

PROJECT NO. 53169

**REVIEW OF TRANSMISSION RATES
FOR EXPORTS FROM ERCOT**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO 16 TAC §25.192
AS APPROVED AT THE NOVEMBER 30, 2022 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amended 16 Texas Administrative Code (TAC) §25.192, relating to Transmission Service Rates. The commission adopts this rule with changes to the proposed rule as published in the August 19, 2022 issue of the *Texas Register* (47 TexReg 4907). The amended rule will be republished. This rule will implement a flat transmission charge for exporting power outside the Electric Reliability Council of Texas (ERCOT) region by eliminating the increased charge for the months of June, July, August, and September. The adopted rule will also provide additional transparency on transmission charges associated with DC ties by requiring ERCOT to file a monthly report with the commission that states the total amount of energy imported and exported over each DC tie. The adopted rule also makes other minor changes.

The commission received comments on the proposed rule from Conservative Texans for Energy Innovation (CTEI), Grid United LLC (Grid United), Joint Transmission Service Providers (Joint TSPs), the Office of Public Utility Counsel (OPUC), Southern Cross Transmission LLC (Southern Cross), and Texas Industrial Energy Consumers (TIEC).

Compliance tariffs

Joint TSPs commented that the proposed amendments to §25.192 would require TSPs serving the ERCOT region to file amended compliance tariffs after the amended rule is adopted. Therefore, a single compliance project should be established for the submission of such tariffs and allow efficient implementation of the TSP export rates. Joint TSPs suggest that, alternatively, a TSP could choose to file its conforming compliance tariff in an individual Transmission Cost of Service proceeding that is pending at the time the commission adopts the proposed amendments. OPUC agreed with Joint TSPs' proposal for a single project to file compliance tariffs to conform to the revised rule.

Commission Response

The commission agrees with Joint TSPs that a single compliance project will facilitate implementation of tariff amendments in a timely, consistent, and efficient manner. The commission will open a compliance project and post the project information in this project.

§25.192(e)

Proposed §25.192(e) would modify the transmission service charge for the use of the ERCOT transmission system in delivering power to be exported from the ERCOT region. The proposal sets a single year-round rate, replacing the existing rule's requirement for a peak rate during the months of June through September.

Proposal to eliminate the export delivery charges

Grid United recommended the commission eliminate export delivery charges entirely, except during the peak months. Grid United asserted that the elimination of export delivery charges would promote free trade between grids and permit the commission to “offer electric generators the same market benefits afforded to the producers of all other Texas commodities” and would “encourage developers to extend capital for beneficial grid interconnection projects.”

TIEC and Joint TSPs opposed Grid United’s recommendation to eliminate export delivery charges outside of the peak months. TIEC emphasized that Grid United’s proposal would enable merchant exports to utilize the ERCOT grid for free without compensating ERCOT’s native customers. TIEC and Joint TSPs strongly discouraged the commission from adopting Grid United’s proposal, because it would essentially force regulated ratepayers in the ERCOT power region to subsidize the cost associated with the use of the ERCOT grid by merchant exporters, power marketers and competitive generators to market their power outside of ERCOT.

Commission Response

The commission declines to eliminate export delivery charges for off-peak months, as recommended by Grid United. The commission agrees with TIEC that Grid United’s proposal would result in ratepayers in the ERCOT power region subsidizing merchant exports. Transmission rate design cannot focus exclusively on the wholesale energy market, because ERCOT ratepayers are subject to transmission and distribution delivery charges in addition to energy market prices. Cost causation and ratepayer equity are the two fundamental principles of sound transmission rate design. Furthermore, PURA §35.004(c)

requires third party users such as energy exporters be charged for delivery service so that the utility's other customers do not bear the costs of the service.

Proposal to retain on-peak seasonality component

TIEC opposed elimination of the seasonal component from the transmission delivery rate for exports from ERCOT. TIEC asserted that the current policy of charging DC tie exports at a higher rate when transmission capacity is in greater demand ensures appropriate market incentives, properly captures the contribution to system costs by exporters, and promotes utilization of the transmission system during off-peak periods. Alternatively, TIEC recommended retaining a time-of-use rate, but limiting the peak period to the hours of 2:00 PM and 7:00 PM during weekdays in the summer months. In TIEC's view, such a framework historically matches when peak demand actually occurs and therefore the potential reliability risk to the grid is the greatest.

Southern Cross, Grid United, and CTEI opposed any form of an on-peak transmission rate charge for exports from ERCOT, alleging that such a rate structure would be disruptive of market signals. Southern Cross and Joint TSPs opposed TIEC's specific proposal for an on-peak rate limited to the hours of 2:00 PM to 7:00 PM.

Joint TSPs argued that TIEC's proposal to limit the on-peak period to the hours of 2:00 PM to 7:00 PM introduces unnecessary complexity and expense because it would require intensive accounting review of daily totals for each weekday of the summer months. Joint TSPs asserted that such a

review would be necessary to separate the megawatt-hours of export transactions for the 2:00 PM to 7:00 PM period from the export transactions made outside of those hours.

Southern Cross, Grid United, and CTEI argued that a seasonal component to the transmission rate for exports from ERCOT is a “significant and unnecessary barrier to trade.” Southern Cross specifically opposed TIEC’s 2:00 PM to 7:00 PM proposal because it would continue to impose an economic burden on exports during pre-determined hours, rather than relying on market forces and ERCOT’s authority to curtail exports when necessary.

TIEC disagreed with Southern Cross and argued that non-native DC tie exports should be required to provide a greater contribution to grid costs if they use the ERCOT transmission system during periods where peak demand is likely to occur. TIEC also argued that its proposal “refin[ed] the current approach to more accurately target peak demand periods.”

Southern Cross also asserted that dollars received from out-of-state customers for use of the ERCOT transmission and system reduces the overall costs associated with the usage of those systems that must be paid by Texas ratepayers. OPUC agreed that the proposed rule would appropriately incentivize DC ties to contribute to grid costs that would otherwise be borne by native ERCOT customers.

TIEC contended that, while export delivery charges benefit ERCOT ratepayers, there is no evidence that the proposed flat transmission rate for exports would result in a net reduction to ratepayers' transmission costs or that the volume of DC tie exports would increase enough to account for reduced summertime export charges.

Southern Cross and Joint TSPs commented that the "on-peak" rate for June through September is not necessary to discourage export during scarcity conditions because high market prices will more effectively accomplish that result. Southern Cross also emphasized that "ERCOT has the authority to curtail exports and call on imports if needed for reliability reasons."

TIEC disagreed that charging a higher price for transmission during peak periods is unnecessary. TIEC noted that ERCOT can only curtail DC tie exports in a few limited situations prior to declaring an Energy Emergency Alert. Further, TIEC argued that scarcity in the energy market does not necessarily align with peak demand on the transmission system. Moreover, TIEC asserted that relying on wholesale market energy signals or emergency conditions where ERCOT curtails exports neither promotes reliability nor prudent use of the transmission grid.

Southern Cross argued that TIEC "understates ERCOT's ability to curtail exports when in fact the priority TIEC seeks for native load already exists in ERCOT's market rules." Southern Cross remarked that the ERCOT Protocols require the grid operator to post Day Ahead limits on DC imports and exports if insufficient transmission is likely to exist in the coming operating day,

“completely independent of and irrespective of market prices or Real-Time energy sufficiency.” Southern Cross also stated that upon implementation of NPRR 825, ERCOT will be required to post each hour a rolling 48-hour schedule of DC tie limits. Southern Cross further stated that under current ERCOT Protocols, ERCOT is prohibited from approving a requested DC tie schedule that would exceed the posted DC tie limit for a given operating hour. Lastly, Southern Cross emphasized that under the ERCOT Protocols, ERCOT has broad discretion to curtail DC tie load including pre-emptive curtailments and rejecting load schedules.

Southern Cross and CTEI argued that the current transmission delivery rate for exports under §25.192(e) does not comply with the postage stamp requirement under PURA §35.004(d) because it artificially increases the postage stamp rate by three times. Southern Cross and CTEI also argued the on-peak transmission rate for June through September deviates from the Legislature’s directive under PURA §39.001 to allow the forces of competition, rather than regulatory methods, to determine market participant behavior by prohibiting otherwise economical market transactions. Southern Cross maintained that the proposed rule is consistent with PURA §35.004(d), which requires all transmission service within the ERCOT region be based upon the postage stamp pricing methodology. Southern Cross commented that PURA §35.004(d) does not distinguish between native load and exports and asserted that PURA §35.004(d) and instead “simply provides that the [c]ommission shall price wholesale transmission services within ERCOT based on the postage stamp method of pricing.” CTEI commented that the seasonal component of the transmission charge “may have been appropriate when the state was transitioning from regulation to competition” and prior to “clear energy pricing market signals to indicate when energy should

not be exported,” but is not a barrier to efficient markets. OPUC generally agreed with CTEI’s comments and specifically agreed with CTEI’s point that eliminating the seasonal price differential in paragraph (e)(2) will “facilitate more efficient market outcomes in the ERCOT region.”

TIEC argued that while PURA §39.001 requires the use of competitive, rather than regulatory means to minimize the impact of commission rules on competition, the statute also carves out commission authority to continue regulating “transmission and distribution service.” TIEC underscored that this carve out provision is why the existing DC tie pricing mechanism under §25.192 has been preserved in its current form since PURA §39.001 was adopted more than two decades ago. TIEC therefore concluded that PURA does not require the commission to prioritize the interests of competitive DC tie exporters over ensuring reliability for native ERCOT load. TIEC further argued that PURA §35.004(d) requires the commission to “uniformly price wholesale transmission service for native loads within ERCOT based on the postage stamp rate, but does not require the same treatment for exports.” TIEC commented that requiring TSPs to apply postage stamp pricing to DC tie exports during all hours of the year would cause “existing grid capacity to be strained when customers need it most” and that imposing higher transmission costs on DC ties during potential peak demand periods is an “appropriate deterrent and tracks cost causation.”

TIEC argued that for this rulemaking the commission should focus on what is in the best interest of native ERCOT load and not DC tie developers or other competitive entities as PURA §§11.002(a) and 31.001(a) “explicitly requires the [c]ommission to ensure that rates, operations, and services are just and reasonable to consumers.”

Commission Response

The commission declines to revise the on-peak window for the rate structure to the hours of 2:00 PM to 7:00 PM during the summer months as recommended by TIEC. The commission agrees with Joint TSPs that TIEC's proposal introduces complexity to the process of calculating the export delivery charges for each TSP that may outweigh any benefits. Further, there is insufficient evidence at this time to support the specific on-peak time window proposed by TIEC.

From a reliability perspective, the commission agrees with Southern Cross that ERCOT has the necessary authority to curtail exports when required to serve ERCOT customers under ERCOT Protocol 4.4.4. Moreover, reducing the on-peak rate from its current level may improve the viability of future DC tie projects, which may improve ERCOT reliability over the long term.

Additionally, the commission disagrees with TIEC that PURA does not allow for a flat rate structure for the export tariff. The commission agrees with TIEC that PURA §39.001 carves out an exception for the regulation of transmission and distribution service from the general requirement that the commission's rules favor competitive over regulatory means. While this carve out would allow the commission to adopt TIEC's proposal, it does not require it. Similarly, TIEC's argument that PURA §35.004(d) does not require exports to receive the same rate treatment as native loads within ERCOT does not prohibit the commission from approving a flat rate structure for export delivery service. Further, the commission disagrees that PURA §§11.002(a) and 31.001(a) require a peak-based export tariff to ensure

that rates, operations, and services are just and reasonable to consumers. Under a flat rate structure, exporters would still be contributing to the cost of the transmission system, and as Southern Cross notes, DC tie loads receive a different level of service than other loads under the ERCOT Protocols. The differences include the fact that ERCOT does not plan transmission for DC ties, the rolling 48-hour schedule of DC-tie limits implemented by NPRR 825, and the ability of ERCOT to pre-emptively curtail DC tie load under ERCOT Protocol 4.4.4.

All comments, including any not specifically referenced herein, were fully considered by the commission. The absence of a commission response to any specific claim made in a filed comment should not be construed as acceptance or rejection of that claim. In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent.

The amended rule is adopted under the following provisions of 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; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also adopted under PURA §§35.001-35.008, which grants the commission oversight and review authority over wholesale transmission service and rates, and PURA § 39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 35.001-35.008, 39.151.

§25.192. Transmission Rates for Export from ERCOT.

- (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. The tariff shall not apply to any entity engaging in wholesale storage as described by §25.501(m) of this title (relating to Wholesale Market Design for the Electric Reliability Council of Texas) (storage entity).
- (b) **Charges for transmission service delivered within ERCOT.** DSPs, excluding storage entities, 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), excluding the portion of coincident peak demand attributable to wholesale storage load. 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 municipally owned 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 municipally owned utility.
- (3) For municipally owned 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) A municipally owned utility that is required to apply for a certificate of public convenience and necessity to construct, install, or extend a transmission facility within ERCOT pursuant to §25.101 of this title (relating to Certification Criteria) is entitled to recover, through the utility's wholesale transmission rate, reasonable payments made to a taxing entity in lieu of ad valorem taxes on that transmission facility, provided that:

- (A) The utility enters into a written agreement with the governing body of the taxing entity related to the payments;
 - (B) The amount paid is the same as the amount the utility would have to pay to the taxing entity on that transmission facility if the facility were subject to ad valorem taxation;
 - (C) The governing body of the taxing entity is not the governing body of the utility; and
 - (D) The utility provides the commission with a copy of the written agreement and any other information that the commission considers necessary in relation to the agreement.
- (5) 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, excluding the portion of coincident peak demand attributable to wholesale storage load. This demand 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, excluding the portion of coincident peak demand attributable to wholesale storage load, 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, but excluding the load of wholesale storage entities. The measurement of the coincident peak shall be in accordance with commission-approved ERCOT protocols.

- (e) **Transmission rates for exports from ERCOT.** A transmission service charge for exports of power from ERCOT must 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 must be assessed a transmission service charge for the use of the ERCOT transmission system in exporting power from ERCOT based on scheduled exports and the rates established under subsections (c) and (d) of this section. The intervals must consist of one hour.
 - (2) The hourly transmission rate for exports from ERCOT will be the TSP's annual rate established under subsections (c) and (d) of this section divided by 8760.
 - (3) The 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) Beginning with the January 2023 reporting month, ERCOT must file a public report with the commission stating the total amount of energy imported and the total amount of energy exported over each DC tie for the calendar month. The report must also include the total amount of energy exported from the ERCOT region during the reporting month and each of the preceding 11 calendar months, reported

by scheduling entity. Each report must be filed within 45 days of the end of the reporting month.

- (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 certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.192, Transmission Service Rates, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the ____ day of November 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER