

The Public Utility Commission of Texas (commission) adopts amendments to §26.79, relating to Equal Opportunity Reports, §26.80, relating to the Annual Report on Historically Underutilized Businesses and new §26.85, relating to the Report of Workforce Diversity and other Business Practices with changes to the proposed text as published in the April 7, 2000, *Texas Register* (25 Tex Reg 2887). The adopted new rule and amendments will implement the provisions of Senate Bill 560 (SB560), Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210, 4215 (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §52.256(b)), which require telecommunications utilities to file an annual report to the commission and the legislature relating to the telecommunications utility efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses and will eliminate duplicative filing requirements. This new rule and amendments are adopted under Project Number 22166.

A public hearing on the proposed rule was held at the commission offices on May 4, 2000, at 9:30 a.m. Representatives from AT&T Communications of Texas, L.P. (AT&T), Southwestern Bell Telephone Company (SWBT), Texas Statewide Telephone Cooperative, Inc. (TSTCI), and Texas Telephone Association (TTA) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The following parties filed written comments in general support of the proposed new rule and amendments: AT&T, SWBT, TTA, and TSTCI.

Comments on Preamble Question:

The commission asked the following question: Is an exemption appropriate for (1) utilities that have fewer than a certain number of employees, (2) utilities that do not do any contracting in Texas, (3) resellers only, (4) utilities whose workforce is more than a certain percentage minority or (5) utilities that were not formed before January 1, 2000?

SWBT commented that it is opposed to any exemptions being granted. SWBT suggested that the Public Utility Regulatory Act (PURA) does not allow for an exemption to be granted. TSTCI suggested that a waiver should be granted allowing an exemption to the reporting requirements for small Incumbent Local Exchange Carriers (ILECs) serving fewer than 31,000 access lines. TSTCI explained that small ILECs anticipate that they have few changes to report in future annual filings. TSTCI stated that turnover at small ILECs is typically very low, and the small ILECs have limited opportunities in rural areas to diversify their workforce. TSTCI stated that if it is not within the commission's discretion to add a waiver provision to the rule, then there should be an abbreviated filing format for small ILECs so that a small ILEC would only be required to report changes that have occurred during the year. At the public hearing, TTA stated that the commission has the authority to grant good-cause exemptions.

However, TTA stated that even smaller companies should be required to file employment and employee information.

The commission agrees that PURA §52.256 does not allow for a complete exemption from the filing requirements; however, the commission understands that some abbreviated filing is necessary for small utilities with no employees in Texas or a limited number of employees and few resources. The definition of "telecommunications utility" encompasses a wide range of providers, including those located in rural areas with fewer opportunities to diversify and a small presence in the state. For example, the definition of telecommunications utility includes entities that act as local and long distance resellers. Many resellers do not own any switches nor do they use contractors for installation and repairs. Further, smaller incumbent local exchange companies with out-of-state home offices have historically been given waivers for filing HUB reports, although no exemptions exist in the current law. (See Project Number 16794) Moreover, the Federal Communications Commission (FCC) allows for an abbreviated filing of the equal opportunity reporting requirement for telecommunications utilities with fewer than 16 employees (FCC Form 395). As such, the commission adds rule language, which allows telecommunications utilities with fewer than 16 employees employed in the state to satisfy the requirements of §26.85, relating to Report of Workforce Diversity and Other Business Practices, by filing an EEO report pursuant to §26.79, relating to Equal Opportunity Reports.

Comments on Proposed Sections:

§26.79. Equal Opportunity Reports

Subsection (f) establishes a reporting requirement for the commission to send a report to the Texas legislature. This section was deleted.

No comments were received.

§26.80. Annual Report on Historically Underutilized Businesses

Subsection (a) defines historically underutilized businesses.

The commission makes changes to this subsection (a) to be consistent with proposed amendments made to §25.80.

Subsection (b) establishes the format of the report being submitted to the commission.

TTA suggested that companies be allowed to use Lotus 1-2-3 format.

The commission agrees with TTA's rationale and makes the appropriate changes to subsection (b).

§26.85 Workforce Diversity Report

AT&T recommended that the title of this proposed rule be changed to reflect accurately the issues addressed in the report.

The commission agrees with AT&T's rationale and makes the appropriate change to the title of §26.85.

Subsection (a) of this section establishes the purpose of the rule. TTA proposed that the purpose clause should be modified to include language that ties the information contained in the report to the issues, initiatives, and progress of the provisions included in the companies' five-year Plan.

The commission agrees with TTA's rationale and makes the appropriate change to subsection (a).

Subsection (d) of this section establishes the title of the report to be filed annually with the commission. TTA suggested that the title of this report should be changed to "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" to better describe the contents of the report.

The commission agrees with TTA's rationale and makes the appropriate changes to subsection (d) and (e).

