

**PROJECT NO. 39623**

<b>RULEMAKING PROCEEDING TO</b>	<b>§</b>	
<b>AMEND PUC SUBST. R. 26.74,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RELATING TO REPORTS ON SALE</b>	<b>§</b>	
<b>OF PROPERTY AND MERGERS,</b>	<b>§</b>	<b>OF</b>
<b>AND SUBST. R. 26.101, RELATING TO</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	<b>TEXAS</b>
<b>AND NECESSITY CRITERIA</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §26.74 AND §26.101 AS APPROVED AT THE SEPTEMBER 29, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.74, relating to Reports on Sale of Property and Mergers, and §26.101, relating to Certificate of Convenience and Necessity Criteria. Pursuant to House Bill 1753 of the 82nd Legislature, Regular Session in 2011 (HB 1753), the amendments increase from \$100,000 to \$10 million the total amount of consideration exchanged in a sale, acquisition, or lease of an operating unit or system above which a public utility is required to report the transaction to the commission.

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

Mr. Cutter has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendment will be compliance with HB 1753. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Mr. Cutter has also determined that for each year of the first five years the amendments 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.

Initial comments on the 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, within 20 days after publication in the Texas Register. Reply comments may be submitted within 27 days after publication. Sixteen copies of initial and reply comments on the 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 amended rules. All comments should refer to Project Number 39623.

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 78711. The request for a public hearing must be received within 20 days after publication in the Texas Register.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (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, HB 1753 §1, which amends PURA §14.101(a),

effective September 1, 2011, to increase the threshold above which public utilities must report to the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§ 14.002 and HB 1753 §1 (which amends PURA 14.101(a)).

**§26.74. Reports on Sale of Property and Mergers.**

- (a) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of **\$10 million** **[\$100,000]** unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

- (b) - (f) (No change.)

**§26.101. Certificate of Convenience and Necessity Criteria.**

(a)-(e) (No change.)

(f) **Sale, transfer, merger.** A notice must be filed for the sale, transfer, or merger (STM) of at least 50% of the utility, or sale, acquisition or lease of facilities as an operating unit or system for a total consideration of more than **\$10 million** [~~\$100,000~~].

(1) Chapter 58 electing utilities must file a written notification with the commission no later than 30 days after the STM has closed.

(2) Chapter 59 electing utilities must comply with the requirements set forth in PURA § 14.101 and §51.010.

(g) (No change.)

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 SEPTEMBER 2011 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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