which requires a reporting entity to designate as confidential any information relating specifically to any other entity unless the commission has determined that such information is not competitively sensitive or the disclosing entity has given the reporting entity express written permission to release such information publicly. Reliant supported this language and stated that adherence to this subsection is critical to the competitive market in that it permits reporting entities to maintain commercially sensitive information confidential. Reliant also supported proposed subsection (g)(2)(A) that requires all entities to complete at least 98% of their technical market transactions within the parameters set forth in the ERCOT Protocols and/or the Standard Tariff for Retail Delivery Service. Reliant supported the language in proposed subsection (i) to allow for commission evaluation of the reporting requirements as necessary to determine if modifications to the performance measures are necessary due to changing market conditions. Reliant indicated that this requirement is crucial in light of the 98% target in subsection (g)(2)(A). By allowing the

commission flexibility in evaluating the performance measures and responding to changing market conditions, subsection (i) mitigates Reliant's concern that the 98% performance target may still result in negative impacts to a large number of customers. Reliant urged the commission to consider adding to the filing package reporting requirements relating to the following transactions: move-out request (814\_24), move-out response (814\_25), and the corresponding final meter reads (867\_03) and final bills (810\_02). Reliant stated that the completion of move-out transactions affects the ability of REPs to timely bill customers and that the additional measures would provide the commission with a more complete picture of transactions flows throughout ERCOT.

The commission recognizes the importance of the transactions related to move-outs, but declines to add the additional reporting requirement to the filing package at this time. However, the commission reserves the right to request ad hoc reporting regarding these transactions at any time, as allowed by §25.88(f)(1) and (2).

TXU Companies argued that exemption from the rule's application of competitive affiliates of MOUs/Coops that have opted-in to customer choice and are serving customers outside the MOU's/Coop's certificated retail service area is discriminatory against REPs that are subject to the rule and creates an unfair playing field in the retail market in violation of PURA §39.001(a)(1) and §39.001(d).

While the commission agrees with TXU Companies that the retail playing field should be as level as possible and may not discriminate against participants in the competitive market, procedural concerns prevent the commission from adopting at this time a version of the rule that has application to MOUs/Coops. *See State Bd. Of Ins. v. Deffebach*, 631 S.W.2d 794, 797 (Tex. App.—1982, writ ref'd n.r.e.). The commission reserves the right to revisit the rule and this issue at a later date.

The TXU Companies asked that the commission recognize that transactions impacted by commission-approved workarounds are often completed outside of the set time parameters as a direct result of the workarounds. The TXU Companies argued that these transactions should be excluded from the group of transactions on which a market participant will be judged in order to accurately portray a market participant's compliance with timely completion of transactions. The TXU Companies cited the example of the safety net move-in workaround as an example of the need to exclude workarounds. The TXU Companies argued that safety net should be excluded from the body of transactions on which the 98% performance standard is based as the performance standard is intended to reflect market participants' compliance with the parameters developed for normal, "non-workaround" situations.

The commission appreciates the TXU Companies' comments regarding the impact of commission-approved workarounds on the performance measures reporting. As indicated in Measure B-1 in Schedule C: Reporting Requirements for TDUs, the commission requires the TDUs to report for each REP the number of safety net move-ins executed where the EDI

transaction is still outstanding. Information regarding safety net move-ins will be reported as long as this workaround is in place. The commission recognizes that the TDU has no control over when the REPs submit the EDI move-in transactions after they have submitted move-ins via the safety net. If a TDU's 814\_04 protocol performance is below 98% and it can be demonstrated that the poor performance is attributable either to REPs not following the market guidelines set forth for the safety net process, or to some delay within the ERCOT systems with regard to processing the move-in transactions, then the commission will consider these factors very carefully prior to pursuing enforcement action against the TDU.

The TXU Companies note that the "Factors to be considered" in §25.88(g)(2)(D) appear to only be applicable to a failure to meet 98% of technical market transaction parameters. The TXU Companies believe that the rule should expressly provide that these factors will be considered with regard to alleged violations of this rule, including not only a failure to meet 98% of technical market transaction parameters, but also a failure to timely file accurate performance measure reports. The TXU Companies proposed language to clarify the commission's intent.

The commission finds that the proposed language by the TXU Companies assists in clarifying the original intent and amends §25.88(g) to include the language proposed by the TXU Companies.

The TXU companies proposed language for Measure B-3 in the filing package to clarify that the billing measures are related to *active* customers only.

The commission amends Measure B-3 to include the language proposed by the TXU Companies.

For consistency and clarity, the commission makes the following minor amendments to the filing package. Section A, Competitive Market Indicators, Definition and Procedure for Measure A-1 states that ERCOT shall report the "REP of Record" in the ERCOT database for each Electric Service Identifier (ESI ID) on the last day of each month in the reporting period. The commission amends the filing package to allow ERCOT to report the "REP of Record" on the last *business* day of each month in the reporting period. This allows ERCOT to generate these reports during normal business operations instead of week-ends in those months where the last calendar day falls on a Saturday, Sunday or holiday. The commission removes all references to a "web-based reporting system" in order to allow ERCOT greater flexibility to determine how data and reports can best be disseminated to market participants. References to a web-based reporting system were found in Measures B-1 and B-2 under Schedule A: Reporting Requirements for ERCOT. The commission also removes references to ERCOT's Market Metrics as this website will no longer be used for the purposes of collecting market performance data. References to Market Metrics appeared in Measures B-1 and B-2 under Schedule A: Reporting Requirements for REPs, as well as in the introductory paragraph of Schedule C and in Measure B-1 under Schedule C. In Measures B-1 and B-2 under Schedule A: Reporting Requirements for ERCOT, the commission clarified that information for Measure B-1: Customer Enrollment Success Rate and Measure B-2: Meter Reading Transaction Success Rate will be provided by REP and by TDU service territory. Staff learned through discussion at an informal

performance measures workshop on February 26, 2003, that the requirements for ERCOT to measure the TDU's production of 867\_04 transactions and to measure whether or not the TDU sends the 867\_04 within three days of completion of the move-in were not possible for ERCOT to track. The commission removed these requirements from Measure B-2 under Schedule A: Reporting Requirements for ERCOT. Staff also learned through that same discussion that the requirement for ERCOT to track whether or not the TDU uses a specific move-in date on an 814\_04 was also not possible for ERCOT to track. The commission removed this requirement from Measure B-2 under Schedule A: Reporting Requirements for ERCOT. The commission added a requirement for ERCOT to track the 814\_10 Transfer to affiliated REP transaction. The filing package already required ERCOT to track the 814\_11 transaction, which is the response to the 814\_10. For this reason, ERCOT expected to track the 814\_10 even though it was not originally listed in Schedule A: Reporting Requirements for ERCOT. Therefore, there is no additional burden to ERCOT to report this measure. Finally, two very similar requirements in Measure B-2 related to reporting on 867\_03 transactions were combined into one requirement and language was added to clarify that ERCOT would measure the amount of time it takes ERCOT to send the 867\_03 to the REP after ERCOT receives the 867\_03 from the TDU.

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.

This new section was adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2003) (PURA) §14.002, which provides the commission with authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.001, which provides authority to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power; §14.003, which provides authority to require reports of a public utility; §15.023, which provides for commission imposition of an administrative penalty against a person regulated under PURA who violates PURA or a rule adopted under PURA; §31.003, which requires the commission to report to the Legislature on the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets; §39.001, which sets forth the legislative policy and purpose of PURA Chapter 39, Restructuring of Electric Utility Industry; §39.101, which sets forth customer safeguards; §39.151, which subjects to commission review procedures established by an independent operator relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants; §39.352, which sets forth standards for certification of REPs; §39.356, which provides for suspension, revocation, or amendment of a REP's certificate; and §39.357, which provides for the imposition of administrative penalties on a REP for violations described by §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 15.023, 31.003, 39.001, 39.101, 39.151, 39.352, 39.356, and 39.357.

**§25.88. Retail Market Performance Measure Reporting.**

- (a) **Purpose.** This section establishes reporting requirements to allow the commission to obtain information to be used for evaluation of the performance of the retail electric market in Texas.
- (b) **Application.** This section applies to:
- (1) Electric Reliability Council of Texas (ERCOT) as defined in Public Utility Regulatory Act (PURA) §31.002(5) and §25.5 of this title (relating to Definitions);
  - (2) Retail electric providers (REPs) as defined in PURA §31.002(17) and §25.5 of this title (relating to Definitions); and
  - (3) Transmission and distribution utilities (TDUs) operating in a qualifying power region in the State of Texas where customer choice has been introduced as defined in PURA §31.002(19) and §25.5 of this title (relating to Definitions), except transmission service providers that provide only wholesale transmission.
- (c) **Filing requirements.** Using forms prescribed by the commission, a reporting entity shall report activities as required by this section. Such reports shall be filed with the commission under the project number assigned by the commission's central records office for all filings required each calendar year.

- (1) Each entity shall file four copies of the printed report and any attachments in accordance with §22.71 of this title (related to Filing of Pleadings, Documents, and Other Material). Additionally, each entity shall file an electronic version of its report consistent with the commission's electronic filing standards set forth in §22.72(h) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).
  - (2) A quarterly report shall be filed no later than the 45th day following the end of the preceding quarterly reporting period. Quarterly periods shall begin on January 1, April 1, July 1, and October 1.
  - (3) The reporting entity may designate information that it considers to be confidential. A reporting entity must file as confidential any information relating specifically to any other entity unless the commission has determined that such information is not competitively sensitive or the disclosing entity has given the reporting entity express written permission to release such information publicly. Information designated as confidential shall be processed in accordance with §22.71 of this title and the requirements of commission rules pertaining to information received from ERCOT.
- (d) **Key performance indicators.** Reporting entities shall report on the following key performance indicators on a quarterly basis:

- (1) **Competitive market indicators.** These measures will allow the commission to assess the activity in the competitive market through the number of customers and corresponding load served by non-affiliated REPs and the number of active REPs.
  - (2) **Technical market mechanics.** These measures will allow the commission to assess whether the technical systems of the reporting entities are functioning properly to perform market transactions necessary for a customer to select a REP and to receive timely electric service with accurate and timely bills for that service.
- (e) **Supporting documentation.** Each performance measures report shall include:
- (1) **Analysis.** The reporting entity shall include an analysis of its data and performance for the reporting period with a comparison to performance in the previous period.
  - (2) **Report attestation.** All reports submitted to the commission shall be attested to by an owner, partner, officer, or manager of the reporting entity under whose direction the report is prepared. The attestation shall also verify that an internal review was conducted to confirm the accuracy of the information contained in the performance measures report.
  - (3) **Supporting documents available for inspection.** All supporting documents, including records, books, and memoranda shall be made available at the reporting entity's main office for inspection by the commission or its designee upon request. Supporting documents shall be maintained for a period of 24 months after the

report date. Supporting documents may be kept outside the State of Texas so long as those records are returned to the State for any inspection requested by the commission or its designee.

- (4) **Waiver of certain information.** The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome for the reporting entity to furnish the requested information. If any such information is omitted by commission waiver, a written explanation of the omission and a copy of the waiver must be included in the report.
  
- (f) **Other reports.** Reporting entities may be required to submit special reports to allow the commission to analyze the changing dynamics of the retail electric market or to obtain information on specific issues that may require additional diagnostic review.
  - (1) **Supplemental information requested by the commission.** Upon request by the commission or its designee, a reporting entity shall provide any special and additional information that relates to its performance measures report. Such request shall specify a time for the reporting entity to respond that is reasonable in consideration of the information requested.
  - (2) **Additional reports requested through ERCOT.** Reporting entities may be required to provide to ERCOT, or groups operating under the authority of ERCOT, special and additional information that relates to market performance for specific analytical or diagnostic purposes.

(g) **Enforcement by the commission.**

(1) **Failure to timely file accurate report.** The commission may impose all applicable administrative penalties pursuant to PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title (relating to Administrative Penalties) for failure of a reporting entity to timely file an accurate performance measures report.

(2) **Technical market mechanics.**

(A) **Prohibited conduct.** Each entity shall complete within the parameters set forth in the ERCOT Protocols and/or the Standard Tariff for Retail Delivery Service pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), at least 98% of all its technical market transactions in each transaction category identified in the filing package.

(B) **Performance-improvement plan.** Prior to imposing any penalty for a violation of subparagraph (A) of this paragraph, the commission or its designee shall meet with the reporting entity and develop a performance-improvement plan. The performance-improvement plan shall contain specific goals and timeframes for improving performance and shall be reasonable in view of all relevant circumstances.

- (C) **Penalties.** If a reporting entity violates subparagraph (A) of this paragraph and fails to meet the performance required in a performance-improvement plan, the commission may impose the following penalties, as appropriate:
- (i) Administrative penalties under PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title;
  - (ii) Any penalty against ERCOT as established by commission rule and as authorized by PURA §39.151; or
  - (iii) Suspension, revocation, or amendment of a REP's certificate or registration as authorized by PURA §39.356 and §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).
- (3) **Factors to be considered.** In assessing penalties pursuant to paragraphs (1) and (2) of this subsection, the commission shall consider the following factors:
- (A) The reporting entity's prior history of performance;
  - (B) The reporting entity's efforts to improve performance;
  - (C) Whether the penalty is likely to improve performance; and
  - (D) Such other factors deemed appropriate and material to the particular circumstances.
- (h) **Public information.** The commission may produce a summary report on the performance measures using the information collected as a result of these reporting requirements. Any such report shall be public information. The commission may

provide the reports to any interested entity and post the reports on the commission's Internet website.

- (i) **Commission review.** The commission may evaluate the reporting requirements as necessary to determine if modifications to the performance measures are necessary due to changing market conditions. Such evaluation process shall include notice and opportunity for public comment.

This agency hereby certifies that the rule, as adopted, 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 §25.88 relating to Retail Market Performance Measure Reporting is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 17th DAY OF April 2003.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Rebecca Klein, Chairman**

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**Brett A. Perlman, Commissioner**

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**Julie Parsley, Commissioner**