

The Public Utility Commission of Texas (commission) proposes new §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies. The proposed new section establishes the procedures for a Public Utility Regulatory Act (PURA) Chapter 58 electing company to introduce nonbasic services, including new services, and to exercise pricing flexibility for basic and nonbasic services and for complaints regarding service offerings introduced through informational notice filings. Project Number 21161 has been assigned to this proceeding.

The commission staff received comments on proposed §26.227 from interested persons at workshops held on November 15, 1999 and March 28, 2000. The November 15, 1999 workshop focused on implementation of Senate Bill 560, while the March 28, 2000 workshop focused on several rules drafted for discussion.

In addition, the commission staff coordinated the end product of Project Number 21161 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings*; Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps and Rate Adjustments*; Project Number 21157, *Rulemaking to Establish Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies*, and Project Number 21159, *Rulemaking to Implement New Services*

and Promotional Offerings and Pricing and Packaging Flexibility for PURA Chapters 52 and 59 companies.

Melene R. Dodson, Administrative Law Judge, Office of Policy Development and Martin Wilson, Senior Attorney, Office of Regulatory Affairs, have 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 the section.

Ms. Dodson and Mr. Wilson have 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 proposed section will be establishment of the commission's procedural requirements relating to nonbasic services and pricing flexibility for basic and nonbasic services offered by Chapter 58-electing companies. There will be no 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.

Ms. Dodson and Mr. Wilson have 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 §2001.022.

The language herein describes the procedural requirements relating to nonbasic services and pricing flexibility for basic and nonbasic services offered by Chapter 58 companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21155 proposes §26.226, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies. Project Number 21156 proposes §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies. Finally, Project Number 21157 proposes §26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies.

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21157, and 21159 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication in the *Texas Register*. Reply comments may be submitted within 45 days after publication in the *Texas Register*. The commission staff requests that commentors e-mail an electronic copy of comments and reply comments to 21161mail@puc.state.tx.us.

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 21161.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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, Chapter 58, Subchapter E, pertaining to nonbasic services and pricing flexibility for basic and nonbasic services and PURA, Chapter 60 pertaining to competitive safeguards.

Cross Reference to Statutes: PURA §§14.002, 51.002 and 51.004; PURA, Chapter 58 and Chapter 60.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58-Electing Companies.

- (a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002 who choose to offer nonbasic services and exercise pricing flexibility for basic and nonbasic services through informational notice filings. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies) and §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies).
- (b) **Purpose.** The purpose of this section is to establish procedures for an electing company to introduce non-basic services, including new services, and to exercise pricing flexibility for basic and non-basic services, and for complaints regarding service offerings introduced through informational notice filings.
- (c) **Informational notice filing and notice requirements related to pricing flexibility and non-basic services, including new services.**
- (1) **Notice requirements:**

- (A) General notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPUC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.
- (B) Additional notice requirements for an electing company serving more than five million access lines. In addition to the notice requirements in subparagraph (A) of this paragraph, an electing company serving more than five million access lines in this state shall:
 - (i) comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:
 - (I) introduction of any new nonbasic services;
 - (II) and new features or functions of nonbasic services;
 - (III) promotional offerings of nonbasic services; or
 - (IV) discontinuation of then-current features or services.
 - (ii) Notice shall be provided to any person who

- (I) holds a certificate of operating authority in the electing company's certificate area or areas; or
 - (II) has an effective interconnection agreement with the electing company.
- (iii) The following timelines shall apply to the provisions of notice pursuant to this subsection:
- (I) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or
 - (II) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.
- (C) The requirement for additional notice under subparagraph (B) of this paragraph expires on September 1, 2003.
- (2) **Filing requirements:**
- (A) At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to both OPUC and the commission's Director - Policy Analysis, Telecommunications Industry Analysis Division.

- (i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".
 - (ii) Staff of the commission's Office of Regulatory Affairs (ORA) shall file any notice of deficiencies for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.
 - (iii) Within two working days after the date of ORA's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.
- (B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.
- (C) Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff, upon execution of a commission approved protective agreement, at the time the informational notice is filed.
- (D) Format of filing. An informational notice under this section must include the following elements:
- (i) name of company;

- (ii) PURA chapter under which company operates;
- (iii) date of submission;
- (iv) effective date;
- (v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs), governing the form and filing of tariffs;
- (vi) proposed implementation date (if different from effective date);
- (vii) affidavit of notice to OPUC, COA holders, and parties to interconnection agreements;
- (viii) type of filing (new service; pricing flexibility involving basic service; non-basic only pricing flexibility; packaging, term and volume discount or promotional offering regulated by PURA §58.004; customer specific contract; customer specific contract regulated by PURA §58.003; promotional offering);
- (ix) relevant long run incremental cost (LRIC) study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for

approval of that LRIC study pursuant to §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), to establish a LRIC floor shall be filed before or simultaneously with the informational filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.215 of this title no later than ten days prior to the filing of the informational notice filing.

- (x) A response of "yes", "no", or "not applicable", with explanatory language to the following question: "Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" If the response is "yes" or "no", the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;
- (xi) A response of "yes" or "no" to the following question: "Is the service available for resale by a competitor?" If the answer is "no", does the proposed price meet the standards set forth in §26.274(f) - (h) of this title (relating to Imputation)? For purposes of this question, "available for resale" means:

- (I) the service is not subject to tariffed resale restrictions; and
 - (II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the electing company's provisioning of the service to the electing company's customers;
 - (xii) For package offerings that include any unregulated product or service or an affiliate's product or service, an affidavit indicating that the price of the package, in addition to the requirements of §26.226(e)(1) of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), also recovers the cost to the electing company, of offering the unregulated products or services or an affiliate's products or services.
 - (xiii) description of offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and
 - (xiv) a privacy concerns statement.
- (d) **Disputes as to sufficiency or appropriateness of informational notice filing.**

- (1) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.
 - (2) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.
 - (3) Parties other than ORA may not challenge the sufficiency of an informational notice filing.
- (e) **Complaints regarding service offerings introduced by informational notice filings.** An affected person, OPUC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will be considered to initiate a contested case.
- (1) A complaint addressing an informational notice filing may challenge whether the filing is in compliance with PURA and/or commission substantive rules.
 - (2) If a complaint challenging the price of a new service is resolved in a final order issued by this commission in favor of the complainant, the electing company shall either:
 - (A) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

- (B) discontinue the service.
- (3) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.
- (4) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:
 - (A) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.
 - (B) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice filings.
- (5) The commission's Office of Regulatory Affairs shall have standing in all proceedings related to informational notice filings before the commission and need not file a motion to intervene.
- (6) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of commission Procedural Rule §22.242(c) of this title (relating to Complaints).

(f) **Interim relief.** A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(1) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(A) the pleading must state an appropriate and bona fide cause of action;

(B) the pleading must be verified or supported with affidavits based on personal knowledge; and

(C) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(2) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(3) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 4th DAY OF MAY 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**