At the public hearing, a representative from Casey, Gentz & Sifuentes, a law firm that represents competitive local exchange carriers, stated that their clients who were operational after January 1, 2000, did not know what to file because they were just starting operations in Texas.

The commission believes that to have pertinent information on supplier and workforce diversity in Texas utilities that become operational after January 1, 2000, should be included in the annual filing requirements. The commission adds language to this section to allow companies to file diversity plans in Docket Number 21170.

Subsection (e) of this section establishes how many copies and with whom to file the reports. TTA suggested that information should be added to include with whom the companies should file the copy that is required to be sent to the Legislature.

The commission agrees with TTA's rationale and makes the appropriate changes to subsection (e).

Subsection (f) of this section outlines the information that must be contained in the annual report. TTA, TSTCI, and AT&T suggested that companies should be given some flexibility as to the format and structure of the report.

The commission agrees with TTA's, TSTCI's, and AT&T's rationale and makes the appropriate change to subsection (f).

The amendments and new section are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supp. 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 12.252, 51.002, and 52.256.

§26.79. Equal Opportunity Reports.

- (a) The term "minority group members," when used within this section, shall include only members of the following groups:
- (1) African-Americans;
 - (2) American Indians;
 - (3) Asian-Americans;
 - (4) Hispanic-Americans and other Americans of Hispanic origin; and
 - (5) women.
- (b) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility shall also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them, if any.

- (c) Any additional information relating to the matters described in this section may be submitted at the utility's option.
- (d) Any utility filing with the commission any documents described in subsections (b) and (c) of this section shall file four copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.
- (e) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by December 30 of the year it is filed with the local, state or federal agencies.
- (f) A utility that files a report pursuant to §26.85(f)(1) of this title (relating to Report of Workforce Diversity and Other Business Practices) satisfies the requirements of subsection (b) of this section.

§26.80. Annual Report on Historically Underutilized Businesses.

- (a) In this section, "historically underutilized business" has the same meaning as in Texas Government Code, §481.191, as it may be amended.

- (b) Every utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. A utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (*utility name.wk*) or Microsoft Excel (*utility name.xls*) format).
 - (1) Each small local exchange company and telephone cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using the Small Utilities HUB Report form.
 - (2) Every utility other than those specified in paragraph (1) of this subsection, shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the year the report is filed, using the Large Utilities HUB Report form.
 - (3) Each utility wishing to report indirect HUB procurements or HUB procurements made by a contractor of the utility may use the Supplemental HUB report form.

- (4) Each utility shall submit a text description of how it determined which of its vendors is a HUB.
 - (5) Each utility that has more than 1,000 customers in a state other than Texas, or that purchases more than 10% of its goods and services from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is situated within the boundaries of Texas.
 - (6) Each utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.
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- (c) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or martial status.
 - (d) This section does not create a new cause of action, either public or private.

§26.85. Report of Workforce Diversity and Other Business Practices.

- (a) **Purpose.** This section establishes annual reporting requirements for telecommunications utilities to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed pursuant to the Public Utility Regulatory Act (PURA) §52.256(b).
- (b) **Application.** This section applies to all telecommunications utilities, as defined in PURA §51.002(11), doing business in the State of Texas.
- (c) **Terminology.** In this section, "small business" and "historically underutilized business" have the meanings assigned by the Texas Government Code §481.191.
- (d) **Annual progress report of workforce and supplier contracting diversity.** An "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed. A telecommunications utility that was not operational on January 1, 2000, and is required to file pursuant to PURA §52.256(b), shall file a plan in Project Number 21170 by December 30 of the year in which an annual report is due under this subsection.

- (e) **Filing requirements.** Four copies of the Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Telecommunications utilities shall obtain the project number by contacting Central Records. A copy of the report shall also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.
- (f) **Contents of the report.** The annual report filed with the commission pursuant to this section may be filed using the Workforce and Supplier Contracting Diversity form or an alternative format and shall contain at a minimum the following information:
- (1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the report. If the telecommunications utility is required to file an Equal Opportunity Report pursuant to §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.
 - (2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §52.256(b), including:

- (A) the specific initiatives, programs, and activities undertaken during the preceding year; and
 - (B) an assessment of the success of each of those initiatives, programs, and activities.
- (3) An explanation of the telecommunications utility's level of contracting with small and historically underutilized businesses in the State of Texas.
- (4) The extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.
- (5) A description of the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses in the State of Texas.
- (g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.
- (h) This section does not create a new cause of action, either public or private.
- (i) **Waiver.** A telecommunications utility that has less than sixteen employees in the State of Texas satisfies the requirements of this rule by completing subsection (f)(1) of this section.

This agency hereby certifies that the rules, as adopted, have 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 §26.79, relating to Equal Opportunity Reports, §26.80, relating to the Annual Report on Historically Underutilized Businesses and new §26.85, relating to Report of Workforce Diversity and Other Business Practices, are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 7th DAY OF JULY 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman