PROJECT NO. 37519

RULEMAKING PROCEEDING TO AMEND SUBST. R. 25.192(g), RELATING TO TRANSMISSION SERVICE RATES	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENT TO §25.192
AS APPROVED AT THE JULY 30, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §25.192, relating to Transmission Service Rates, with changes to the proposed text as published in the February 12, 2010 issue of the *Texas Register* (35 TexReg 988). This amendment increases from once to twice per year the frequency with which a transmission service provider (TSP) may file for an interim update to its rates to reflect changes in invested capital. Additionally, the amendment provides for procedural rules that include expedited approval of interim updates to transmission service rates in uncontested cases. This amendment is adopted under Project Number 37519.

The commission received written comments and/or reply comments on the proposed amendment from AEP Texas Central Company and AEP Texas North Company (AEP); Brazos Electric Power Cooperative (Brazos); CenterPoint Energy Houston Electric, LLC (CenterPoint); the Coalition of Regulatory Entities (CORE); Electric Transmission Texas LLC, Lone Star Transmission LLC, Wind Energy Transmission Texas LLC, and Texas-New Mexico Power Company (collectively, Interested TSPs); Golden Spread Electric Cooperative (Golden Spread); City of Houston (COH); LCRA Transmission Services Corporation (LCRA); Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company, LLC (Oncor); the REP Coalition (REP Coalition); Sharyland Utilities, L.P. (Sharyland); State of Texas agencies and institutions

(State Agencies); the Steering Committee of Cities Served by Oncor (Cities); and Texas Industrial Energy Consumers (TIEC). Wind Energy Transmission Texas, LLC and Lone Star Transmission LLC, signatories to the initial and reply comments filed by Interested TSPs, additionally filed separate reply comments as "New Entrant TSPs." LCRA filed initial comments separately, and reply comments as part of Interested TSPs.

Comments and Reply Comments

AEP, Brazos, COH, Golden Spread, Interested TSPs, LCRA, the REP Coalition, New Entrant TSPs, and Oncor generally supported the amendments or did not oppose them. CenterPoint, Cities, CORE, OPUC, State Agencies, and TIEC generally opposed the amendments. Sharyland limited its comments to the issue of administrative processing of interim transmission cost of service (TCOS) filings and the related proposed additional procedural requirements, which Sharyland opposes.

Overview Comments

Interested TSPs expressed support for the proposals that reduce regulatory lag and noted that the changes are necessary to address the impact of significant increases in ERCOT transmission investment, which, for Interested TSPs, will be very large in comparison to their existing transmission investment. Interested TSPs contended, however, that the amendments regarding mandatory consideration of the impact on rate of return and a new, longer process for determining the sufficiency of the applications are unnecessary or ill-advised.

Generally, Interested TSPs expressed their belief that the costs of the amendments are significantly outweighed by the benefits, which include: (1) supporting the financial strength of

ERCOT TSPs as they make substantial investments to expand the transmission grid, and (2) implementing the directive of the Public Utility Regulatory Act (PURA) §35.004(d) to approve periodic adjustments of wholesale rates to ensure timely recovery of transmission investment. CORE, in its reply comments, disagreed with this contention, opining that such arguments misconstrue the current environment in which TSPs can already timely recover transmission investments and have flexibility with respect to when they may file for an annual interim update. CORE asserted that Interested TSPs' comments misinterpret PURA's use of the word "timely" to mean "immediate" cost recovery, which PURA does not sanction. Thus, CORE contended, not only is increased frequency in interim updates unwarranted, biannual updates violate PURA cost-of-service provisions. CORE further argued that the proposed amendments to the interim updates' approval process inhibits the commission's ability to perform as a regulatory agency and interferes with stakeholders' rights to meaningful participation in ratemaking proceedings.

COH stated that, in general, it is not opposed to the amendments, observing that more frequent updates could result in the potential for lower rates, but only if the amendment relating to consideration of the TSPs' financial risk and rate of return is implemented and effectively executed.

The REP Coalition stated that while it does not oppose increasing from one to two the number of times a TSP may file for an interim update, as a general matter it does have concerns regarding "streamlined ratemaking" through processes such as administrative rate approvals. The REP Coalition stated that, to the extent the commission moves forward with allowing two interim

updates per year, it supports the inclusion of the additional protections contemplated in the proposed amendment.

OPUC, TIEC, Cities, CORE, and State Agencies stated that they do not support the amendments, with OPUC contending that the amendments are unnecessary and contrary to good public policy, and OPUC, TIEC, and Cities averring that the current rule not only provides sufficient incentives for TSPs to build transmission infrastructure, it is also generous and more than sufficient to minimize regulatory lag and allow TSPs to recover their transmission investments in a timely manner. Thus, OPUC, TIEC, and Cities argued a shift of additional risk to ratepayers under a biannual recovery mechanism is unwarranted. In view of these arguments, OPUC requested that the commission dismiss this proceeding.

OPUC, Cities, and CORE additionally commented that regulatory lag is a risk historically borne by utilities, which have rates of return that are set to compensate for this risk, and that some degree of regulatory lag is beneficial to the public interest because it promotes efficient and cost-effective utility management. TIEC, in reply comments, agreed with these points. Oncor argued in reply that just because some degree of regulatory lag may be inherent, that doesn't mean it is a good thing or that the commission should not take steps to reduce it. Oncor additionally noted that the proposed changes would only reduce, not eliminate, regulatory lag. Citing PURA §35.004(d), which provides that "notwithstanding §36.201, the commission may approve wholesale rates that may be periodically adjusted to ensure *timely* (Oncor's emphasis) recovery of transmission investment," Oncor argued that CORE's and Cities' arguments extolling the benefits of regulatory lag are inconsistent with the Texas legislature's expressly stated desire to

ensure timely recovery of transmission investment. Oncor further commented that the arguments of TIEC and OPUC similarly miss the point, as the primary issue is not to incentivize TSPs to construct transmission projects that would not otherwise be constructed, but to timely provide for recovery of those projects that *are* constructed.

Oncor additionally argued in reply comments that the notion that regulatory lag helps induce utilities to reduce costs may be true with respect to operations and maintenance costs, but not for additional costs resulting from increased capital investments. Oncor noted that a utility cannot avoid the increased depreciation expense and taxes it incurs when it places a new transmission project into service.

OPUC, Cities, CenterPoint, and CORE pointed out that TSPs involved in the competitive renewable energy zone (CREZ) projects have acknowledged in the past that the current TCOS model already provides a very attractive cost-recovery mechanism that should assure that adequate debt and equity capital is available to fund CREZ projects, and that there is no shortage of TSPs willing to build transmission infrastructure and therefore no need for additional incentives. CenterPoint contended, and Cities and CORE agreed in reply, that it is disingenuous for TSPs to claim financial harm after they testified under oath in the CREZ proceedings that their firms had the financial ability to construct the necessary investment under the commission's existing rules. Additionally, Cities observed, the state's largest TSP--Oncor--told investors in its 2008 Annual Report that it and other utilities in ERCOT benefit from existing cost recovery mechanisms that enable "adequate and timely recovery of transmissions investments." Cities also commented that the commission's current TCOS recovery system provides more generous

timelines than rate cases in other states and that extending this generosity by allowing two filings per year is excessive. CORE commented and reiterated in its replies that the courts have concluded that the commission has the power to "alleviate the impact of regulatory lag," but only to the point necessary to fulfill its statutorily imposed duties, and that by permitting the utilities to file for an interim update once per year, the commission has already alleviated most regulatory lag associated with updates to a TSP's invested capital. State Agencies stated in reply that parties who advocate more frequent TCOS adjustments but who oppose the commission's recognition of the financial benefit of decreased regulatory lag are taking a position inconsistent with those same parties' acknowledgement that more frequent TCOS adjustments will enhance their financial profiles.

Cities stated in reply comments that the TSPs' claims of significant regulatory lag and how the rule change would assist TSPs in obtaining capital are amorphous and contrary to specific statements--such as those made by Oncor to its investors--that the transmission recovery process in Texas adequately addresses regulatory lag. Cities further replied that the utilities' comments failed to show how the current system is inadequate and how two annual filings would produce a material improvement in the ability to recover CREZ investment. Cities noted that these types of superficial assertions contrast with the demonstration of major financial harm normally required to obtain extraordinary relief for regulatory lag and that, at a minimum, a second interim rate increase in a single year should be allowed only upon a showing of material financial harm.

Cities and CORE also claimed that because the purpose of CREZ projects is to connect distant wind generation to the ERCOT grid, one would expect that substantial lengths of the CREZ lines

would need to be completed to be considered used and useful; accordingly, there is no reason to believe that two rate filing dates would place more CREZ investment into rate base than a single rate filing per year. TIEC agreed in reply, but Oncor disagreed, contending that while it is true that the *gross* amount of investment ultimately included in rate base will not change, it is also true that once a project is placed into service, depreciation begins immediately, such that by the time the project is actually included in rates, the *net* plant in service amount has been reduced. Oncor pointed out that the amount of depreciation expense taken between the date the project is placed in service and when it is reflected in rates, plus the return on that investment, is forever lost by the utility, and that this result is what constitutes the harm of unnecessary regulatory lag. Additionally, Oncor argued that it is not possible to time a single interim filing so as to minimize regulatory lag.

Oncor also argued in reply that rejecting the proposed rule simply because it will assist utilities in financing their CREZ projects--projects that the Texas legislature and the commission have found to be in the public interest and that will provide significant benefits to the state of Texas and its residents and ratepayers--would be poor public policy.

Cities commented that the state's two largest TSPs--Oncor and CenterPoint--have in commission earnings monitoring reports (EMRs) reported high earned returns on equity (ROE) associated with wholesale transmission investment. Oncor replied by pointing out that Cities base this claim on Oncor's 2008 EMR, despite the fact that Oncor is now filing quarterly EMRs, the most recent of which showed that for the 12 months ending September 2009, Oncor's earned ROE on wholesale transmission investment was 9.43%, well below its authorized ROE of 10.25%.

New Entrant TSPs commented that while the issues addressed in this proceeding are important to all TSPs, the New Entrant TSPs are unique because they do not have existing rate bases or authorized rates of return. Thus, New Entrant TSPs argued, they will not be able to use the TCOS filing mechanism in any form to minimize regulatory lag until they have completed their first rate proceedings and the commission has set their initial levels of rate base and rate of return, and in this respect, New Entrant TSPs claim they will experience regulatory lag that is different from that of other TSPs. New Entrant TSPs submitted that this condition will exist for them until: (1) the commission establishes for each of them a rate base and authorized rate of return in a rate proceeding; and (2) TCOS updates occur. New Entrant TSPs included in their comments an illustrative example indicating that a nine-month revenue lag equates to approximately $11.25 million for every $100 million of transmission investment. New Entrant TSPs opined that while most of the comments opposing changes to the current TCOS rule are directed to TSPs generally, such comments fail to appreciate the challenges that are unique to New Entrant TSPs. New Entrant TSPs argued that the specter of over-earning is overblown by those opposing the proposed change in TCOS filings because New Entrant TSPs will not be in the position to over-earn given that, at least initially, they will not have an authorized rate of return.

Interested TSPs in reply comments pointed out that some of the proposals suggested by some commenters would introduce contested issues into the interim TCOS filings, extending the proceedings and increasing, rather than decreasing, the associated regulatory lag. Interested

TSPs submitted that such suggestions would not address the concerns that gave rise to this rulemaking and many, in fact, would aggravate the problem.

Commission Response

As a general matter, the commission concludes that providing to TSPs the opportunity for twice-per-year interim TCOS filings fulfills the important policy objectives of allowing for timely recovery of investments related to expansion in ERCOT's transmission infrastructure and providing for the implementation of ratemaking mechanisms pursuant to the provisions of PURA §35.004(d) regarding periodic adjustments of wholesale rates. These policy objectives will be particularly important for both old and new utility companies as they add significant amounts of transmission facilities pursuant to the CREZ build-out. With regard to the particular concerns raised by commenters and in response to comments on specific sections of the rule, the commission responds in greater detail below.

Interaction with TCRF Filings

CenterPoint stated that it opposes the amendments as proposed because the provisions would exacerbate the losses that distribution service providers (DSPs) incur as a result of the timing difference between commission approval of TCOS requests and the subsequent reflection of these increases in DSPs' transmission costs recovery factors (TCRF). CenterPoint stated that increasing the number of interim TCOS filings from one to two per year would increase the amount of permanent losses that occur because of this timing difference. Oncor replied that while it shares CenterPoint's concerns in this regard, it believes a more reasonable approach is to alleviate any possible negative impacts on DSPs by modifying the rules relating to TCRF filings.

Oncor noted that in Project Number 37909 (*Rulemaking Proceeding to Amend PUC Subst. R. 25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)),* the commission staff is proposing such changes to the TCRF rule. AEP likewise stated its belief in the necessity of considering enhancements to the TCRF mechanism. CORE and COH suggested that the possibility of changes to the TCRF filings and twice-per-year interim TCOS filings could strain commission resources, and CORE argued that Project Number 37909 should be closed. Oncor in reply comments argued that a single general rate case that is filed solely because of the provisions of this section, and that otherwise could have been avoided, would likely have a far greater impact on staff's resources than all the additional interim TCOS proceedings combined. Oncor contended that such a result is contrary to good public policy and should be avoided.

Commission Response

The commission acknowledges the comments by CenterPoint regarding the impact on DSPs that would result from increasing the number of interim TCOS filings from one to two per year. Under the current provisions of §25.193, the DSPs do not have the ability to recover certain increases in wholesale transmission costs passed on to them periodically by TSPs as a result of TSPs' rate cases and interim updates. The TCRFs of DSPs are updated only twice per year, and DSPs can incur these increases in TSPs' passed-through costs with no corresponding increases to revenues until several months later. To address this timing mismatch, the commission has opened Project Number 37909 to consider amending §25.193, and expects to issue a decision on the proposed amendment by September 2010.

To ensure that the opportunity for TSPs to file twice per year for interim TCOS updates does not exacerbate the amount of unrecoverable transmission costs passed through to DSPs, the commission concludes that the provision allowing twice-per-year updates shall become operative only upon the effective date of an amendment to §25.193 pursuant to an order in Project Number 37909 that allows a DSP to recover, through its transmission cost recovery factor, all transmission costs charged to the DSP by TSPs. The commission has revised subsection (h)(1) to reflect these changes.

Possible Scheduling of Interim TCOS Filings

The REP Coalition opined that it would be beneficial for the commission to prescribe a schedule for TSPs' interim filings, so that any rate charges would be effective on January 15 and July 15, as this would help align new rates with the March 1 and September 1 effective dates for the TCRF filings. The REP Coalition noted that this rule will not directly affect the prices charged by REPs, but that the existing rules do provide that DSPs may, through the TCRF filings, expeditiously pass through to their customers any changes in wholesale transmission rates. TIEC in its replies expressed general agreement with these points, but Brazos and Oncor strongly disagreed, stating that such a process defeats the goal of the rule to allow a TSP to make an interim filing and implement the revised rates relatively quickly. Oncor additionally stated that the REP Coalition's arguments are misplaced because neither the number nor the timing of interim TCOS filings has a direct impact on REPs because REPs do not pay any additional transmission-related charges until the DSP's TCRF filing is approved, and the schedule of those filings is fixed by the commission. CORE in reply comments stated that it does not see how the proposed dates of January 15 and July 15 would provide better alignment of dates, because there

is typically a 60-day period for interim TCOS approval. Interested TSPs also rejected the establishment of a schedule for interim TCOS filings, saying that doing so would destroy the flexibility in the current rule, aggravate the concerns that gave rise to this rulemaking, and increase, rather than reduce, regulatory lag during this period of unprecedented transmission investment.

Commission Response

The commission agrees with Oncor that neither the number nor the timing of interim TCOS filings has an immediate or direct impact on REPs, as REPs do not pay additional transmission-related charges until the DSP's TCRF filing is approved, and the schedule of those filings is fixed by commission rules. The commission also agrees with Interested TSPs that a specific schedule for interim TCOS filings would significantly impair the flexibility of the current rule. Accordingly, the commission declines to include in the rule a schedule for interim TCOS filings.

Comments on specific sections of the rule:

§25.192(h)(1): Interim Update of Transmission Rates--Frequency

Interested TSPs commented that the opportunity for two filings per year will enhance the ability of TSPs to recover their authorized rates of return, or at least a return closer to the authorized levels. Similarly, Brazos commented that the opportunity for two filings per year would promote needed construction and encourage investment in transmission facilities.

New Entrant TSPs expressed support for the opportunity for twice-per-year filings by pointing out that the upcoming capital expenditures by TSPs on an annual basis will be over three times the average annual expenditures since 1999 ($1.6 billion per year compared to $525 million per year), and that it is this spike in capital investment that warrants improvements to the TCOS filing mechanisms, particularly given that New Entrant TSPs will not be able to use the TCOS filings mechanism to update their respective rate base until after their first rate case. New Entrant TSPs observed that the commission addressed a similar situation in 2001, when a spike in transmission investment occurred and, pursuant to Senate Bill 7's requirement to restructure the electricity market, the commission granted waivers to TXU Electric (now Oncor) and Reliant Energy (now CenterPoint) to file updates to their transmission plant in service more frequently than once per year to "encourage adequate generation and transmission infrastructure and to facilitate a competitive wholesale market in Texas."

In their comments related specifically to subsection (h)(1), OPUC and TIEC re-emphasized overview comments concerning the fact that most of the incumbent TSPs that were awarded CREZ lines explicitly extolled the attractiveness of the existing TCOS recovery process and stated that no new process was needed. TIEC noted that the incumbent TSPs acknowledged that the commission's TCOS recovery model provides a very attractive cost-recovery mechanism that should ensure that adequate debt and equity capital is available to fund the proposed CREZ projects and, as a result, the new TSPs voluntarily competed for the ability to construct CREZ transmission based on the existing TCOS process. State Agencies agreed in reply, while New Entrant TSPs and Interested TSPs disagreed in reply, stating that these parties' logic is fundamentally flawed. Interested TSPs submitted that such previous comments have been

generally taken out of context, and Interested TSPs and New Entrant TSPs argued that the commission should not be restrained from adopting better rules nor should market participants be denied the opportunity to recommend improvements to existing rules solely because they applied to become CREZ transmission providers under the rules prevailing at that time. Interested TSPs and New Entrant TSPs submitted that the commission has been, and is, mindful of the nature, structure, and environment under which the electric utility industry has operated in Texas and has amended or added rules in response to that changing environment. New Entrant TSPs contended that determining the appropriate frequency of TCOS updates lies within the commission's discretion on how to best promote the public interest, and that the optimal number of annual adjustments has no logical connection to the number allowed at a particular time when some TSPs were seeking to build CREZ transmission projects.

TIEC commented that as a utility's load increases, its revenues will correspondingly increase. TIEC opined that increasing the frequency of TCOS updates will only shift risk to customers and increase the likelihood of over-recovery. Oncor replied to TIEC by asking what "risk" is shifted to customers, and argued that TIEC does not say what the risk is because no risk is shifted. Oncor averred that DSPs will continue to pay commission-approved rates, nothing more and nothing less, and over-recovery will exist only if some level of construction expenditures is found to be imprudent. Oncor asserted that TIEC fails to explain how adding a second interim TCOS update will somehow cause imprudent expenditures.

CenterPoint reiterated its overview comments by stating that increasing the number of possible interim TCOS filings from one to two per year would increase the amount of DSPs' permanent

losses that occur because of the timing difference between TCOS and TCRF filings, while Oncor contended that one additional TCOS update per year will not have an impact on retailers that is any different from the effects of the current frequency of filings, because the effect of TCOS interim updates on retailers is realized through the TCRF filings. Interested TSPs in reply comments stated that while they understand the concerns about downstream effects of interim TCOS changes, transmission is only a small fraction of the total electric bill, and the impact of more-frequent interim TCOS filings is likely to be marginal. Interested TSPs further opined that the solution for addressing downstream effects on DSPs and REPs is to facilitate their ability to flow transmission costs through to customers, not in restricting the ability of TSPs to recover those costs.

Commission Response

The commission concludes that amending the rule to provide for the opportunity of two interim TCOS filings per year is appropriate given the substantial investments in transmission facilities that utilities are expected to add to rate base in coming years. The opportunity to file twice per year will enhance the ability of TSPs to achieve their authorized rates of return and improve their cash ratios, thereby strengthening their financial positions and improving their access to capital at reasonable rates during a time of significant expansion in transmission infrastructure. The commission agrees with Oncor that the opportunity for two filings per year does not shift risk to ratepayers, because ultimately the utilities will include in rate base only the amounts that the commission deems prudent. The commission additionally agrees with Oncor that one additional TCOS update per year will not have an impact on retailers that is any different from the effects of

the current frequency of filings, because the effect of TCOS interim updates on retailers is realized through the TCRF filings.

As pointed out by the New Entrant TSPs, the commission addressed a similar situation in 2001 when a spike in transmission investment occurred and the commission allowed TXU Electric and Reliant Energy to file updates to their transmission plant in service more frequently than once per year to "encourage adequate generation and transmission infrastructure and to facilitate a competitive wholesale market in Texas." Although the 2001 provision was temporary, no ill consequences occurred during its pendency that indicate it would have been detrimental had it been permanent. The amendment allowing two interim TCOS filings per year reflects the similarities between the 2001 situation and the present circumstances in which TSPs will soon experience significant increases in transmission investment related to the CREZ facilities.

Suggestions that TSPs must demonstrate failure to earn authorized rate of return

OPUC opined that the rule should require a TSP to make a showing that it is not earning its rate of return on transmission assets before electing to seek relief under the rule. Interested TSPs replied that although OPUC does not specify the process for making this showing, presumably it would be a contested issue in the interim TCOS filing. Interested TSPs observed that such filings are currently mechanical and formulaic, which allows them to be resolved without a hearing, and the introduction of contested issues into the interim TCOS filings, as OPUC suggests, would delay the proceedings and defeat the purpose of reducing regulatory lag that underlies this rulemaking project. Brazos and Oncor replied that OPUC's proposal would

require two filings that the commission would have to administer and process, leading to a situation that would essentially cause interim TCOS proceedings to evolve into mini general rate case proceedings, given that determining the rate of return earned by a utility requires looking at all its costs and revenues. Oncor and Brazos contended that such a two-step requirement completely undermines what has been a very successful process for handling interim TCOS updates. Brazos pointed out that even if a TSP made such a showing, it is not at all clear what the TSP could do in the interim filing to correct such under-recovery, given that the rules do not allow the TSP to change its previously approved rate of return as part of the interim filing process. Brazos argued that OPUC's proposal would complicate rather than streamline the interim rate proceeding and ultimately create more, not less, of a workload for the commission and TSPs.

Commission Response

The commission agrees with Oncor and Brazos that inclusion in the rule of a requirement that a TSP must demonstrate that it is not earning its authorized rate of return would complicate and undermine the purpose of and process for interim TCOS filings. Accordingly, the commission makes no such change to the rule.

Suggestions for sunset provision

OPUC and CORE offered the suggestion, with which State Agencies and TIEC agreed, that given that TSPs have cited increased CREZ investments as one of the primary reasons for twice-per-year interim filings, the rule should incorporate a sunset provision whereby subsequent to the completion of the CREZ build-out, TSPs are once again permitted only one interim proceeding

per year. Brazos and Interested TSPs urged the commission to reject this recommendation because many events can impact the assumed completion dates for major transmission projects and the commission would always have the option to change a provision in the rule based on information known at the time. Oncor and New Entrant TSPs echoed the points made by Brazos, and added that a sunset provision is unnecessary because a TSP is not likely to file interim TCOS cases absent a material change in the book value of its assets, and to the extent that a lower level of post-CREZ transmission development occurs, there would be little economic incentive for TSPs to file two times per year.

Commission Response

The commission agrees with the comments of Brazos, Interested TSPs, Oncor, and New Entrant TSPs that many unpredictable events can affect the completion dates for major transmission projects. The commission notes that the amended rule does not mandate two interim filings per year; rather, it only provides an opportunity to make two filings, and utilities are motivated to make interim filings only when they have an economic incentive to do so. Additionally, inclusion in the rule of a sunset provision would impose upon the commission a specific requirement to change the rule in the future; such a requirement is not necessary given that the commission inherently possesses the power to change its own rules. The commission therefore declines to include a sunset provision in the rule.

Consistency of phrase "commission-authorized rate of return"

For consistency with the language in subsection (h)(2), COH suggested changing the reference to the "commission-allowed rate of return" to "commission-approved rate of return," a point with

which CORE agreed in reply. Additionally, COH recommended moving the language regarding the use of an updated rate of return from subsection (h)(2) to (h)(1), thereby resulting in the application of the updated rate of return to the transmission rate-base additions being requested in interim TCOS filings.

Commission Response

The commission agrees with COH that the use of consistent terminology has merit and has changed the relevant references to "commission-authorized rate of return." The commission rejects COH's recommendation to move the proposed language addressing the rate-of-return issue from subsection (h)(2) to (h)(1), as doing so would, for TSPs that have not had a rate case within the last four years, introduce into the interim TCOS filings the need to determine a new rate of return, which is typically a highly contentious issue and one that would substantially alter the nature of interim TCOS filings and significantly complicate and lengthen their processing.

§25.192(h)(2): Reconciliation

Golden Spread and Brazos expressed concerns that the use of an "updated" rate of return could be used not only for calculating interest on refunds, but also for determining if a refund is due in the first place. Golden Spread pointed out that a TSP's transmission rates could have been approved using one rate of return, but later, if the commission determined that an over-recovery had occurred, interest on that over-recovery could be calculated using a different rate of return. This type of situation, Golden Spread and Brazos asserted, would constitute retroactive ratemaking. In their reply comments, Oncor and CORE stated that they did not share these

interpretations by Golden Spread and Brazos, but Oncor suggested that the point should be clarified. Oncor commented generally that while it does not object to the inclusion of a provision that provides for interest on any amounts that must be refunded, it does find unreasonable the provision for interest on the refund to be based on the TSP's last commission-approved rate of return, a point with which LCRA agreed. Golden Spread and Brazos also argued that using the TSP's updated rate of return would be unfair because it may not be closely correlated to what ratepayers could get for their funds in the market, and Brazos contended as well that the proposal for interest on refunds to be calculated at the TSP's last commission-approved rate of return is unreasonable, unwarranted, potentially confiscatory, and creates uncertainty that would adversely impact the financial markets on which TSPs depend for construction costs.

For these reasons, Oncor, Golden Spread, Brazos, and LCRA advocated, with respect to the determination of interest on refunds, the use of the overbilling rate specified in §25.28(c) or the interest rate on customer deposits specified in §25.24(g). Golden Spread noted that the proposed rule does not state how the commission intends to calculate an updated rate of return and that, historically, commission practice in establishing interest on refunds has been based not on the utility's rate of return, but on the overbilling rate specified in §25.28(c). Golden Spread and Brazos stated that the commission should not now deviate from this practice for transmission rates and, as well, the commission should make clear that any update in a TSP's rate of return will be prospective from the effective date of an order entered in a TSP's complete rate case.

With respect to these points, CORE contended that the bases of the TSPs' arguments for the use of the rates applied to overbilling or customer deposits are not comparable to the circumstances underlying the refund contemplated under subsection (h)(2), and that such provisions are thus not indicative of how interest on a refund of TCOS rates should be calculated. For example, CORE pointed out that customer billing adjustments and customer deposits are much smaller and more frequently reconciled, such as on a monthly basis. CORE submitted that, unlike refunds to customers based on billing errors or returns of customer deposits, interest on over-collected TCOS rates could be a sizable windfall for TSPs absent incentives for them to properly request accurate and necessary interim rates. CORE asserted that, moreover, TSPs do not have any particular time limit to refund over-collected rates. CORE observed that under the current rule, TSPs are permitted an unlimited number of interim update requests, while under the proposed rule, no time limit is in place, only a limit on the number of interim update requests before the TSP must file a complete rate case. Thus, CORE averred, a TSP could capitalize on its over-collected TCOS rates and have no reason to reconcile its rates and refund the over-collection.

TIEC stated in reply comments that the TSPs' concerns are misplaced regarding how an updated rate of return would be applied retroactively to the utility's total revenues and possibly create artificial over-recoveries. TIEC averred that the rule clearly states that the updated rate of return would apply only to over-recovered amounts and not to the TSP's total revenue, so no potential would exist for the use of an updated rate of return to result in artificial over-recoveries. TIEC also replied that the interest rate determined under §25.28 is substantially lower than the utilities' rates of return, and using it for TCOS refunds would create an arbitrage opportunity for the utility and subject consumers to unreasonable risk. TIEC pointed out that both the existing rule

and the proposed rule provide a TSP with an opportunity to earn its full awarded rate of return on any amounts included in rates through an interim TCOS adjustment. If over-recoveries are not refunded at a level that reflects the TSP's rate of return, according to TIEC, the utility will be overcompensated and have an incentive to include additional amounts in its TCOS updates, given that the interest rate at which any over-recoveries are refunded will be lower than the return the TSP can earn on those amounts.

CenterPoint commented that the proposed language for determining the appropriate interest rate required for the refund of over-recovered transmission costs is confusing and should be modified to provide for a simpler mechanism. CenterPoint noted that because a reconciliation of such costs must occur within a rate proceeding, and the commission establishes a rate of return in each TSP rate proceeding, it is therefore logical to apply the rate of return determined within that proceeding to the over-recovery of transmission costs.

COH similarly recommended that the interest rate should be based on the rate of return approved in the next complete review of the TSP's transmission cost of service. In its reply comments, COH opined that it found no convincing arguments from initial commenters opposed to using the approved rate of return, and that a utility's approved rate of return is still lower than the ultimate consumers' use of money. COH suggested in its replies two alternatives for determining the approved rate of return to determine refunds: (1) the rate of return used by the commission staff in its evaluation of earnings reports, or (2) the rate of return approved for the utility in its next rate case.

Interested TSPs disagreed with the suggestion by CenterPoint and COH that the appropriate rate of return is the rate approved in the utility's next rate case, stating that such a determination would effectively change the TSP's previously authorized rate of return retroactively, an outcome that should be avoided for legal and policy reasons. State Agencies in reply comments expressed disagreement with this claim, contending that because the interim TCOS adjustments are by their very nature a reconcilable quantity, the commission may consider all factors pertinent to reconciliation without straying into the area of retroactive ratemaking.

TIEC and CORE suggested that the language in the proposed rule does not make clear how the commission will calculate an updated rate of return for refund purposes, nor does it explain how the commission will select the rate of return for refunds by TSPs that have not had a rate case. TIEC and CORE suggested that the rule give the commission discretion to specify the interest rate that adequately reflects economic conditions during the over-recovery period. Cities in reply comments agreed with these points. Oncor in reply comments agreed with TIEC that that commission should set an interest rate that reflects economic conditions during the over-recovery period, but reiterated its original comments wherein it argued that the appropriate interest is the commission overbilling rate prescribed in §25.28. Brazos in reply comments disagreed with the comments of CORE, COH, CenterPoint, and TIEC regarding the appropriate rate of return for refunds, and reiterated its support for an interest rate consistent with those approved by the commission pursuant to other statutes and rules related to refunds by utilities.

COH observed as a general matter that, since the implementation of interim rate procedures, it is unaware of any full TCOS case that included a true-up of prior interim TCOS rate increases, much less the ordering of true-up refunds. Consequently, COH argued, the TSPs' concerns regarding the proposed interest rate as being too high appear to be unwarranted, based on commission practices to date.

Oncor and Brazos pointed out, and Interested TSPs agreed in reply, that if a TSP were required to refund an over-recovery of costs related to a plant disallowance, the refund would include the incremental revenue requirement, which would include the return dollars on that plant investment; therefore, if additional interest were included in the refund amount, this would be tantamount to a double recovery of interest by ratepayers. In response, COH argued that such a claim is incorrect, because to the extent any over-recovery refund amount includes a return component, that return is part of what customers have overpaid, and it would not compensate customers for their interest on that overpayment.

Commission Response

The commission concurs with COH's argument that for any over-recovery refund amounts that include a return component paid by customers, that return is part of the overpayment, and refunding only those return dollars would not provide interest to and appropriately compensate customers for their loss of the use of the overpaid funds. The commission also acknowledges COH's observation that, since the beginning of interim TCOS filings, the commission has made no determinations of imprudence with respect to transmission

investment and, consequently, there have been no instances of the commission ordering a refund of over-recovered costs resulting from prudence disallowances.

Regardless of the likelihood or unlikelihood of a prudence disallowance and subsequent refund, for the determination of an appropriate interest rate the commission agrees with TIEC's comments that the use in interim TCOS refunds of the interest rate established under §25.28 would create an arbitrage opportunity for TSPs because this rate is lower than the TSPs' rates of return. As noted by TIEC, if an over-recovery is refunded with an interest rate that is lower than the TSP's authorized rate of return, the utility will be overcompensated and theoretically have an incentive to include excessive amounts in its TCOS updates, given that the interest rate at which any over-recoveries would be refunded would be lower than the rate of return the TSP can earn on those amounts. For interest calculations on refunds of interim TCOS over-recoveries, the commission therefore rejects the use of the over- and under-billing rate specified in §25.28.

With respect to the proposal requiring the use of an updated rate of return for over-recoveries by TSPs that have not had a rate case within the last four years, the commission concludes that such an approach would not be consistent with the rule's general provision of applying the TSP's last commission-authorized rate of return to additions to transmission rate base. That is, regardless of whether the commission last authorized a rate of return for a TSP one year ago or ten years ago, that authorized rate of return is what the TSP receives on new rate base amounts approved in interim TCOS proceedings, and in the event that the commission subsequently orders a refund of interim TCOS

amounts deemed to have been over-recovered, the use of a different, updated rate of return for calculating carrying costs on the over-recovered amount would be inconsistent.

To achieve the appropriate consistency in the calculation of a refund's carrying costs during the period of over-recovery, the interest rate on the over-recovered amount should be the TSP's last commission-authorized rate of return, as it is a reasonable and knowable measure of the rate at which the TSP recovered excess return dollars. The use of the TSP's last commission-authorized rate of return also reflects the concept that any over-recovered amounts, plus the dollars related to the allowed return, have theoretically been reinvested by the TSP and earned that same rate of return. Therefore, for the period during which an over-recovery occurred, the amount of the refund should consist of the over-recovered rate-base amount (*i.e.*, depreciation and related taxes) and the return dollars thereon (based on the TSP's last commission-authorized rate of return), plus carrying costs on the total of these two amounts. Given that the last authorized rate of return was the interest rate used in the TSP's interim TCOS filing that gave rise to the over-recovery, and because the TSP was allowed to earn that rate of return on any over-recovered amounts, using that same rate to determine carrying costs on the refund amounts is appropriate for the over-recovery period.

For the period subsequent to the period in which the over-recovery occurred--that is, for the period starting with the effective date of the TSP's new rates determined in the next complete rate case--carrying costs on any unrefunded balance should reflect the TSP's new commission-authorized rate of return. This new rate will appropriately reflect current

market conditions and the updated rate of return on investment that the commission has approved for the TSP.

This overall approach achieves the objective of eliminating a TSP's opportunity for arbitrage by: (1) requiring the TSP to refund over-recovered amounts with interest calculated for the period of over-recovery at the same rate at which the TSP was allowed to recover carrying charges on interim TCOS investments, and (2) providing for application of the new commission-authorized rate for the time period starting with the effective date of the TSP's new rates.

Accordingly, the commission has revised the rule language by omitting the reference to the use of an "updated" rate of return and replacing it with a provision that, for the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the utility's rates established in the next full cost-of-service proceeding, the interest rate used to calculate carrying costs on over-recovered amounts shall be the TSP's last commission-authorized rate of return. The language additionally provides that, in the event that the TSP does not have a commission-authorized rate of return, carrying costs on the refund amount will be calculated using the same rate of return that was applied to the transmission investments included in the update. Finally, the revised language provides that, from the effective date of the rates established in the new rate case going forward, the interest rate shall be the TSP's new rate of return established by the commission.

Suggestion for recovery of under-recovered costs

Interested TSPs stated that while they do not oppose the proposal to refund any over-recovery of costs and related interest at the TSP's last commission-approved rate of return, they believe that a balanced and symmetrical regulatory approach should also provide that any *under*-recovery of transmission costs should be recovered through a surcharge with interest at the same rate. TIEC and CORE strongly disagreed with this suggestion, replying that TCOS adjustments substantially reduce the TSPs' regulatory lag and shift risk from utilities to customers and, accordingly, while it is appropriate that any over-recoveries be refunded to customers with interest (to protect customers), it is not appropriate to add an additional layer of unnecessary protection for the utilities by also subjecting customers to the potential that utilities will surcharge them with interest for under-recoveries. TIEC and CORE pointed out that utilities have sole control over when they seek to add an investment to their rates through the interim TCOS process, as well as the amount and accuracy of what they ultimately request, and, as a result, it makes sense to protect customers against the risk of utilities' over-recovering. CORE opined that availability of an interim adjustment should not amount to a guaranteed recovery, with interest, of an amount not properly requested. TIEC also cited other examples of PURA and commission rules recognizing that symmetry is not always appropriate, such as PURA §36.110 (relating to Bonded Rates) and §25.28 (relating to Bill Payments and Adjustments).

Commission Response

The commission agrees with TIEC and CORE that it is not appropriate for a TSP to recover through a surcharge an under-recovery of transmission costs. PURA §36.051 states that "the regulatory authority shall establish the utility's overall revenues at an

amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service." In contrast to this statutory directive, implementation of the suggestion by Interested TSPs would essentially guarantee recovery of transmission costs. The commission therefore rejects Interested TSPs' recommendation and makes no change to the rule in this regard.

§25.192(h)(3): Limitation on Number of Requests

TIEC, Cities, CORE, and OPUC expressed support for the provision that limits the number of interim filings before a TSP must file a complete rate case. OPUC suggested that the number of interim filings should be capped at four, not six, before a TSP must come in for a full rate case, as this would incent the TSPs to avail themselves of the twice-per-year adjustment only when absolutely needed. Cities echoed the idea of capping the number at four, and also suggested a further reduction for TSPs that have not undergone a general rate review during the three years prior to the effective date of the proposed rule. Similarly, TIEC argued that if the commission adopts the amendment to allow twice-per-year applications, the number of interim filings should be limited to three, rather than six. CORE suggested that, regardless of whether the commission approves the amendment to allow twice-per-year interim TCOS filings, the commission should include this provision and limit a TSP to three annual interim updates before requiring a TSP to file for a complete review, although in reply comments CORE stated that it did not oppose a limit of four requests.

Cities additionally noted in reply comments that the rule provision does not force a utility to file for a general rate case, but rather, if the TSP has used its allotment of update filings, the

provision only prevents the utility from filing *more* interim updates. Cities further observed that excessive or perpetual delays of full rate cases could allow the accrual of potentially large reconciliation amounts associated with the interim TCOS updates, and the result could be exposure to large refunds, a circumstance that is not beneficial to either the TSP or its customers.

Oncor replied to these arguments by pointing out that it went roughly eight years between its unbundled cost of service rate case and the next general rate case, and that while during those eight years it filed seven interim TCOS updates, not one party took issue with the prudence of any of Oncor's transmission investment. Oncor contended that its history shows that neither the number of years nor the number of interim TCOS filings between general rate cases has any relationship to whether a utility is over-earning or under-earning, or to the prudence of its transmission investment. Oncor submitted that the actual facts totally disprove some parties' warnings that waiting four to five years between rate cases is too long or that six interim TCOS filings are too many.

Brazos likewise disagreed with the comments of TIEC, CORE, OPUC, and Cities, arguing that a lower cap could cause an unwarranted financial burden on the TSP and adversely impact the work load for the commission and its staff. Brazos contended that the proposed limit of six interim filings strikes an appropriate balance for this issue.

Interested TSPs stated in initial comments that they do not oppose the proposal of six filings before a full review is required, but recommended that the commission consider including an exception to such requirement in instances when a TSP's earnings report indicates little

likelihood of over-earning. In its reply comments, CORE disagreed with this approach and suggested that the earnings reports should not be the trigger for an overall rate review.

Oncor in its initial comments strongly disagreed with the six-limit provision, submitting that the current earnings monitoring process provides the commission with sufficient information regarding possible over-earnings, a position echoed by Brazos and Interested TSPs. Oncor pointed out that if the commission determines that over-earning is occurring and is material, the commission can always initiate a rate proceeding. On the other hand, if a utility is not earning its authorized rate of return, but does not feel that the under-earning level warrants a full general rate case, then Oncor does not believe that the utility should face the choice of either forgoing future interim TCOS filings or having to spend the resources to file and prosecute a full general rate case. Consequently, Oncor averred, adoption of this provision could result in the commission finding itself in the awkward position of essentially requiring the utility to increase its overall rates through a general rate case filing. Oncor reiterated this point in its reply comments and added that if a utility is under-earning and ineligible to file an interim TCOS because it has filed the maximum number of interim TCOS updates, adoption of this provision will result in the commission requiring the utility to increase all its rates through a general rate proceeding rather than allowing the utility to simply reflect in rates the costs of the new transmission investment. Interested TSPs in reply agreed with Oncor's points, and submitted that the commission should not enact rules that limit its discretion by mandating a filing that the commission can initiate at any time on its own motion. Interested TSPs further replied that recommendations by some commenters to mandate full rate-case filings more frequently than after six interim TCOS filings would simply further restrict the commission's use of its own

discretion to require a company to file a full rate case, and impose upon the commission the need to consider and resolve up to 50% more cases.

Oncor additionally noted that mandatory rate case filings could create uncertainty in the financial community, which could negatively impact the TSP's financial strength. Oncor reiterated these points in its reply comments, adding that commenters supporting this provision fail to even address the fact that the commission receives annual earnings monitoring filings (quarterly for Oncor) and initiates rate cases in those instances when it believes such action is appropriate. In arguing that the proposed limitation on the number of interim TCOS filings is not needed at all, Oncor reiterated its point that such a provision is in fact inconsistent with PURA §35.004(d)'s instruction to the commission to periodically adjust wholesale rates to ensure timely recovery of transmission investment.

COH and TIEC disagreed with the position that the earnings-report review is adequate for monitoring the effects of interim TCOS rates. COH noted that functional allocations can change significantly if new facilities have been completed, and earnings reports may not adequately reflect these changes. TIEC held that earnings monitoring is a tool, but it is insufficient to properly vet a utility's rates and does not reflect issues like whether the utility's investments have been prudent. TIEC also noted that relying on the earnings monitoring process can result in delays between the time a utility begins to over-earn and the time it is required to submit a rate case. Cities in reply comments echoed similar points of view.

Commission Response

While the commission acknowledges the comments of Cities regarding the possibility of large reconciliation amounts associated with interim TCOS updates, the commission notes that it has not imposed prudence disallowances of plant additions for many years. More fundamentally, the commission concludes that, as pointed out by Oncor in its description of its history of interim TCOS filings over the last eight years, no inherent correlation exists between a utility's need to file a full rate case and the number of years that have passed since its last full rate proceeding or the number of times it has availed itself of the opportunity to file for interim TCOS updates.

The commission further agrees with Oncor that a requirement for TSPs to file a full rate case after a specified number of interim TCOS filings could have unintended consequences, the most undesirable of which would be the possibility of higher rates for consumers than might otherwise would occur. It would also impose an unnecessary requirement on the commission by establishing, without any regard to the actual earnings status of the TSP, an artificial and arbitrary trigger for a TSP to have a full review of its rates. As suggested by Interested TSPs, the implementation of such an arbitrary trigger would in some sense supersede and undermine the discretion the commission already has with respect to its ability to order a TSP to file a full rate case.

In view of these points, the commission declines to include in the rule the proposal to limit the number of times a utility may update its rates on an interim basis before being required to file a complete rate case and, accordingly, has removed proposed subsection (h)(3).

The commission disagrees with the comments of CORE that the earnings reports should not be used as a trigger for a utility's overall rate review. Indeed, for many years, the earnings report process has been the primary tool by which the commission evaluates the earnings status of electric utilities, and in recent years it has served as a basis for the commission's decisions to require the state's two largest utilities (CenterPoint and Oncor) to file general rate cases. The commission acknowledges, however, the comments of COH and TIEC regarding changes in functional allocations that can occur over time, and recognizes that the current instructions for the commission earnings monitoring report require a utility to reflect its wholesale transmission allocator as calculated using information from its most recent rate case. The instructions also, however, provide for the optional filing of a second version of the schedules that shows the effects of a more updated allocation of costs based on direct assignment, and commission staff will, in a separate project, propose a change in the earnings monitoring report instructions that makes the second version (direct assignment) mandatory. Thus, the commission earnings report, after these revisions, should capture and reflect any significant cost changes across functions.

Suggestion for separate distribution and transmission rate cases

AEP stated that the language should be clarified to indicate that the requirement to file for a complete TCOS review should not include a provision that a transmission and distribution service provider (TDSP) must also submit its distribution cost of service for a full review. Regarding this point, AEP agreed with Interested TSPs' recommendation that the commission

develop and approve a distinct TCOS filing package. TIEC, Cities, and CORE replied that the transmission and distribution rates of TDSPs are interrelated and intertwined, and the commission must review a TDSP's total rates to determine whether they are set at an appropriate level. Cities additionally replied that allowing a TDSP to conduct a transmission-only general rate case is not consistent with commission practice and constitutes piecemeal ratemaking, and because many of the cost elements of a TDSP's operations are common to both transmission and distribution operations, reviewing a TDSP's cost of service in separate transmission and distribution cases would result in duplicative litigation of the same issues. Consistent with these points, CORE replied that the plain language of PURA requires the commission to establish a utility's overall revenues.

Commission Response

The commission agrees with TIEC, Cities, and CORE that it must review both the transmission and distribution functions of a TDSP in establishing an overall cost of service. The commission also notes that additional investments in transmission facilities impact various financial and operational aspects of a utility such as the allocation of costs across functions and customer classes as well as costs associated with particular functions. Accordingly, the commission makes no changes in response to these comments from AEP and Interested TSPs.

Prospective application of the rule

LCRA and Interested TSPs recommended that the six-filing limitation only be applied prospectively after adoption of the amendment. TIEC stated that under its interpretation of the

proposed amendment, prior interim adjustments would count toward the six-filing cap, and TIEC noted in its reply comments that numerous TSPs have been utilizing the interim TCOS process for years without coming in for a rate case. CORE also stated its position that previous annual updates should count toward the limit under this paragraph. Interested TSPs disagreed in reply, arguing that retroactive application of new legal requirements is discouraged in Texas and in some instances prohibited by the Texas Constitution.

Commission Response

Because, for reasons discussed previously, the commission declines to impose a limitation on the number of interim TCOS filings before a TSP must file a full rate case, this issue is moot.

§25.192(h)(4): Future consideration of effect on TSP's financial risk and rate of return

Interested TSPs, Oncor, and CenterPoint stated that they do not support the proposal that the commission shall expressly consider in a TSP's next full rate case the effects of reduced regulatory lag resulting from the interim TCOS updates. Interested TSPs, Oncor, and CenterPoint commented that in setting a utility's rate of return, the commission already considers a wide array of risk factors, and if parties believe that interim TCOS changes affect the setting of the rate of return, they are likely to raise that issue in a rate case. CenterPoint held that the proposal is duplicative of the provisions of PURA and unnecessary, and that §25.231(c) currently contains the factors that the commission considers in establishing a utility's return on invested capital. CenterPoint opined that all the provisions related to determining the return on invested capital should be contained within one section of the commission's substantive rules to

provide a single comprehensive location for interested parties to locate such requirements and considerations. Interested TSPs contended that while the proposed rule would reduce the risk of significant under-recovery during periods of substantial new investment, it would not create a low-risk environment that would justify reducing a utility's rate of return. Interested TSPs further opined in reply comments that ironically the amendment could substantially *increase* the risk premium TSPs would have to pay for capital in the midst of the transmission build-out.

Cities in reply agreed that the commission has authority to consider the impact without any explicit references in the rule, but asks why the utilities would oppose inclusion of the language if it does not alter the commission's authority. Cities suggested in replies that the utilities would prefer that this subject be lost in the thicket of rate case issues, and Cities pointed out that highlighting the issue, at the least, means that it will not be forgotten or lost in a rate case. State Agencies replied that the admission that the rule reduces risk, accompanied by a refusal to recognize that reduced risk should generally translate into reduced return, flies in the face of virtually all the rate-of-return analyses ever filed at the commission. State Agencies argued that the positive impact should clearly be reflected in a lowered rate of return.

Oncor argued that while twice-per-year updates would be helpful in alleviating some amount of regulatory lag, the particular risks faced by a utility at any given point in time may greatly outweigh any possible reduction in risk related to a partial reduction in regulatory lag. Cities commented in reply that these statements from Oncor appear to contradict other statements made by Oncor that the proposed increase in annual allowable interim updates is critical to improving its financial position and enhancing its financial profile. CenterPoint commented that it does not

agree with the assumption that the ability to implement changes to the TCOS twice per year will always provide a positive impact to a utility's financial risk, because DSPs will have higher risk as a consequence of the additional unrecoverable costs passed on to them by TSPs as a result of the greater number of filings per year. CenterPoint also reiterated the point that each of the entities participating in the CREZ build-out testified under oath that they had the financial ability to construct the requested transmission facilities, and that this testimony was provided under the current rule that allows only one TCOS update per year.

With respect to the language in subsection (h)(4) that states the commission "shall" consider in a TSP's next complete rate case the effects of reduced regulatory lag, LCRA and Interested TSPs recommended modifying the word "shall" to "may," a position with which Oncor agreed in reply comments. CORE in reply suggested that such a change would render the provision meaningless.

OPUC, CORE, and Cities commented, and State Agencies agreed in reply, that the amendment should clearly reflect a reduction in the TSP's rate of return commensurate with the lowering of the TSP's risk, rather than simply a "consideration of the effects of reduced regulatory lag" as proposed in the amendment. TIEC, CORE, and Cities proposed that, to ensure the reduction in risk is given full and proper effect, the commission should consider adding a rebuttable presumption that each interim TCOS adjustment reduces the TSPs' risk and regulatory lag by a specified amount until that TSP's rates are reset in a full rate case--TIEC and CORE argued that a reduction in the ROE of 100 basis points would be appropriate, while Cities suggested 50 basis points. Cities argued, and TIEC agreed in reply, that a significant flaw in the amendment is that

the consideration of a reduction to a utility's rate of return can only affect the prospective rate of return applied in the utility's next general rate case, allowing the utility to potentially receive a return windfall for several years. Interested TSPs replied that injecting into interim TCOS filings a hotly contested issue such as the rate of return would substantially lengthen interim TCOS proceedings and defeat the purpose of this rulemaking. TIEC opined that if there is not regulatory lag, there should be little or no risk and, accordingly, the applicable return on equity should reflect the cost of long-term debt. TIEC held that, given that some degree of regulatory lag will continue to exist, the applicable return on equity should fall in between long-term debt costs and the last authorized return on equity. In its reply comments, TIEC stated that it would be appropriate for each TSP's rate of return to be reduced at the time of its first interim TCOS filing by half of the difference between its authorized rate of return and its cost of debt, and that splitting the difference between each utility's specific authorized return and cost of debt recognizes that each utility is different while also attempting to properly balance the relative risks faced by customers and each respective utility. TIEC opined that this type of basis-point reduction would be a rebuttable presumption, and the TSP could submit evidence that the reduced rate of return would not allow it a reasonable opportunity to earn a reasonable return on its investment, as provided by PURA §36.051.

Brazos and Interested TSPs in their replies urged the commission to reject the comments of CORE, TIEC, and Cities, arguing that a TSP already has the burden of proving up its requested rate of return in a full transmission rate case, and that including an additional burden to overcome a rebuttable presumption on this issue is not appropriate and goes beyond any requirements for the TSP in filing its case. Interested TSPs opined that such a proposal would

enact a rule that limits the commission's exercise of its own discretion, and establishing in a rulemaking a specific factual determination such as a 100 basis point reduction without any evidentiary basis or meaningful analysis would be poor policy. Brazos also averred that imposing a specific reduction would be a "one size fits all" approach that is clearly not appropriate when viewed from the perspective of an investor-owned utility versus that of an electric cooperative or municipality. Brazos additionally opined that to provide by rule a specific or rebuttable presumption of a reduction in a TSP's rate of return simply because a TSP takes advantage of filing for interim updates would ultimately cause TSPs to not make such interim filings so as to not suffer the penalty of the reduced rate of return.

Similarly, Oncor argued in reply comments that the suggestions to include a rebuttable presumption of a reduction in the return on equity of 50 or 100 basis points should be rejected, as these proposed reductions have simply been pulled "out of thin air" and that if such a presumption were to occur in each interim TCOS filing, then each such proceeding would involve a lengthy contested case hearing on a proper return on equity.

Commission Response

The commission agrees with Brazos, Interested TSPs, and Oncor that the inclusion of a provision providing for a specific basis-point reduction as a rebuttable presumption would be arbitrary and lacking evidentiary basis. The commission further agrees that including such a rebuttable presumption is not feasible because the determination of the rate of return for different types of TSPs--*e.g.*, investor-owned utilities, municipalities, and electric cooperatives--requires the commission to consider different methodologies and different

organizational structures. For example, municipalities and electric cooperatives are not funded with "equity" in the same way as are investor-owned utilities, and establishing a general "one size fits all" rebuttable presumption based on differences between the rate of return and the cost of debt does not make sense given the differences between affected TSPs. Furthermore, the circumstances of each TSP's situation may differ with respect to the number and frequency of interim TCOS filings, and any beneficial effects of interim TCOS filings would likewise differ. Thus, the effects of interim TCOS filings are best considered on a case-by-case basis. Accordingly, the commission rejects recommendations to incorporate within the rule a specific basis-point reduction to the rate of return as a rebuttable presumption.

With respect to the general impact of interim TCOS updates on a TSP's financial condition, the commission observes that while the opportunity for two interim TCOS filings per year does not necessarily decrease risk *per se* (because if additional transmission investments are ultimately deemed imprudent, such investments will be disallowed and refunded with carrying costs), it clearly provides for reduced regulatory lag, which eliminates at least some degree of uncertainty with respect to the timing of a TSP's recovery of investment. A reduction in regulatory lag during a period of increasing investment and higher costs positively impacts a utility's financial condition, and it is therefore appropriate for the commission to consider these effects in establishing a reasonable rate of return. The commission agrees with Cities that it already has the authority to consider the effects of reduced regulatory lag without any explicit references in the rule. However, making this authority explicit makes clear that this rule may have a

significant impact on a particular TSP's financial risk and cost of capital. Accordingly, the commission retains proposed subsection (h)(4) in the rule, but, as suggested by Interested TSPs, LCRA, and Oncor, has changed the word "shall" to "may" to reflect the possibility of circumstances in which no need exists for explicit commission consideration of this issue.

§25.192(h)(5): Commission processing of application

Several parties expressed concerns about the changes to the filing provisions in the rule. LCRA observed that application of subparagraphs (A) and (B) together could result in a filing that requires a minimum of 88 days to receive approval. LCRA recommended that a date certain for approval should be established at 60 days from the date service of notice is completed, or, alternatively, if the commission wishes to associate the presiding officer's notice of approval with a date for the motion to find an application materially deficient, then such timeline should result in the approval of an applicant's updated transmission rate by no later than the 75th day after filing of the application.

Oncor in its initial comments expressed support for the 21-day deadline for notice and intervention, but cited §22.75(c) and the more narrow scope of interim TCOS proceedings as reasons for its recommendation to modify to 21 days the proposed 28-day deadline to file a notice of material deficiency. In reply comments, Oncor suggested further reducing the time for filing such a motion to 15 days, as interim TCOS filings are much smaller than general rate case filings and any claim of material deficiency can easily be made within 15 days, especially given that Staff typically files sufficiency recommendations within 14 days after filing.

Interested TSPs and Sharyland stated that although they support the proposal in subsection (h)(5)(C) to authorize the presiding officer to issue a notice of approval for an interim TCOS application that is eligible for informal disposition, the proposed new procedural requirements would extend the process for reviewing the sufficiency of the application well beyond the schedule employed in recent interim TCOS filings. Interested TSPs and Sharyland contended that the new procedural requirements would essentially eliminate the advantage of using an expedited process for interim TCOS adjustments and negate the purpose of the proposal to expedite the approval process. Sharyland, citing the commission's delegation of its authority to presiding officers for uncontested TCOS applications, expressed its belief that such requirements are not necessary in uncontested cases and pointed out that if a particular interim TCOS application *were* contested, the matter would not be eligible for informal disposition and the presiding officer could set an appropriate schedule for processing the case, including review by the commission if necessary. Interested TSPs and Sharyland suggested that requiring commission approval of routine applications not only delays the effective date of new rates, but also burdens the commission with uncontested interim TCOS cases that, through time and practice, have become straightforward and formulaic. Interested TSPs and Sharyland observed that no interventions in these cases have occurred for many years and, consequently, little reason exists to lengthen the process on this basis, particularly when it would counteract the general purpose of the rule proposal to reduce regulatory lag. Echoing Oncor, Interested TSPs further noted that in recent interim TCOS cases Staff has typically filed a sufficiency recommendation approximately two weeks after the application has been filed.

In view of these points, Interested TSPs and Sharyland recommended that the existing procedure be retained along with the proposed changes authorizing administrative approval, as these provisions would allow a presiding officer to issue a notice of approval within 45 days of the filing, rather than 60 days as proposed. AEP and Oncor likewise raised questions about the language allowing up to 60 days for approval of an application. AEP expressed concern that the proposed amendments could potentially lengthen the commission's processing of an interim TCOS filing and opined that such a result does not improve the interim TCOS process. AEP stated support for the comments of Interested TSPs in this regard. Oncor suggested in its initial comments that the rule should require the presiding officer to issue a notice of approval within five working days after the parties file an agreed-upon proposed order, a suggestion with which Interested TSPs agreed in reply comments. Oncor stated in reply comments that it continues to support that approach, but would not object to also reducing the 60-day deadline to 45 days.

TIEC argued that the provision allowing informal resolution of the interim TCOS updates should be rejected, to properly protect ratepayers during a time when TSPs will be adding substantial amounts to their books because of the CREZ build-out, a point with which CORE agreed in reply. TIEC reiterated this point in its replies, commenting that it opposes informal processing for interim TCOS updates whether implemented in this rule or in the procedural rules. TIEC held that informal processing of interim updates would remove some of the existing transparency and reduce TSPs' incentives to limit the amounts they request through interim updates.

Reiterating points made in their initial comments, Interested TSPs and Sharyland replied to TIEC by pointing out that contested proceedings would continue to be subject to commission review

just as they are at present and that informal processing would not be available in contested proceedings because under subsection (b)(1) of §22.35, issuance of a notice of approval is *only* permitted in the case of an uncontested application. Interested TSPs and Sharyland further reiterated that administrative processing would only apply to routine, uncontested applications. Oncor similarly replied that the proposed rule would give the presiding officer discretion as to whether the proceeding should be considered by the commission rather than approved by the presiding officer.

Commission Response

The purpose of subsection (h)(5) is to provide transparency and consistency in the manner in which interim TCOS applications are processed. One of the effects of subsection (h)(5) will be to establish a relatively definitive timeline by which interim TCOS applications will be processed. The commission believes that a 60-day deadline, in contrast to a 45-day deadline as proposed by Interested TSPs, Sharyland, and AEP, by which the presiding officer generally must issue a notice of approval in the event that an application meets the requirements of §22.35, is an appropriate deadline for these applications. LCRA misinterpreted the rule as establishing a 60-day deadline starting from a determination that the application is materially sufficient, rather than a 60-day deadline from the date a materially sufficient application is filed. Given that the amended rule will allow utilities to apply for interim TCOS adjustments twice per year instead of once per year, the anticipated additional filings from new TSPs, and an expected increase in filings from existing TSPs that will likely occur because of CREZ-related transmission investment, commission staff's workload may increase as a result of the amended rule. A 45-day

deadline would make it more difficult for commission staff to conduct a thorough review of these applications than would a 60-day deadline. A 60-day deadline is therefore preferable to a 45-day deadline. Nevertheless, the 60-day deadline does not prevent applications from being processed more quickly, and the commission expects that staff will process the applications more quickly if possible given its overall workload and if there are no disputed issues.

The commission believes that the appropriate deadline for filing a material deficiency motion is 21 days from the filing of the application rather than the 28-day deadline as originally proposed in the proposal for publication. The 21-day deadline is consistent with §22.57 (relating to Examination and Correction of Pleadings and Documents), which governs the filing of application sufficiency motions in Chapter 36 rate cases and in transmission-line CCN cases. The commission does not believe that a 15-day deadline as proposed by Oncor in its reply comments is warranted because that may not provide intervenors, or staff given its workload at any particular time, sufficient opportunity to file a deficiency motion. Further, although most interim TCOS applications have hitherto been uncontroversial, that does mean that there will not be controversies in the future, especially in light of the substantial sums being invested by certain utilities as part of CREZ transmission line projects. Thus, the commission disagrees with Sharyland that the 21-day material deficiency deadline applicable in Chapter 36 rate cases and transmission-line CCN cases is essentially inapplicable because those cases are generally disputed and interim TCOS cases are generally not.

The commission agrees with Interested TSPs and Sharyland that it is unnecessary for undisputed interim TCOS proceedings to be considered by the commission at an open meeting and that they can be approved by the presiding officer by issuance of a notice of approval pursuant to §22.35(b)(1) as long as the requirements of §22.35 are met. TIEC's concerns about protecting ratepayers, transparency in the process, and incentive to limit requested amounts are sufficiently addressed by a party's ability to dispute the request, which would eliminate the possibility that such an application would be resolved by means of notice of approval and would require consideration by the commission at an open meeting. In addition, the rule permits the presiding officer to submit the application to the commission at an open meeting even if the application is undisputed. The commission does not entirely agree with Sharyland's argument that the rule does not need to be modified to allow the administrative processing on interim TCOS applications because the commission can exercise its existing authority pursuant to existing §22.35(b)(1). The rule revision effectively delegates to the presiding officer the ability to issue a notice of approval. If the rule revision did not provide for this delegation of authority, then the commission would have to delegate that authority in some other manner. In addition, as explained previously, the rule revision will add transparency and consistency in the manner in which interim TCOS applications are processed.

The commission disagrees with Oncor's proposal that the presiding officer issue a notice of approval within five working days of the parties' filing of an agreed on proposed order provided that the requirements of §22.35 are met. As with staff serving as a party in an interim TCOS application, the presiding officer needs the flexibility to manage his

workload. Nevertheless, as explained above, the commission expects that staff will process the applications more quickly if possible given its overall workload and there are no disputed issues.

OPUC, CORE, and Cities opined that the notice provisions should be changed to ensure that notice is provided to all parties in the TSP's last rate case. Cities recommended that, at a minimum, the TSP should be required to provide notice to all intervenors in its most recent general rate case. Similarly, TIEC argued that end-use customers should receive notice of the filing, given that ultimately they will be directly impacted by the interim TCOS adjustments. TIEC noted that because transmission costs are socialized within ERCOT, providing notice to all end-use customers would require notice to most of the state, and TIEC and CORE recommended that interim TCOS filings be noticed in the *Texas Register*, in addition to the notice provided to the DSPs.

Brazos and Interested TSPs in their reply comments disagreed with the suggestions of OPUC, CORE, TIEC, and Cities, stating that the purpose of interim filings is to enhance efficiency and timeliness. Brazos also pointed out that it is the DSPs that are directly impacted by the interim rate adjustments, and so the DSPs are the appropriate parties to receive the required notices of a TSP's interim filing. Brazos and Interested TSPs also noted that requiring that interim filings to be published in the *Texas Register* would clearly cause the entire schedule to be lengthened and that such a requirement would increase, rather than decrease, the regulatory lag that is supposed to have been reduced by the interim filing procedure.

Commission Response

The commission has changed the rule to require notice to all parties in the last complete review of the TSP's transmission cost of service, in addition to the DSPs listed in the last docket in which the commission set the annual transmission service charges for ERCOT. Because those parties have expressed their interest in the TSP's transmission rates by intervening in the last complete review of the TSP's transmission cost of service, it is reasonable and not burdensome that they be provided notice of the application. The commission disagrees, however, with TIEC's and CORE's recommendation that notice of the application be published in the *Texas Register*, because this type of application is not one of broad public interest and is unlikely to result in motions to intervene, the notice may not appear sufficiently in advance of the 21-day intervention deadline for persons to timely intervene based on that notice, and such a requirement would create additional work for staff to have the notice published.

CenterPoint opined that this paragraph should be deleted from the proposed substantive rule and the commission should propose the changes related to procedural processing of application in its procedural rules. CenterPoint cited §22.1 as providing for "the just and efficient disposition of proceedings and public participation in the decision-making process." Sharyland agreed in reply and stated that the commission could accomplish the purpose of the proposed changes related to administrative processing of uncontested applications by using its existing authority under §22.35(b)(1). CenterPoint also commented that it believes the commission should remain consistent in adopting all procedural issues within its procedural rules and not inter-mix such matters in the substantive rules. COH in its replies generally agreed with CenterPoint comments,

and stated that the nature and timetable for processing of applications under the proposed rule would be more equitably suited to the intent of §22.35(b)(2). In reply comments, Oncor suggested that, to ensure that the procedural provisions are effective at the same time as the substantive changes, the provisions be adopted in this rule and they can then be removed at such time as the commission opens a new rulemaking to incorporate them into the procedural rules.

Commission Response

The commission disagrees with CenterPoint that this paragraph of the rule should be deleted and should instead be incorporated into the commission's procedural rules. The commission's procedural rules are rules that generally apply to many different types of commission proceedings. The commission believes it is more user-friendly to have procedural requirements concerning interim TCOS applications in the narrow substantive rule that addresses those applications, rather than in commission's procedural rules, which are in a different chapter of rules. The commission notes, as observed by Oncor, that other provisions in the commission's substantive rules include rules of a procedural nature such as §25.304(e) and therefore the inclusion of subsection (h)(5) in this rule is consistent with prior commission practice.

COH commented that proposed subsection (h)(5) is unclear and may be interpreted to mean that a motion shall be served on the applicant if agreed to by the applicant. COH suggested that the commission consider applying the provisions of §22.35(b)(2) to the review of TSP filings for the notice and opportunity for comment it affords to interested persons. Oncor in reply disagreed that subsection (h)(5) is unclear, and that to the extent the commission believes it is, it can

simply clarify its intent in the preamble. Oncor further replied by stating that it fails to see why there is any need to send uncontested application to the commission for final approval just to allow for possible comments by "interested persons." Oncor submitted that COH's recommendation in this regard makes no sense and should be rejected.

Commission's Response

The commission disagrees with COH that subsection (h)(5)(B) could reasonably be construed to mean that a material deficiency motion can be served on the applicant only if the applicant agrees, and declines to make the changes proposed by COH because they would change the meaning of the paragraph rather than clarify it. The commission disagrees with COH's proposal to strike the language in the subsection (h)(5)(C) that would allow the presiding officer the ability to issue a notice of approval in undisputed cases pursuant to §22.35(b)(1), and instead limit the presiding officer to issuing a proposed order pursuant to §22.35(b)(2). As addressed above, the rule should allow undisputed applications to be approved by the notice of approval mechanism in §22.35(b)(1).

§25.192(h)(6): Filing schedule

LCRA suggested that although this portion of the rule was adopted as part of the initial rule, it has not been used and could be deleted.

Commission Response

The commission disagrees with LCRA because it may use this provision in the future.

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 amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (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 provides the commission the general power 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 and jurisdiction; §35.004(d), which allows the commission to approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment; §35.006(a), which requires that the commission adopt rules relating to wholesale transmission service, rates and access; and §36.001(a), which allows the commission to establish and regulate rates of an electric utility.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 35.004(d), 35.006(a), and 36.001(a).

§25.192. Transmission Service Rates.

(a) **Tariffs.** Each transmission service provider (TSP) shall file a tariff for transmission service to establish its rates and other terms and conditions and shall apply its tariffs and rates on a non-discriminatory basis. The tariff shall apply to all distribution service providers (DSPs) and any entity scheduling the export of power from the Electric Reliability Council of Texas (ERCOT) region.

(b) **Charges for transmission service delivered within ERCOT.** DSPs shall incur transmission service charges pursuant to the tariffs of the TSP.

(1) A TSP's transmission rate shall be calculated as its commission-approved transmission cost of service divided by the average of ERCOT coincident peak demand for the months of June, July, August and September (4CP). A TSP's transmission rate shall remain in effect until the commission approves a new rate. The TSP's annual rate shall be converted to a monthly rate. The monthly transmission service charge to be paid by each DSP is the product of each TSP's monthly rate as specified in its tariff and the DSP's previous year's average of the 4CP demand that is coincident with the ERCOT 4CP.

(2) Payments for transmission services shall be consistent with commission orders, approved tariffs, and §25.202 of this title (relating to Commercial Terms for Transmission Service).

(c) **Transmission cost of service.** The transmission cost of service for each TSP shall be based on the expenses in Federal Energy Regulatory Commission (FERC) expense

accounts 560-573 (or accounts with similar contents or amounts functionalized to the transmission function) plus the depreciation, federal income tax, and other associated taxes, and the commission-allowed rate of return based on FERC plant accounts 350-359 (or accounts with similar contents or amounts functionalized to the transmission function), less accumulated depreciation and accumulated deferred federal income taxes, as applicable.

(1) The following facilities are deemed to be transmission facilities:

(A) power lines, substations, reactive devices, and associated facilities, operated at 60 kilovolts or above, including radial lines operated at or above 60 kilovolts, except the step-up transformers and a protective device associated with the interconnection from a generating station to the transmission network;

(B) substation facilities on the high side of the transformer, in a substation where power is transformed from a voltage higher than 60 kilovolts to a voltage lower than 60 kilovolts;

(C) the portion of the direct-current interconnections with areas outside of the ERCOT region (DC ties) that are owned by a TSP in the ERCOT region, including those portions of the DC tie that operate at a voltage lower than 60 kilovolts; and

(D) capacitors and other reactive devices that are operated at a voltage below 60 kilovolts, if they are located in a distribution substation, the load at the substation has a power factor in excess of 0.95 as measured or calculated at the distribution voltage level without the reactive devices, and the

reactive devices are controlled by an operator or automatically switched in response to transmission voltage.

(E) As used in subparagraphs (A) - (D) of this paragraph, reactive devices do not include generating facilities.

(2) For municipal utilities, river authorities, and electric cooperatives, the commission may permit the use of the cash flow method or other reasonable alternative methods of determining the annual transmission revenue requirement, including the return element of the revenue requirement, consistent with the rate actions of the rate-setting authority for a municipal utility.

(3) For municipal utilities, river authorities, and electric cooperatives, the return may be determined based on the TSP's actual debt service and a reasonable coverage ratio. In determining a reasonable coverage ratio, the commission will consider the coverage ratios required in the TSP's bond indentures or ordinances and the most recent rate action of the rate-setting authority for the TSP.

(4) The commission may adopt rate-filing requirements that provide additional details concerning the costs that may be included in the transmission costs and how such costs should be reported in a proceeding to establish transmission rates.

(d) **Billing units.** No later than December 1 of each year, ERCOT shall determine and file with the commission the current year's average 4CP demand for each DSP, or the DSP's agent for transmission service billing purposes, as appropriate, which shall be used to bill transmission service for the next year. The ERCOT average 4CP demand shall be the sum of the coincident peak of all of the ERCOT DSPs for the four intervals coincident

with ERCOT system peak for the months of June, July, August, and September, divided by four. As used in this section, a DSP's average 4CP demand is determined from the total demand, coincident with the ERCOT 4CP, of all customers connected to a DSP, including load served at transmission voltage. The measurement of the coincident peak shall be in accordance with commission-approved ERCOT protocols.

(e) **Transmission rates for exports from ERCOT.** Transmission service charges for exports of power from ERCOT will be assessed to transmission service customers for transmission service within the boundaries of the ERCOT region, in accordance with this section and the ERCOT protocols.

(1) A transmission service customer shall be assessed a transmission service charge for the use of the ERCOT transmission system in exporting power from ERCOT based on the megawatts that are actually exported, the duration of the transaction and the rates established under subsections (c) and (d) of this section. Billing intervals shall consist of a year, month, week, day, or hour.

(2) The monthly on-peak transmission rate will be one-fourth the TSP's annual rate, and the monthly off-peak transmission rate will be one-twelfth its annual rate. The peak period used to determine the applicable transmission rate for such transactions shall be the months of June, July, August, and September.

(3) The DSP or an entity scheduling the export of power over a DC tie is solely responsible to the TSP for payment of transmission service charges under this subsection.

(4) A transmission service customer's charges for use of the ERCOT transmission system for export purposes on a monthly basis shall not exceed the annual transmission charge for the transaction.

(f) **Transmission revenue.** Revenue from the transmission of electric energy out of the ERCOT region over the DC ties that is recovered under subsection (e) of this section shall be credited to all transmission service customers as a reduction in the transmission cost of service for TSPs that receive the revenue.

(g) **Revision of transmission rates.** Each TSP in the ERCOT region shall periodically revise its transmission service rates to reflect changes in the cost of providing such services. Any request for a change in transmission rates shall comply with the filing requirements established by the commission under this section.

(h) **Interim Update of Transmission rates.**

(1) **Frequency.** Each TSP in the ERCOT region may apply to update its transmission rates on an interim basis not more than once per calendar year to reflect changes in its invested capital. Upon the effective date of an amendment to §25.193 pursuant to an order in Project Number 37909, *Rulemaking Proceeding to Amend P.U.C. Subst. R. 25.193, Relating to Distribution Service Provider Transmission Cost Recovery factors (TCRF),* that allows a distribution service provider to recover, through its transmission cost recovery factor, all transmission costs charged to the distribution service provider by TSPs, each TSP in the ERCOT region may apply to update its transmission rates on an interim basis not more

than twice per calendar year to reflect changes in its invested capital. If the TSP elects to update its transmission rates, the new rates shall reflect the addition and retirement of transmission facilities and include appropriate depreciation, federal income tax and other associated taxes, and the commission-authorized rate of return on such facilities as well as changes in loads. If the TSP does not have a commission-authorized rate of return, an appropriate rate of return shall be used.

(2) **Reconciliation.** An update of transmission rates under paragraph (1) of this subsection shall be subject to reconciliation at the next complete review of the TSP's transmission cost of service, at which time the commission shall review the costs of the interim transmission plant additions to determine if they were reasonable and necessary. Any amounts resulting from an update that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, shall be refunded with carrying costs determined as follows: for the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TSP's rates set in that complete review of the TSP's transmission cost of service, carrying costs shall be calculated using the same rate of return that was applied to the transmission investments included in the update. For the time period beginning with the effective date of the TSP's rates set in that complete review of the TSP's transmission cost of service, carrying costs shall be calculated using the TSP's rate of return authorized in that complete review.

(3) **Future consideration of effect on TSP's financial risk and rate of return.** For a TSP that has increased its rates pursuant to paragraph (1) of this subsection, the

commission may, in setting rates in the next complete review of the TSP's transmission cost of service, expressly consider the effects of reduced regulatory lag resulting from the interim updates to the TSP's rates and the concomitant impact on the TSP's financial risk and rate of return.

(4) **Commission processing of application**. The commission shall process an application filed pursuant to paragraph (1) of this subsection in the following manner.

(A) **Notice and intervention deadline.** The applicant shall provide notice of its application to all parties in the applicant's last complete review of the applicant's transmission cost of service and all of the distribution service providers listed in the last docket in which the commission set the annual transmission service charges for the Electric Reliability Council of Texas. The intervention deadline shall be 21 days from the date service of notice is completed.

(B) **Sufficiency of application.** A motion to find an application materially deficient shall be filed no later than 21 days after an application is filed. The motion shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery, or by e-mail if agreed to by the applicant or ordered by the presiding officer. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application materially deficient shall be filed no later than five working days after

such motion is received. If within ten working days after the deadline for filing a motion to find an application materially deficient, the presiding officer has not filed a written order concluding that material deficiencies exist in the application, the application is deemed sufficient.

(C) **Review of application.** A proceeding initiated pursuant to paragraph (1) of this subsection is eligible for disposition pursuant to §22.35(b)(1) of this title (relating to Informal Disposition). If the requirements of §22.35 of this title are met, the presiding officer shall issue a notice of approval within 60 days of the date a materially sufficient application is filed unless good cause exists to extend this deadline or the presiding officer determines that the proceeding should be considered by the commission.

(5) **Filing Schedule.** The commission may prescribe a schedule for providers of transmission services to file proceedings to revise the rates for such services.

(6) **DSP's right to pass through changes in wholesale rates.** A DSP may expeditiously pass through to its customers changes in wholesale transmission rates approved by the commission, pursuant to §25.193 of this title (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)).

(7) **Reporting requirements.** TSPs shall file reports that will permit the commission to monitor their transmission costs and revenues, in accordance with any filing requirements and schedules prescribed by the commission.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §25.192, relating to Transmission Service Rates, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS this the 5th day of August 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

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BARRY T. SMITHERMAN, CHAIRMAN

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DONNA L. NELSON, COMMISSIONER

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KENNETH W. ANDERSON, JR., COMMISSIONER

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