

PROJECT NO. 23157

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
REVISE PUC TRANSMISSION	§	
RULES CONSISTENT WITH THE	§	OF TEXAS
NEW ERCOT MARKET DESIGN	§	
	§	

PROPOSED RULES AS APPROVED FOR PUBLICATION AT THE FEBRUARY 22, 2001 OPEN MEETING AND SUBMITTED TO THE TEXAS REGISTER

The Public Utility Commission of Texas (commission) proposes amendments to §25.5, relating to Definitions, §25.191, relating to Transmission Service Requirements, §25.192, relating to Transmission Service Rates; new §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF); amendments to §25.195, relating to Terms and Conditions for Transmission Service, §25.196, relating to Functional Unbundling, §25.198, relating to Initiating Transmission Service, §25.200, relating to Load Shedding, Curtailments, and Redispatch, §25.202, relating to Billing and Payment for Transmission Service and Ancillary Services, §25.203, relating to Alternative Dispute Resolution (ADR); and new §25.361, relating to Electric Reliability Council of Texas (ERCOT). The proposed amendments and new rules will revise the commission's transmission rules consistent with the new ERCOT market design. Project Number 23157 has been assigned to this proceeding.

Under this project, and for the same purpose, the commission is also repealing existing §25.193, relating to Procedures for Modifying Transmission Rates, §25.194, relating to Determining Peak Load and Transmission Adequacy, §25.197, relating to ERCOT

Independent System Operator, §25.201, relating to Ancillary Services, and §25.204, relating to Summary of Required Filings.

The commission is proposing a new §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF). This provision, consistent with the commission's consideration of transmission costs in Docket Number 22344, *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and P.U.C. Subst. R. 25.344*, would allow a distribution service provider to pass on changes in its transmission costs to its customers through the use of a TCRF. The provision would also allow a distribution service provider to update its class allocators to allocate transmission costs when the TCRF is adjusted due to a change in transmission costs.

The commission is also proposing a new §25.361, relating to Electric Reliability Council of Texas (ERCOT) for the purpose of relocating and revising provisions currently found in existing §25.197, relating to ERCOT Independent System Operator, which is proposed for repeal at this time.

The commission seeks comments from interested persons on the proposed new rules and amendments to existing rules. Parties should organize their comments in a manner that parallels the organization of the proposed rules. In addition, the commission invites comments on the following questions:

Question Number 1:

Should the commission eliminate the proposed §25.196(d), formerly §25.196(b)(4), that limits construction of new generation by a transmission service provider's affiliate in the transmission service provider's service areas? If not, why should it be continued, and for how long?

Question Number 2:

How should the rules accommodate the special financing rules of utilities that use tax-exempt financing?

Jan Bargaen, Senior Policy Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Bargaen has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced wholesale and retail competition in the sale of electricity within the ERCOT region. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Barga has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and, therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, April 13, 2001 at 9:30 a.m. in the seventh floor Commissioners' Hearing Room.

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Comments on the proposed amendments and new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 33 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained

by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the proposed sections. All comments should refer to Project Number 23157.

These amendments, new rules and repeals are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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. In addition, in proposing to revise the commission's transmission rules consistent with the new ERCOT market design, the commission relies on the following PURA provisions: §35.002, which specifies the providers of generation that may compete for the business of selling power at wholesale; §35.004, which relates to the provision of wholesale transmission service; §35.005, which relates to the commission's authority to order transmission service; §35.006, which requires the commission to adopt rules relating to wholesale transmission service, rates, and access; §35.007, which relates to the filing of a compliance tariff by a utility that owns or operates a transmission facility; §35.008, which grants the commission authority to order nonbinding alternative dispute resolution for parties to a dispute concerning wholesale transmission service; §39.001(a)-(b), which set out a legislative finding that a competitive retail electric market is in the public interest; §39.151, which requires the commission to certify independent organizations to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms, ensure the reliability and adequacy of the regional electrical network, ensure that information relating to a customer's choice of retail electric

provider is conveyed in a timely manner to the persons who need that information, and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region; and §39.203(a), which relates to a transmission and distribution utility's required provision of transmission and distribution service.

Cross Reference to Statutes: PURA §§14.002, 35.002, 35.004-35.008, 39.001(a)-(b), 39.151, and 39.203(a).

SUBCHAPTER A. GENERAL PROVISIONS.

§25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (9) (No change.)

~~(10) **Ancillary service provider** — An electric utility, municipally owned utility, electric cooperative, or power generation company that provides an ancillary service or an independent system operator that provides such services.~~

(10)~~(11)~~ **Base rate** — Generally, a rate designed to recover the costs of electricity other than costs recovered through a fuel factor, power cost recovery factor, or surcharge.

(11)~~(12)~~ **Commission** — The Public Utility Commission of Texas.

(12)~~(13)~~ **Control area** — An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

- (A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

- (B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;
- (C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and
- (D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

~~(13)~~(14) **Corporation** — A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

~~(14)~~(15) **Customer choice** — The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

~~(15)~~(16) **Customer class** — A group of customers with similar electric usage service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas

Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.

~~(16)~~(47) **Demand-side management** — Activities that affect the magnitude and/or timing of customer electricity usage.

~~(17)~~(48) **Demand-side resource or demand-side management resource** — Activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

~~(18)~~(49) **Distribution line** — A power line operated below 60,000 volts, when measured phase-to-phase.

~~(19)~~(20) **Distributed resource** — A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (60,000 volts and below), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

~~(20)~~ **Distribution service provider (DSP) — an electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities to distribute electricity.**

(21) - (23) (No change.)

~~(24)~~ **~~Eligible ancillary service customer~~** — Any person, municipally-owned utility, or electric cooperative that is an eligible transmission service customer.

~~(24)~~(25) **Eligible transmission service customer** — A ~~transmission service provider (for all uses of its transmission system) or any electric utility,~~ municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be an eligible transmission service customer. For the purpose of billing transmission service, an eligible transmission service customer includes an electric utility providing distribution service.

(25) **ERCOT protocols** — Body of procedures developed by ERCOT and approved by the commission, to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants.

(26) - (41) (No change.)

(42) **Person** — Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative. ~~Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.~~

~~(43) **Planned resources** — Generation resources owned, controlled, or purchased by a transmission customer, and designated as planned resources for the purpose of serving load.~~

~~(44) **Planned transmission service** — A service that permits a transmission service customer to use the transmission service providers' transmission systems for the delivery of power from planned resources to loads on the same basis as the transmission service providers use their transmission systems to reliably serve their native load customers.~~

~~(43)~~(45) **Pleading** — A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

~~(44)~~(46) **Power cost recovery factor** — A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

~~(45)~~(47) **Power generation company** — A person that:

- (A) generates electricity that is intended to be sold at wholesale;
- (B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and
- (C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

~~(46)~~(48) **Power marketer** — A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities

in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators and Qualifying Facilities).

~~(47)~~(49) **Power region** — A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

~~(50)~~ ~~**Pre-existing transmission contract**~~ — ~~A contract for transmission or wheeling services that took effect prior to March 4, 1996.~~

~~(48)~~(51) **Premises** — A tract of land or real estate including buildings and other appurtenances thereon.

~~(49)~~(52) **Proceeding** — A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

~~(50)~~(53) **Public utility or utility** — means an electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

~~(51)~~(54) **Public Utility Regulatory Act (PURA)** —The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 ~~*et. seq.* 64.158, (Vernon 1999).~~

~~(52)~~(55) **Purchased power market value** — The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted

average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

~~(53)~~~~(56)~~ **Qualifying cogenerator** — The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

~~(54)~~~~(57)~~ **Qualifying facility** — A qualifying cogenerator or qualifying small power producer.

~~(55)~~~~(58)~~ **Qualifying small power producer** — The meaning as assigned this term by 16 U.S.C. §796(17)(D).

~~(56)~~~~(59)~~ **Rate** — A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

~~(57)~~~~(60)~~ **Rate class** — A group of customers taking electric service under the same rate schedule.

~~(58)~~~~(61)~~ **Rate year** — The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

~~(59)~~~~(62)~~ **Ratemaking proceeding** — A proceeding in which a rate may be changed.

~~(60)~~~~(63)~~ **Regulatory authority** — In accordance with the context where it is found, either the commission or the governing body of a municipality.

~~(61)~~~~(64)~~ **Renewable energy technology** — Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

~~(62)~~~~(65)~~ **Renewable resource** — A resource that relies on renewable energy technology.

~~(63)~~~~(66)~~ **Retail customer** — The separately metered end-use customer who purchases and ultimately consumes electricity.

~~(64)~~~~(67)~~ **Retail electric provider** — A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

~~(65)~~~~(68)~~ **Retail stranded costs** — That part of net stranded cost associated with the provision of retail service.

~~(66)~~(69) **Rule** — A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

~~(67)~~(70) **Rulemaking proceeding** — A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, [Chapter 2001, Subchapter B, §§2001.021—2001.037](#) to adopt, amend, or repeal a commission rule.

~~(68)~~(71) **Separately metered** — Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

~~(69)~~(72) **Service** — Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

~~(70)~~(73) **Spanish-speaking person** — A person who speaks any dialect of the Spanish language exclusively or as their primary language.

~~(71)~~(74) **Stranded cost** — The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act, Chapter 39. For purposes of §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under §39.262(h), whichever is earlier, and shall include stranded costs incurred under §39.263.

~~(72)~~(75) **Submetering** — Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

~~(73)~~(76) **Supply-side resource** — A resource, including a storage device, that provides electricity from fuels or renewable resources.

~~(74)~~(77) **Tariff** — The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

~~(75)~~(78) **Tenant** — A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

~~(76)~~(79) **Test year** — The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

~~(77)~~(80) **Transmission and distribution utility** — A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative.

~~(81) **Transmission facilities study** — An engineering study conducted by a transmission service provider subsequent to a system security study to determine the required modifications to its transmission system, including the detailed costs and scheduled completion date for such modifications, that will be required to provide a requested transmission service.~~

~~(82) **Transmission interconnection agreement** — An agreement that sets forth requirements for physical connection or other terms relating to~~

~~electrical connection between an eligible transmission service customer and a transmission service provider, including contracts or tariffs for transmission service that include provisions for interconnection. Transmission service providers must have such an agreement with all transmission service providers to whom they are physically connected.~~

~~(78)~~(83) **Transmission line** — A power line that is operated at 60,000 volts or above, when measured phase-to-phase.

~~(84)~~ **Transmission losses** — Energy losses resulting from the transmission of power.

~~(79)~~(85) **Transmission service** — Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

~~(80)~~(86) **Transmission service customer** — An eligibleA transmission service customer that is taking-receiving transmission service under Subchapter I, Division 1 of this chapter (relating to Transmission and Distribution). For the purpose of billing for transmission service, a transmission service customer includes an electric utility providing distribution service.—Where consistent with the context, "transmission service customer" includes an eligible transmission service customer seeking transmission service.

~~(81)~~(87) **Transmission service provider (TSP)** — An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity and provides transmission service.

~~(82)~~(88) **Transmission system** — The transmission facilities at or above 60 kilovolts owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

~~(89)~~ **Transmission system security study** — ~~An assessment by a transmission service provider of the adequacy of the transmission system to accommodate a request for transmission service and whether any costs are anticipated in order to provide transmission service.~~

~~(90)~~ **Transmission upgrade** — ~~A modification or addition to transmission facilities owned or operated by a transmission service provider.~~

~~(91) **Unplanned resources** — Generation resources owned, controlled or purchased by the transmission customer that have not been designated as planned resources.~~

~~(92) **Unplanned transmission service** — A service that permits a transmission service customer to use the transmission service providers' transmission systems to deliver energy to its loads from resources that have not been designated as the transmission service customer's planned resources.~~

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION.

**DIVISION 1. Open-Access Comparable Transmission Service for Electric Utilities
in the Electric Reliability Council of Texas.**

§25.191. Transmission Service Requirements.

(a) **Purpose.** The purpose of Subchapter I, Division 1 of this chapter (relating to Transmission and Distribution), is to clearly state the terms and conditions that govern ~~wholesale~~ transmission access ~~and related ancillary services~~, in order to:

(1) ~~facilitate robust~~~~increase~~ competition in the sale of electric energy ~~at~~ ~~wholesale~~ in Texas,

(2) - (3) (No change.)

(b) **Applicability.** Unless otherwise explicitly provided, Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas) applies to transmission service providers (TSPs), as defined in §25.5 of this title (relating to Definitions), which include river authorities and other electric utilities, municipally-owned utilities, and electric cooperatives. The transmission service standards described in Division 1 of this subchapter also apply to transmission service to, from, and over the direct-current interconnections between the Electric Reliability Council of Texas (ERCOT) region and areas outside of the ERCOT region, to the extent that tariffs for such service incorporating the terms of

Division 1 of this subchapter are approved for the transmission providers that own an interest in the interconnections.

~~(c)(b)~~ **Nature of transmission service.** Transmission service allows for power delivery transmission service customers to use the transmission systems to deliver power from generation resources to serve ~~their~~ loads, inside and outside of the geographic region of ~~ERCOT~~ the Electric Reliability Council of Texas (ERCOT). Service provided pursuant to Division 1 of this subchapter permits municipally-owned utilities, electric cooperatives, power marketers, power generation companies, qualifying scheduling entities, retail electric providers (REPs), qualifying facilities, and distribution service providers (DSPs) ~~a transmission service customer~~ to use the transmission systems of ~~all of the TSPs~~ transmission service providers in ERCOT. Transmission service shall be provided pursuant to Division 1 of this subchapter and commission-approved ERCOT protocols. Transmission service under Division 1 of this subchapter includes the provision of transmission service to an entity that is scheduling the export or import of power from the ERCOT region across a high voltage direct current interconnection.

~~(e)~~ **Definitions.** ~~The following terms, when used in Division 1 of this subchapter have the following meanings, unless the context clearly indicates otherwise:~~

~~(1)~~ **Planned transmission service** ~~— A service that permits a transmission service customer to use the transmission service providers' transmission systems for the delivery of power from planned resources to loads on the~~

~~same basis as the transmission service providers use their transmission systems to reliably serve their native load customers. This service shall have priority over all unplanned transmission service.~~

~~(2) **Unplanned transmission service**—A service that permits a transmission service customer to use the transmission service providers' transmission systems to deliver energy to its loads from resources that have not been designated as the transmission service customer's planned resources. This service permits such energy to be delivered if sufficient transmission capacity is available to support the requested service.~~

~~(d) **Application.** Unless otherwise explicitly provided, Division 1 of this subchapter applies to electric utilities in ERCOT, as the term "electric utility" is defined in the Public Utility Regulatory Act §35.001. The transmission service standards described in Division 1 of this subchapter also apply to transmission service to, from, and over the direct current interconnections between ERCOT and the Southwest Power Pool, to the extent that tariffs for such service incorporating the terms of Division 1 of this subchapter are approved for the electric utilities that own an interest in the interconnections.~~

~~(d)(e) **Obligation to provide transmission service.** Each TSP electric utility in ERCOT that owns transmission facilities shall provide wholesale transmission service to other electric utilities, power marketers, exempt wholesale generators, qualifying facilities and other eligible transmission service customers, in accordance with the~~

provisions of Division 1 of this subchapter. ~~Each electric utility that owns transmission facilities shall file a tariff for transmission service and shall take transmission service for all of its uses of its transmission facilities in accordance with the terms of its tariff for transmission service.~~

- (1) ~~Where a TSP~~Each electric utility that owns transmission facilities shall provide transmission service to other electric utilities, power marketers, exempt wholesale generators, qualifying facilities and other eligible transmission service customers on the same terms and conditions that it provides transmission service to itself. ~~Where an electric utility~~ has contracted for another person to operate its transmission facilities, the person assigned to operate the facilities shall carry out the operating responsibilities of the ~~TSPelectric utility~~ under Division 1 of this subchapter.
- (2) The obligation to provide comparable wholesale transmission service applies to ~~a TSPan electric utility~~, even if the ~~TSPselectric utility's~~ interconnection with the transmission service customer is through distribution, rather than transmission facilities.
 - (A) A ~~TSP or a DSPtransmission service provider~~ that owns facilities for the delivery of electricity to ~~a an eligible~~ transmission service customer purchasing electricity at wholesale using facilities rated at less than 60 kilovolts shall provide the customer access to its facilities on a non-discriminatory basis ~~an eligible transmission service customer access to the transmission service provider's~~

~~delivery points on the same pricing, terms and conditions used by the transmission service provider in serving similar primary metered distribution level customers.~~

- (B) A TSP or DSP shall~~Beginning September 1, 1999 a transmission service provider shall also~~ provide access to its facilities at the distribution level to another TSPelectric utility, in order to transmit power to a retail customer in an area in which the other TSPelectric utility has the right to provide retail electric service. Such service shall be provided on a non-discriminatory basis~~under the same pricing and other terms and conditions available to the transmission service provider in serving similar customers.~~

(C) A DSP shall file a tariff for wholesale transmission service at distribution level voltage.

~~(3) The obligation to provide transmission service includes the obligation to provide reactive power support to maintain adequate system voltage support and control.~~

~~(3)~~(4) A TSPtransmission service provider shall interconnect its facilities with new generating sources and construct facilities needed for such an interconnection, in accordance with Division 1 of this subchapter. A TSP shall use all reasonable efforts to communicate promptly with a power generation company to resolve any questions regarding the requests for service in a non-discriminatory manner. If a TSP or a power generation company is required to complete activities or to negotiate agreements as a

condition of service, each party shall use due diligence to complete these actions within a reasonable time.

(4) A TSP shall interconnect with DSPs to serve retail loads and with retail customers that request service at transmission voltage. Requests for interconnection by a retail customer or REP shall be in accordance with the standard terms and conditions for delivery service, under §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) and §25.215 of this title (relating to Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice).

~~(5) Service provided pursuant to Division 1 of this subchapter allows a transmission service customer to deliver energy from its planned resources to serve loads within ERCOT, deliver unplanned energy to its loads without an additional facilities charge, deliver energy to third parties in connection with a sale of energy to loads within ERCOT, and transmit power over transmission facilities within ERCOT for export from ERCOT.~~

~~(6) All transmission service and ancillary services shall be provided on a non-discriminatory basis, in a manner that is comparable to the service provider's use of such services to serve its native load customers.~~

~~(f) **Resale of transmission rights.** A transmission service customer that holds transmission and ancillary transmission service rights under Division 1 of this subchapter may resell those rights to another eligible transmission service customer.~~

~~(g) **Redispatch.** ERCOT utilities shall provide redispatch services in accordance with §25.200 of this title (relating to Load Shedding, Curtailments, and Redispatch).~~

~~(h) **Scheduling.** Control area utilities shall schedule a transmission service customer's resources and accommodate changes to schedules requested by transmission service customers. Control area utilities shall implement requested schedules and changes to schedules for third party transmission service customers upon the same terms and conditions and within the same time frames applied by control area utilities in scheduling resources to serve their native load customers.~~

§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)(a) Charges for transmission service delivered within ERCOT. DSPs shall incur transmission service charges pursuant to the tariffs of the TSP. Transmission service customers shall incur access charges, loss compensation charges, and an independent system operator (ISO) fee for all planned transmission service. Transmission service customers shall incur loss compensation charges and an ISO fee for unplanned transmission service. Access charges shall be determined in transmission ratemaking proceedings conducted periodically, at such intervals as the commission determines are appropriate.~~

(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 monthly, weekly, daily, and hourly rates. The monthly transmission service charge to be paid by each DSP is the product of the 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. The costs included in the access charge will be the annual cost of transmission service for each transmission service provider in the Electric Reliability Council of Texas (ERCOT). A transmission service customer taking planned transmission service will pay a share of these costs, based on its share of the total load in ERCOT.~~

~~(A) For each transmission service provider, an access rate will be calculated by dividing the transmission service provider's annual transmission cost of service by the total ERCOT load, as calculated in accordance with this section.~~

~~(B) Each transmission service customer taking annual planned transmission service will pay an access charge to transmission service providers, calculated by multiplying the applicable access rate by the transmission service customer's peak load, as calculated in accordance with this section.~~

(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).~~The commission may adjust the access charges under this section to account for any transmission revenues that an electric utility receives under an existing transmission contract.~~

~~(3) The access charge for the short term planned service described in §25.198 of this title (relating to Initiating Transmission Service) will be the prorated annual cost of transmission service for each transmission service~~

~~provider and will be charged on the basis of the megawatts of transmission service that are reserved. A transmission service customer will be obligated to pay all transmission service providers for this service upon making a request, whether the customer uses the service or not. Transmission service providers shall file tariffs for this service for commission approval.~~

~~(c)(b)~~ **Transmission cost of service.** The ~~annual~~ transmission cost of service for each ~~TSP~~~~transmission service provider~~ shall be based on the ~~annual~~ expenses in Federal Energy Regulatory Commission (FERC) expense accounts 560-573 (or accounts with similar contents) 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), less accumulated depreciation and accumulated deferred federal income taxes.

- (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 (DC) interconnections with areas outside of the ERCOT region~~the Southwest Power Pool~~ that are owned by a TSP~~transmission service provider~~ in ERCOT; and
 - (D) capacitors and other reactive devices that are operated at a voltage of 60 kilovolts or below, 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 transmission voltage level without the capacitors, and the capacitors are controlled by an operator or automatically switched in response to transmission voltage.
- ~~(2) In determining the annual transmission cost of service under this subsection, the following expenses shall not be included:~~
- ~~(A) expenses of an electric utility that are otherwise included in its annual transmission cost for service under any existing transmission contract (including the value of goods and services exchanged for transmission service);~~
 - ~~(B) transmission expenses paid to another electric utility in accordance with this section; and~~
 - ~~(C) expenses for transmission service outside of ERCOT.~~
- ~~(2)~~⁽³⁾ 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, cost of transmission service, including the cash flow method,~~
consistent with the rate actions of the rate-setting authority for a municipal
utility, ~~and an alternative method for determining the utility's return, as~~
~~permitted in paragraph (4) of this subsection.~~

(3)(4) For municipal utilities, river authorities, and electric cooperatives, the
return may be determined based on the ~~TSP's electric utility'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 electric utility's~~ bond indentures or ordinances and the most
recent rate action of the rate-setting authority for the ~~TSP electric utility.~~

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

(d)(e) **Billing units.** No later than December 1 of each year, ERCOT shall determine
and file with the commission the average 4CP demand for each DSP for the
current year, 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. The

~~measurement of the coincident peak shall be in accordance with commission-approved ERCOT protocols. As used in this section, a transmission service customer's system demand is the average of the demand of the transmission service customer's retail and wholesale customers for hours that are coincident with the most recent ERCOT system coincident peak demand. In determining a transmission service customer's demand and ERCOT system coincident peak demand, the actual demand on electric utility systems shall be considered, and the ERCOT system coincident peak demand shall be an average of the highest aggregate demand in each of the months of June, July, August, and September of the relevant period. Actual electric utility demand shall be calculated based on the electric utility's net hourly generation, plus wholesale purchases, minus wholesale sales. Peak demand may be adjusted for known and measurable changes to wholesale customer loads and resources, when such changes can be identified and quantified with reasonable certainty.~~

~~(d) **Transmission revenue.** The access charges prescribed in subsection (a) of this section are intended to provide each transmission service provider an opportunity to recover its transmission cost of service. Revenue from the transmission of electric energy out of ERCOT over the DC ties that is not recovered through rates for annual planned transmission service and revenue from monthly, weekly, and daily planned transmission service shall be credited to all transmission service customers as a reduction in the transmission cost of service for transmission service providers that receive the revenue.~~

~~(e) **Compensation for losses.** A transmission service customer that uses transmission service to transmit power to its loads shall compensate affected control area utilities for energy losses resulting from such transmission service. Losses shall be calculated by the independent system operator under a method approved by the commission. The method of compensation for losses shall provide reasonably accurate compensation for the cost of supplying losses incurred under different system conditions.~~

~~(f) **Independent system operator charges.** Transmission service customers shall incur an ISO fee for planned transmission service and unplanned transmission service, payable to the independent system operator. Changes in the fee are subject to approval by the commission.~~

~~(e)(g) **Transmission rates for exports from ERCOT.** Transmission service charges and the ERCOT administrative fee~~Access charges, ISO charges, and loss compensation~~ for exports of power from ERCOT will be assessed to transmission service customers for transmission service~~that portion of transmission that is~~ 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 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. For the purposes of facilitating these transactions, the annual access charge shall be prorated on a monthly, weekly, daily and hourly basis.~~
- (2) Transmission service customers exporting power from the ERCOT region ~~on an unplanned basis~~ will be assessed a transmission access charge based on the duration of the transaction, and will be charged only for the transmission service actually used. ~~Transmission service customers exporting power from ERCOT on a planned basis will be assessed an access charge based on duration of the service requested.~~
- (3) The monthly on-peak transmission rate access fee will be one-fourth the TSP's annual rate, and the monthly off-peak transmission rate access fee will be one-twelfth ~~its~~the 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.
- (4) The DSP or an entity scheduling the export of power over a high voltage direct current tie is solely responsible to the TSP for payment of transmission service charges under this subsection.
- (5) 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 not recovered through rates for transmission service and is charged in accordance with 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.

(1) Each TSP in the ERCOT region may on an annual basis update its transmission rates 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-allowed rate of return on such facilities as well as changes in loads.

(2) 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. The commission shall review whether the cost of transmission plant additions are reasonable and necessary at the

- next complete review of the TSP's transmission cost of service. Any over-recovery of costs, as a result of the update, is subject to refund.
- (3) The commission may prescribe a schedule for providers of transmission services to file proceedings to revise the rates for such services.
- (4) 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)).
- (5) 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.

§25.193. Distribution Service Provider Transmission Cost Recovery Factors (TCRF).

- (a) **Application.** The provisions of this section apply to all investor-owned distribution service providers providing distribution service within ERCOT to retail electric providers and other customers of the distribution system.
- (b) **TCRF authorized.** A distribution service provider subject to this section that is billed for transmission service by a transmission service provider (TSP) pursuant to §25.192 of this title (relating to Transmission Service Rates) may be allowed to include within its tariff a TCRF clause which authorizes the distribution service provider to charge or credit its customer for the cost of transmission service to the extent that such costs vary from the transmission service cost utilized to fix the rates of the distribution provider. The terms and conditions of such TCRF clause shall be approved by an order of the commission.
- (c) **TCRF Formula.** The TCRF for each class shall be computed pursuant to the following formula:

$\frac{(NWTR - BWTR) * LS * ALLOC}{BD}$	
<u>Where:</u>	<u>NWTR is the new wholesale transmission rate approved by the commission by order or pursuant to commission rules;</u>
	<u>BWTR is the base wholesale transmission rate used to develop the retail transmission charge in the distribution service provider's last rate case;</u>
	<u>LS is the distribution service provider's load share of the new ERCOT transmission costs based on the 4 CP information used to develop the NWTR;</u>
	<u>ALLOC is the class allocator approved by the commission to allocate the transmission revenue requirement among classes in the distribution service provider's last rate case; and,</u>
	<u>BD is each class' projected annual billing determinant (kWh, or kW, or kVa) for the same period covered by the new transmission cost change.</u>

(d) Revision of allocator. When the TCRF is subject to change as a result of a change in the transmission charges imposed on the distribution service provider by a TSP, the distribution provider may petition the commission for approval of the use of updated allocators. Upon petition by the distribution service provider to update allocators, the distribution service provider may, without commission approval, revise its TCRF on an interim basis to reflect the updated allocators. The commission shall rule on the petition within 90 days. To the extent that the final TCRF for any class of customers is less than an interim TCRF implemented

by the distribution service provider, the distribution service provider shall refund the overcollection as directed by the commission.

(e) **TCRF charges.** The TCRF charge shall remain in effect until transmission rates charged by a TSP to the distribution service provider are changed or the rates of the distribution service provider change, following a rate proceeding that it or the commission initiates.

(f) **Reports.** The distribution service provider shall maintain and provide to the commission, semi-annual reports containing all information required to monitor the costs recovered through the TCRF clause. This information includes, but is not limited to, the total estimated TCRF cost for each month, the actual TCRF cost on a cumulative basis, and total revenues resulting from the TCRF.

§25.195. Terms and Conditions for Transmission Service.

(a) **Transmission service requirements.** As a condition to obtaining transmission service, a transmission service customer that owns electrical facilities in the Electric Reliability Council of Texas (ERCOT) region~~ERCOT~~ shall execute interconnection agreements with the transmission service providers **(TSP)** to which it is physically connected. The commission-approved~~commission will develop a~~ standard agreement for the interconnection of new generating facilities, ~~and when this standard agreement is approved, it~~ shall be used by transmission service customers and **TSPs**~~transmission service providers~~. A standard agreement may be modified with commission approval.~~The transmission service customer shall either:~~

- ~~(1) — operate as a control area under applicable guidelines adopted by the national reliability organization and the independent system operator for Electric Reliability Council of Texas; or~~
- ~~(2) — satisfy its control area requirements, including the provision of all necessary ancillary services by contracting with the transmission service provider or by purchasing the necessary services from another service provider or non-utility provider of such services, in accordance with good utility practice.~~

(b) **Transmission service provider responsibilities.** The **TSP**~~transmission service provider~~ will plan, construct, operate and maintain its transmission system in accordance with good utility practice in order to provide transmission service

customers with ~~planned~~ transmission service over its transmission system in accordance with Division 1 of this subchapter (relating to Transmission and Distribution). The ~~TSP transmission service provider~~ shall ~~include transmission service customers' load in its transmission system planning and shall~~, consistent with good utility practice, endeavor to construct and place into service sufficient transmission capacity to ensure adequacy and reliability of the network to deliver power to transmission service customer loads~~deliver power from the resources nominated by a transmission service customer as annual planned resources to serve the customer's load on the same basis as the transmission service provider's delivery of its own nominated generating and purchased resources to its native load customers.~~ The ~~TSP transmission service provider~~ will plan, construct, operate and maintain facilities that are needed to relieve transmission constraints, as recommended by ERCOT the ISO, in accordance with ~~this~~ Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas~~Transmission and Distribution~~). The construction of facilities requiring commission issuance of a certificate of convenience and necessity is subject to such commission approval.

~~(e) — **Transmission service customer redispatch obligation.** A transmission service customer will redispatch its resources to provide annual planned transmission service to third parties. The redispatch of resources pursuant to Division 1 of this subchapter shall be on a non-discriminatory basis among all transmission service customers and transmission service providers.~~

~~(d) **Priority for transmission service applications.** Planned transmission service shall have priority over unplanned transmission service, and annual planned transmission service shall have priority over planned transmission service of a shorter duration.~~

~~(1) Subject to the foregoing priorities, for applications for planned or unplanned transmission service, complete applications filed earlier with the independent system operator shall have priority over applications that are filed later. Requests for annual planned transmission service filed on or before the date prescribed in this subchapter will be accorded equal priority.~~

~~(2) Where a transmission service customer is using annual planned transmission service for a resource that becomes unavailable due to an unplanned outage or the expiration of a power supply contract, the transmission service customer shall have priority, in using the same transmission capacity to transmit power from a replacement resource, over other requests for unplanned transmission service or planned transmission service of a shorter duration.~~

~~(c)(e) **Construction of new facilities.** If additional transmission facilities or interconnections between TSPselectric utilities are needed to provide transmission service pursuant to a request for such service, the TSPstransmission-service providers where the constraint exists shall construct or acquire the facilities~~

necessary to permit the transmission service to be provided, unless ERCOT identifies an alternative means of providing the transmission service that is less costly, operationally sound, and relieves the transmission constraint at least as effectively as would additional transmission facilities. ~~the independent system operator determines that redispatch or other more economical means of making transmission capacity available will permit the requested transmission service to be provided. If additional facilities are needed to provide ancillary services to a customer requesting such service, the ancillary service provider shall acquire the facilities necessary to permit the ancillary service to be provided.~~

~~(1) If, in order to provide ancillary services, an electric utility must construct new facilities, the ancillary services customer may be required to enter a long term contract for ancillary service or make a contribution in aid of construction to cover all or a part of the cost of acquiring the new facilities, to the extent that the acquisition of the additional facilities is for the customer's benefit.~~

~~(1)(2)~~ When an eligible transmission service customer requests transmission service for a new generating source that is planned to be interconnected with a TSP's transmission service provider's transmission network, the transmission service customer shall be responsible for the cost of installing step-up transformers to transform the output of the generator to a transmission voltage level and a protective device at the point of interconnection. The TSP transmission service provider shall be responsible for the cost of installing any other interconnection facilities

that are designed to operate at a transmission voltage level and any other transmission system upgrades that may be necessary to accommodate the requested transmission service.

- (A) An affected ~~TSP transmission service provider~~ may require the transmission service customer to pay a reasonable deposit or provide another means of security, to cover the costs of planning, licensing, and constructing any new transmission facilities that will be required in order to provide the requested service.
 - (B) If the new generating source is completed and the transmission service customer begins to take the requested transmission service, the ~~TSP transmission service provider~~ shall return the deposit or security to the transmission service customer. If the new generating source is not completed and new transmission facilities are not required, the ~~TSP transmission service provider~~ may retain as much of the deposit or security as is required to cover the costs it incurred in planning, licensing, and construction activities related to the planned new transmission facilities. Any repayment of a cash deposit shall include interest at a commercially reasonable rate.
- ~~(2)(3)~~ An eligible transmission service customer that is requesting transmission ~~or ancillary~~ service may be required to make a contribution in aid of construction to cover all or a part of the cost of acquiring additional facilities, if the acquisition of the additional facilities would impair the

tax-exempt status of obligations issued by the provider of transmission ~~or~~
~~ancillary~~ services.

~~(d)~~ **Curtailment of service.** In an emergency situation, as determined by ERCOT ~~the~~
~~independent system operator~~ and at its direction, ~~TSPs~~~~control area utilities~~ may
interrupt transmission service on a non-discriminatory basis, if necessary, to
preserve the stability of the transmission network and service to customers. Such
curtailments shall be carried out in accordance with §25.200 of this title (relating
to Load Shedding, Curtailments, and Redispatch) and in accordance with ERCOT
protocols.

~~(g)~~ ~~**Filing of contracts.** Electric utilities shall file with the commission all new~~
~~interconnection agreements and agreements involving the sale or purchase of~~
~~electric utility generation, transmission, or ancillary services at wholesale within~~
~~30 days of their execution. Upon a showing of good cause, appropriate portions~~
~~of the filings required under this subsection may be subject to provisions of~~
~~confidentiality to protect competitively sensitive commercial or financial~~
~~information. Interconnection agreements are subject to commission review and~~
~~approval upon request by any party to the agreement.~~

§25.196. Functional Unbundling.

- (a) **Applicability.** This section applies to transmission service providers (TSP), as defined in §25.5 (relating to Definitions), which include river authorities and other electric utilities, municipally owned utilities, and electric cooperatives. ~~**Cost separation.** Each electric utility that is subject to the requirements in §25.221 of this title (relating to Electric Cost Separation) shall separate its costs and rates in accordance with the provisions of that section. Other electric utilities in the Electric Reliability Council of Texas shall separate their costs and rates, based on the costs associated with the utility's generation, transmission, and distribution functions. Unless otherwise directed by the commission, the cost and rate separation requirements prescribed in this section shall not require the statement of unbundled rates on retail customer bills.~~
- (b) **Separation of functions.** Each ~~TSP~~electric utility subject to the rules in Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas~~Transmission and Distribution~~) that is not otherwise required by the commission to unbundle its generation and transmission activities, operates a control area shall functionally separate the operation of its transmission facilities and the operation of its wholesale power purchase and sale activities to the extent necessary to achieve the purposes of this section.
- (1) Personnel of a TSP~~Electric utility~~ personnel shall be physically separated to the maximum extent practicable and necessary to accomplish the

purposes of this section. Each ~~TSP~~~~electric utility~~ subject to this section shall ~~have on file~~~~make a filing~~ with the commission ~~a filing~~ showing how it will implement the requirements of this section, including written procedures governing the exchange of information and physical separation of personnel among its functionally separated organizational units. This filing shall be amended if the requirements of this section are amended or the ~~TSP~~~~electric utility~~ changes its organization or procedures relating to the requirements of this section.

- (2) ~~TSPs~~~~Electric utilities~~ may request limitations on the requirement to separate their personnel, based on a showing that complete physical separation would impair the reliability of electric service. The ~~TSP~~~~electric utility~~ bears the burden of demonstrating that the separation of personnel requirements contained in this rule would impair system reliability.
- ~~(3) — An electric utility with an affiliate that owns a generating facility in the electric utility's retail service area shall not buy power from the affiliate, either directly or through a power marketer, without express authorization from the commission. This provision does not apply to any purchase agreement that was entered prior to the effective date of this section.~~
- ~~(4) — An affiliate of an electric utility shall not construct a new generating plant in the electric utility's retail service area, either directly or through an exempt wholesale generator or qualifying facility, unless the facility is approved in accordance with §25.170 of this title (relating to Hearing on~~

- ~~the Final Integrated Resource Plan) or the electric utility meets the following conditions:~~
- ~~(A) the electric utility separates its generation operations and transmission operations into separate corporate entities, in a manner approved by the commission; and~~
 - ~~(B) the generation and transmission operations of the electric utility and its affiliates operate under a code of conduct approved by the commission.~~
- ~~(5) Paragraph (4) of this subsection shall not apply to any generating facility for which an affiliate of an electric utility has made, prior to March 11, 1999, a firm commitment for construction of such a facility under a contract with an unrelated person or submitted a written offer or proposal to an unrelated person for the construction of such a facility.~~
- ~~(6) If the commission finds that an electric utility has violated the rules in Division 1 of this subchapter, it may impose an appropriate penalty, including the following:~~
- ~~(A) assess an administrative penalty under the Public Utility Regulatory Act §15.023; or~~
 - ~~(B) prohibit the utility and any affiliate of the utility from constructing a new generating facility in the electric utility's retail service area, unless the facility is approved in accordance with §25.170 of this title or §25.171 of this title (relating to Certificate of Convenience and Necessity for Generation Facilities).~~

- (c) **Standards of conduct.** A TSP subject to subsection (b) of this section~~In performing its obligations under Division 1 of this subchapter, a transmission or ancillary service provider shall apply the provisions of this section in a non-discriminatory manner to all users, including itself. In addition, any electric utility that operates a control area~~ shall comply with the following standards:
- (1) The employees of a TSP who an electric utility that are engaged in wholesale merchant functions (that is, the purchase or sale of electric energy at wholesale), other than purchases required under the Public Utility Regulatory Policies Act, shall not:
 - (A) (No change.)
 - (B) have preferential access to the TSP's electric utility's system control center and other facilities, beyond the access that is available to other market participants;
 - (C) have preferential access to information about the TSP's electric utility's transmission system that is not available to users of the electronic information network established in accordance with Division 1 of this subchapter; or
 - (D) obtain information about the TSP's electric utility's transmission system and offerings of ancillary services, including calculations of available transmission capacity and information concerning curtailments, through means or sources other than the electronic

information network operated by the Electric Reliability Council of Texas (ERCOT) the independent system operator.

- (2) To the maximum extent practicable, employees of a TSP an electric utility engaged in transmission system operations must function independently of employees engaged in wholesale merchant functions and of employees of any affiliate of the TSP electric utility. Employees engaged in transmission system operations may disclose information to employees of the TSP not electric utility engaged in transmission system operations or of an affiliate merchant functions only through the electronic information network, if the information relates to the TSP's electric utility's transmission system or offerings of ancillary services, including calculations of available transmission capacity and information concerning curtailments. Employees engaged in transmission system operations may not disclose to employees of the TSP not engaged in transmission service operations or of any affiliate any information that is not publicly available concerning activities of any competitors of the TSP or any of its affiliates including requests for interconnection by a transmission service customer or requests by ERCOT for comments on the scope of a system security screening study.
- (3) Information concerning transfers of persons between an organizational unit that is responsible for transmission system operations and a unit that is responsible for wholesale merchant functions shall be provided to

~~ERCOT the independent system operator~~ on a monthly basis and shall be made available, on request, to any market participant.

(4) If an employee of ~~a TSPan electric utility~~ discloses or obtains information in a manner that is inconsistent with the requirements in this subsection, the ~~TSPelectric utility~~ shall post a notice and details of the disclosure on the information network.

(5) Employees of ~~a TSPan electric utility~~ engaged in transmission operations shall apply the rules in Division 1 of this subchapter and any tariffs relating to transmission ~~and ancillary~~ service in a fair and impartial manner.

(6) - (7) (No change.)

(d) **New construction of generation.** An affiliate of TSP subject to the rules of Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas) shall not begin to construct a new generating plant in the TSP's service area, either directly or through an exempt wholesale generator or qualifying facility, unless the TSP meets the following conditions:~~Communications with eligible customers. A transmission or ancillary service provider shall use all reasonable efforts to communicate promptly with all eligible customers to resolve any questions regarding their requests for service in a non-discriminatory manner.~~

- (1) the TSP separates its generation operations and transmission operations into separate corporate entities, in a manner approved by the commission;
and
- (2) the generation and transmission operations of the TSP and its affiliates operate under a code of conduct approved by the commission.

~~(e) **Standard of due diligence.** If a transmission or ancillary service provider or customer is required to complete activities or to negotiate agreements as a condition of service, each party shall use due diligence to complete these actions within a reasonable time.~~

§25.198. Initiating Transmission Service.

- (a) **Initiating service.** Where a transmission service customer uses the transmission facilities in the Electric Reliability Council of Texas (ERCOT), whether its own facilities or those of another transmission service provider ~~(TSP), to serve load or to make-in-serving-its-native-load-or-in-making~~ sales of energy to a third party, it shall apply for transmission service pursuant to this section and the commission-approved ERCOT protocols. ~~Transmission service customers and transmission service providers shall provide the information that is required under this section to the independent system operator.~~
- (b) **Conditions precedent for receiving service.** Subject to the terms and conditions of this section and in accordance with the commission-approved ERCOT protocols, the ~~TSP~~transmission service provider will provide transmission service to any ~~eligible~~ transmission service customer as that term is defined in §25.5 of this title (relating to Definitions), provided that:
- (1) the ~~eligible~~ transmission service customer has completed an application for service with ERCOT under subsection (c), (d), or (e) of this section;
 - (2) the ~~eligible~~ transmission service customer and the ~~TSP~~transmission service provider have completed the technical arrangements set forth in subsection ~~(e)~~(g) of this section; and
 - (3) if the ~~eligible~~ transmission service customer operates electrical facilities that are interconnected to the facilities of a ~~TSP~~transmission service provider, it has executed an interconnection agreement for service under

this section or requested in writing that the ~~TSP~~transmission-service provider file a proposed unexecuted agreement with the commission;

~~(4) the eligible transmission service customer has arranged for ancillary services necessary for the transaction; and~~

~~(5) if the eligible transmission service customer is responsible for serving wholesale load, it shall maintain a power factor of 95% or greater at each point of interconnection.~~

(c) **Application procedures for ~~annual-planned~~ transmission service.** ~~A~~An eligible transmission service customer requesting ~~annual-planned~~ transmission service under this section must submit an application for service to ERCOT.~~the independent system operator, no later than October 1 in the year preceding the year in which service is to commence. The purpose of this application is to identify deficiencies in the ERCOT transmission system so that plans may be formulated by the independent system operator and transmission service providers to correct these deficiencies. A completed application shall provide information required in paragraph (1) of this subsection.~~

(1) The transmission service customer shall provide all information deemed necessary by ERCOT to evaluate the transmission service.~~The following information shall be provided in connection with an application for service under this section:~~

- ~~(A) the identity, address, e-mail address, telephone number and facsimile number of the party requesting service and the name of a contact person to deal with matters relating to the application;~~
- ~~(B) a statement that the party requesting service is, or will be upon commencement of service, an eligible transmission service customer under Division 1 of this subchapter (relating to Transmission and Distribution);~~
- ~~(C) a description of the load to be served (including a five year forecast of summer and winter peak load and resource requirements beginning with the first year after the service is scheduled to commence, in the format prescribed by the independent system operator);~~
- ~~(D) a description of planned resources (current and five year projection), which shall include, for each resource:
 - ~~(i) location, unit size and amount of capacity from a unit to be designated as a resource,~~
 - ~~(ii) reactive power capability (both leading and lagging) of all generators,~~
 - ~~(iii) operating restrictions, including:
 - ~~(I) any periods of restricted operations during the year;~~
 - ~~(II) minimum loading level of unit,~~
 - ~~(III) normal operating level of unit, and~~~~~~

- ~~(IV) any must run unit designations required for system reliability or contract reasons,~~
 - ~~(iv) a description of purchased power designated as a resource, including source of supply, control area location, transmission arrangements and, if applicable, delivery points into ERCOT,~~
 - ~~(v) to the extent arrangements have been made for ancillary services, the identity of the providers of ancillary services,~~
 - ~~(vi) the service commencement date of the requested transmission service and service termination date or duration of service,~~
 - ~~(vii) where the transmission service customer serving the load does not own the resource, a copy of the contract between the transmission service customer and the owner of the resource, which may be redacted to remove market-sensitive information not needed in assessing the request for service, and~~
 - ~~(viii) any other information designated by the independent system operator as reasonably necessary to evaluate the ability of the interconnected ERCOT transmission systems to reliably accommodate the requested service.~~
- ~~(2) The independent system operator shall provide to affected transmission service providers the information needed for them to evaluate the request.~~

- (2)(3) ~~ERCOT~~~~The independent system operator~~ must acknowledge the request within ten days of receipt. When the request is complete, the~~The~~ acknowledgment must include a date by which a response will be sent to the ~~eligible~~ transmission service customer and a statement of any fees associated with responding to the request (*e.g.*, system studies).
- (3)(4) If an application fails to provide ERCOT with all information deemed necessary~~meet the requirements of this subsection, then ERCOT~~~~the independent system operator~~ shall notify the ~~eligible~~ transmission service customer requesting service within 15 business days of receipt and specify the reasons for such failure. Wherever possible, ~~ERCOT~~~~the independent system operator~~ will attempt to remedy deficiencies in the application through informal communications with a~~an eligible~~ transmission service customer.
- (4)(5) If a system security screening study is required, upon approval of the requesting transmission service customer, ~~ERCOT~~~~the independent system operator~~ will initiate such a study. If this study concludes that the transmission system is adequate to accommodate the request for service, either in whole or in part, or that no costs are likely to be incurred for new transmission facilities or upgrades, the transmission service will be initiated or tendered, within 15 business days of completion of the system security screening study.
- (5)(6) If ~~ERCOT~~~~the independent system operator~~ determines as a result of the system security screening study that additions or upgrades to the

transmission system are needed to supply the transmission service customer's forecasted transmission requirements, the TSP transmission service provider will, upon the approval of the requesting transmission service customer, initiate a facilities study. When completed, a facilities study will include an estimate of the cost of any required facilities or upgrades and the time required to complete such construction and initiate the requested service.

(6) When a transmission service customer applies for transmission service for a new resource under this section, ERCOT shall notify affected TSPs of the application and request comments concerning the scope of any system security screening study. The study will be used to determine the feasibility of integrating such new resource into the TSPs' transmission system, and whether any upgrades of facilities providing transmission or ancillary services are needed. ERCOT will perform the system security screening study.

(A) ERCOT shall complete the system security screening study and provide the results to the transmission service customer within 60 business days after the receipt of an executed study agreement and receipt from the transmission service customer of all the data necessary to complete the study. In the event ERCOT is unable to complete the study within the 60-day period, it will provide the transmission service customer a written explanation of when the study will be completed and the reasons for the delay.

(B) The requesting transmission service customer shall be responsible for the cost of the system security screening study and shall be provided with the results thereof, including relevant work papers.

(C) ERCOT will use a methodology consistent with good utility practice to conduct the system security screening study and shall coordinate with affected TSPs as needed in determining the most efficient means for all TSPs in the ERCOT region to assure feasibility of transmission service.

~~(7) Unplanned transmission service transactions of a duration of 30 days may be converted to planned transmission service transactions upon approval of an application submitted pursuant to subsection (d) of this section. The participants to such a transaction are responsible for the costs of feasibility analysis.~~

~~(d) **Application procedures for other planned transmission service.** An eligible transmission service customer may request monthly, weekly, or daily planned transmission service in connection with a change in its designated planned resources or other transmission needs. The independent system operator may establish hourly planned transmission service, if it deems that it is feasible.~~

~~(1) The independent system operator shall determine maximum and minimum lead times for submitting requests for planned transmission service other than annual planned transmission service.~~

- ~~(2) The application must provide information similar to that required for annual planned transmission service for the period that the planned transmission service is to be effective.~~
- ~~(3) When the independent system operator determines that the service can be provided and a system security study is not required it will notify the requesting transmission service customer and tender transmission service.~~
- ~~(4) The independent system operator shall develop charges for planned transmission service under this subsection, in accordance with §25.192 of this title (relating to Transmission Service Rates). The transmission charges shall be subject to commission approval.~~
- ~~(e) **Application for unplanned transmission service.** Eligible transmission service customers wishing to use the ERCOT transmission system for unplanned transmission service must submit a request for service to the independent system operator. The duration for unplanned transactions is from one hour to 30 days. In no case shall unplanned transactions be accepted for consideration more than 30 days in advance of the actual commencement of service.~~
- ~~(1) Requests for service must be submitted with at least the lead times prescribed in subparagraphs (A) (D) of this paragraph:~~
- ~~(A) for hourly transactions, at least 20 minutes in advance,~~
- ~~(B) for daily transactions, no later than 2:00 p.m. the day before the transaction is to commence,~~
- ~~(C) for weekly transactions, at least two days in advance, and~~

- ~~(D) for monthly transactions, at least four days in advance.~~
- ~~(2) A response to a request for service will be made by the independent system operator as soon as practical after the request is made. Unless the parties agree to a different time frame, responses to requests for unplanned transmission service shall be provided no later than the times prescribed in subparagraphs (A) (D) of this paragraph:
 - ~~(A) for hourly transactions, within 10 minutes of the request for service,~~
 - ~~(B) for daily transactions, within four hours of the request for service,~~
 - ~~(C) for weekly transactions, within 24 hours of the request for service,~~
 - ~~and~~
 - ~~(D) for monthly transactions, within two days of the request for service.~~~~
- ~~(3) A request for a transaction will be analyzed first for the next hour and allowed to start if no violations of the transmission operating criteria are anticipated.~~
- ~~(4) The following information shall be provided in connection with an application for unplanned transmission service:
 - ~~(A) the identity, address, telephone number and facsimile number of the party requesting service and contact person to deal with questions concerning the application for service;~~~~

- ~~(B) — a statement that the party requesting service is, or will be upon commencement of service, an eligible transmission service customer under this section;~~
- ~~(C) — a description of the load to be served and the resources serving the load, which shall include, for each resource:
 - ~~(i) — location, unit size and amount of capacity from that unit to be designated as resource,~~
 - ~~(ii) — reactive power capability (both leading and lagging) of all generators,~~
 - ~~(iii) — operating restrictions, including minimum loading level of unit, and normal operating level of unit,~~
 - ~~(iv) — a description of purchased power designated as a resource including source of supply, control area location, and, if applicable, delivery points into ERCOT,~~
 - ~~(v) — to the extent arrangements have been made for ancillary services, the identity of the providers of ancillary services,~~
 - ~~(vi) — when service is to begin and the anticipated duration, and~~
 - ~~(vii) — if the unplanned transmission service will result in the transmission service customer's using different resources than its planned resources, a statement of the effect of the unplanned transmission service on the use of the planned resources.~~~~

~~(5) — The independent system operator will make every reasonable attempt to begin the transactions as soon as possible to conform to the requested commencement time. Operating restrictions, anticipated redispatch needs, the potential for curtailment, and other related information, if known, will be communicated to the requester to see if the transactions are still feasible for the eligible transmission service customer given the known restrictions.~~

~~(6) — The independent system operator, at its discretion, may take requests outside the timeframes prescribed in paragraph (1) of this subsection, if practical given the current or expected operating conditions on the transmission service providers' systems. The independent system operator may set longer notification and response times than those prescribed in paragraphs (1) and (2) of this subsection, during a system emergency, and shall periodically review the notification and response times and may propose to the commission revisions to those times. The independent system operator may put such revisions into effect, pending action by the commission on its proposal.~~

~~(f) — **System security study.** — When a transmission service customer applies for planned transmission service for a new resource under this section, the independent system operator shall notify affected transmission service providers of the application and request comments from them concerning the scope of any security study. The transmission service customer and the independent system~~

~~operator shall execute a joint study agreement for performing a system security study to determine the feasibility of integrating such new resource into the transmission service providers' transmission system, and whether any upgrades of facilities providing transmission or ancillary services are needed. The independent system operator will perform the security study.~~

~~(1) In performing the system security study, the independent system operator shall apply the same methods and criteria that the transmission service providers employ in integrating new resources or new loads.~~

~~(2) The independent system operator shall complete the system security study and provide the results to the transmission service customer within 60 days after the receipt of the executed study agreement and receipt from the transmission service customer of all the data necessary to complete the study. In the event the independent system operator is unable to complete the study within the 60 day period, it will provide the transmission service customer a written explanation of when the study will be completed and the reasons for the delay.~~

~~(3) The requesting transmission service customer shall be responsible for the cost of the system security study and shall be provided with the results thereof, including relevant workpapers.~~

~~(4) The independent system operator will use a methodology consistent with good utility practice to conduct a system security study and shall coordinate with affected transmission service providers as needed in~~

~~determining the most efficient means for all electric utilities in ERCOT to assure feasibility of transmission service.~~

~~(d)~~ **Facilities study.** Based on the results of the system security screening study, the TSP transmission service provider shall perform, pursuant to an executed facilities study agreement with the transmission service customer, a facilities study addressing the detailed engineering, design and cost of transmission or ancillary services facilities required to provide the requested transmission service.

(1) The facilities study will be completed as soon as reasonably practicable.

If the TSP transmission service provider may charge a contribution in aid of construction under §25.195 of this title (relating to Terms and Conditions for Transmission Service), the ~~TSP transmission service provider~~ shall notify the transmission service customer whether it considers that a contribution in aid of construction is appropriate and the amount of the contribution. The ~~TSP transmission service provider~~ shall base its request on the information in the system security screening study, ~~and~~ the facilities study and ~~the rules in~~ §25.195 of this title.

(2) The transmission service customer shall be responsible for the reasonable cost of the facilities study pursuant to the terms of the facilities study agreement and shall be provided with the results of the facility study, including relevant workpapers.

(3) The TSP shall be responsible for the costs of any planning, designing, and constructing of facilities associated with its addition of new facilities used

~~to provide transmission service. The TSP shall separately book such costs. The transmission service provider shall be responsible for the costs of any facilities study undertaken to determine the engineering, design and cost of facilities associated with the transmission service provider's addition of new resources used to serve the transmission service provider's load. Such costs will be separately booked by the transmission service provider.~~

(e)(h) Technical arrangements to be completed prior to commencement of service.

Service under this section shall not commence until the installation has been completed of all equipment specified under the interconnection agreement, consistent with guidelines adopted by the national reliability organization and ERCOT~~the independent system operator~~, except that the TSP~~transmission service provider~~ shall provide the requested transmission service, to the extent that such service does not impair the reliability of other transmission service. The TSP~~transmission service provider~~ shall exercise reasonable efforts, in coordination with the transmission service customer, to complete such arrangements as soon as practical prior to the service commencement date.

(f)(i) Transmission service customer facilities. The provision of transmission service shall be conditioned upon the transmission service customer's constructing, maintaining and operating the facilities on its side of each point of interconnection that are necessary to reliably interconnect and deliver power from a resource to

the transmission system and from the transmission system to the transmission service customer's loads.

~~(g)~~^(j) **Transmission arrangements for resources located outside of the ERCOT region.** If a transmission service customer intends to import power from outside the ERCOT region, it shall be the transmission service customer's responsibility to make any transmission arrangements necessary for delivery of capacity and energy from the resource to an interconnection with ERCOT, produced from a resource outside of ERCOT to the interconnection with the Southwest Power Pool. The independent system operator and transmission service provider shall undertake reasonable efforts to assist the transmission service customer in coordinating and scheduling arrangements with connecting systems within ERCOT.

~~(h)~~^(k) **Changes in service requests.** A transmission service customer's decision to cancel or delay the addition of a new ~~planned~~ resource shall not relieve the transmission service customer of the obligation to pay for the facility study ~~contribution in aid of construction to cover the costs of transmission facilities constructed by a transmission service provider, under the rules in §25.195 of this title. Upon receipt of a transmission service customer's written notice of such a cancellation or delay, a transmission service provider will use the same reasonable efforts to mitigate the costs and charges owed by the transmission service~~

~~customer to the transmission service provider as it would to reduce its own costs and charges.~~

~~(i)~~ **Annual load and resource information updates.** A transmission service customer shall provide ~~ERCOT~~~~the independent system operator~~ with annual updates of load and resource forecasts ~~consistent with those included in its application for transmission service by October first of each year.~~ The transmission service customer also shall provide ~~ERCOT~~~~the independent system operator~~ with timely written notice of material changes in any other information provided in its application relating to the transmission service customer's ~~planned~~ load, resources, its transmission system or other aspects of its facilities or operations affecting the ~~TSP's~~~~transmission service provider's~~ ability to provide reliable service under Division 1 of this subchapter.

~~(i)~~ **Termination of ~~planned~~ transmission service.** A transmission service customer may terminate ~~planned~~ transmission service after providing the ~~TSP~~~~transmission service provider~~ with written notice of the transmission service customer's intention to terminate. A transmission service customer's provision of notice to terminate service under this section shall not relieve the transmission service customer of its obligation to pay ~~TSP~~~~transmission service providers~~ any rates, charges, or fees, including contributions in aid of construction, for service previously provided under the applicable interconnection service agreement, and

which are owed to TSP~~transmission service providers~~ as of the date of
termination.

§25.200. Load Shedding, Curtailments, and Redispatch.

(a) **Procedures.** The Electric Reliability Council of Texas (ERCOT) shall implement~~Transmission service providers and the independent system operator shall establish~~ non-discriminatory emergency load shedding and curtailment procedures for responding to emergencies on the transmission system.

~~(1) Transmission service providers and transmission service customers will comply with the load shedding and curtailment procedures established under this section.~~

~~(2) Transmission service providers and customers will implement such programs during any period when the independent system operator determines that a transmission capacity constraint exists and such procedures are necessary to alleviate the constraint.~~

~~(3) The transmission service provider will notify the independent system operator in a timely manner of any scheduled transmission facility interruption (e.g., scheduled maintenance).~~

(b) **Congestion management principles.** ERCOT shall develop market mechanisms to manage transmission congestion.

~~(c)~~**(b) Transmission constraints and redispatch.** During any period when ERCOT~~the independent system operator~~ determines that a transmission constraint exists on the transmission system, and such constraint may impair the reliability of a transmission service provider's (TSP's) system or adversely affect the operations

of either a ~~TSP transmission service provider~~ or a transmission service customer, ~~ERCOT will take the independent system operator will take whatever~~ actions, consistent with good utility practice and the commission-approved ERCOT protocols, that are reasonably necessary to maintain the reliability of the ~~TSP's transmission service provider's~~ system and avoid interruption of service. ~~ERCOT~~The independent system operator shall notify affected ~~TSPs transmission service providers~~ and transmission service customers of the actions being taken. In these circumstances, ~~TSPs transmission service providers~~ and transmission service customers shall take such action as ERCOT the independent system operator directs.

~~(1) Any interruption shall be based on operational factors and shall not accord a higher priority to the electric utility's native load customers than to its customers taking transmission service. Priority shall be accorded to transmission service customers in accordance with §25.195(d) of this title (relating to Terms and Conditions for Transmission Service).~~

~~(1)(2)~~ Service to all transmission service customers shall be restored as quickly as possible.

~~(3) The independent system operator shall determine whether a proposed redispatch is cost effective and which transmission service customer shall redispatch its generating resources to facilitate a transaction.~~

~~(2)(4)~~ To the extent ERCOT the independent system operator determines that the reliability of the transmission system can be maintained by redispatching resources, or when redispatch arrangements are necessary to facilitate

generation and transmission transactions for ~~a an eligible~~ transmission service customer, a ~~transmission service provider or~~ transmission service customer will initiate procedures to redispatch ~~its~~ resources, as directed by ~~ERCOT, the independent system operator. The obligation to redispatch resources includes the obligation to redispatch non-utility resources that a transmission service customer is relying on.~~

- ~~(3)(5)~~ To the greatest extent possible, any redispatch shall be made on a least-cost non-discriminatory basis. Any redispatch under this section will provide for equal treatment among transmission service customers,~~;~~ ~~subject to the priorities set out in §25.195(d) of this title. If the independent system operator determines that a transmission service provider will not have adequate transmission capacity to satisfy the full amount of a valid request for planned transmission service, the transmission service provider nonetheless shall be obligated to offer and provide the portion of the requested planned transmission service that can be accommodated without addition of any facilities. This obligation includes a duty to redispatch resources to increase the level of planned transmission service that may be provided. However, the transmission service provider shall not be obligated to provide transmission service, to the extent that the service requires the addition of facilities or upgrades to the transmission system, until such facilities or upgrades have been placed in service.~~

(4) ERCOT shall keep records of the circumstances requiring redispatch and the costs associated with each redispatch and file annual reports with the commission, describing costs, frequency and causes of redispatch. Costs for relieving capacity constraints shall be allocated in a manner consistent with commission-approved ERCOT protocols.

~~(e) **Cost responsibility for relieving capacity constraints.** Electric utilities in the Electric Reliability Council of Texas (ERCOT) shall provide redispatch services on a non-discriminatory basis to all wholesale market participants when necessary to preserve system reliability or to alleviate transmission constraints that impede wholesale generation and transmission transactions. The independent system operator shall keep a record of the circumstances requiring redispatch.~~

~~(1) The price for redispatch services for annual planned transactions shall be based on the cost of providing the service, which shall be allocated among transmission service customers in proportion to each customer's share of the transmission cost of service, as determined by the commission under §25.192 of this title (relating to Transmission Service Rates). For redispatch required to accommodate an annual planned transaction, the electric utility providing the redispatch service shall provide information documenting the costs incurred to provide the service to the independent system operator. This information shall be available to affected persons.~~

~~(2) The cost of redispatch services for other transactions (including planned transmission service of a duration of less than a year) shall be borne by the~~

~~transmission service customer for whose benefit the redispatch is made. Electric utilities shall provide binding advance bids for redispatch services for unplanned transactions. The participants in unplanned transactions shall be promptly notified by the independent system operator that their transactions may be or have been continued through redispatch; shall be informed of the cost of the redispatch measures; and shall have the opportunity to abandon or curtail their transactions to avoid additional redispatch costs.~~

~~(3) ERCOT utilities that are required to provide ancillary services under Division 1 of this subchapter (relating to Transmission and Distribution), shall include in their tariffs a standard methodology for calculating redispatch costs.~~

~~(4) To the extent that non-utility resources are redispatched by an electric utility pursuant to this subsection, the compensation for such services shall be consistent with this subsection.~~

- (d) **System reliability.** Notwithstanding any other provisions of this section, a TSP ~~may the transmission service provider reserves the right~~, consistent with good utility practice and on a non-discriminatory basis, ~~to~~ interrupt transmission service without liability on the TSP's transmission service provider's part for the purpose of making necessary adjustments to, changes in, or repairs to its lines, substations and other facilities, or where the continuance of transmission service would endanger persons or property.

- (1) In the event of any adverse condition or disturbance on the ~~TSP's transmission service provider's~~ system or on any other system directly or indirectly interconnected with the ~~TSP's transmission service provider's~~ system, the ~~TSP transmission service provider~~, in consultation with ERCOT and consistent with good utility practice, may interrupt transmission service on a non-discriminatory basis in order to limit the extent ~~of~~ damage ~~from~~ the adverse condition or disturbance, to prevent damage to generating or transmission facilities, or to expedite restoration of service.
- (2) The ~~TSP transmission service provider~~ will give ~~ERCOT the independent system operator~~, affected transmission service customers, and affected suppliers of generation as much advance notice as is practicable in the event of such interruption.
- (3) ~~If a~~ The transmission service ~~customer fail~~customer's failure to respond to established emergency load shedding and curtailment procedures to relieve emergencies on the transmission system, the transmission service customer shall be deemed to be in default. Any dispute over a transmission service customer's default shall be referred to alternative dispute resolution under §25.203 (relating to Alternative Dispute Resolution (ADR)) and may subject~~may result in~~ the transmission service customer ~~being deemed by the transmission service provider to be in default and subject~~ to an assessment of an administrative penalty by the commission under ~~the~~ Public Utility Regulatory Act §15.023.

- (4) ERCOT~~The independent system operator~~ shall report interruption~~the interruption~~ to the commission, together with a description of the events leading to each~~the~~ interruption, the services interrupted, the duration of the interruption, and the steps taken to restore service.

§25.202. Commercial Terms for Transmission Service~~Billing and Payment for
Transmission Service and Ancillary Services.~~

- (a) **Billing and payment.** Within a reasonable time after the first day of each month, transmission service providers (TSPs) shall issue invoices for the prior month's transmission service to distribution service providers (DSPs) and customers responsible for the export of power from the Electric Reliability Council of Texas (ERCOT) region~~the service provider shall submit an invoice to the customer for the charges for all services furnished under this section during the preceding month.~~
- (1) An invoice for transmission service shall be paid so that the TSP~~The invoice shall be paid to the service provider by the customer so that the service provider~~ will receive the funds by the 35th~~20th~~ calendar day after the date of issuance of the invoice, unless the TSP~~provider~~ and the transmission service customer agree on another mutually acceptable deadline. All payments shall be made in immediately available funds payable to the TSP~~service provider~~, or by wire transfer to a bank named by the service provider or by other mutually acceptable terms.
- (2) Interest on any unpaid amount shall be calculated by using the average of prime commercial paper rates in effect during the period for which an amount is overdue and compounded monthly~~in accordance with the methodology specified for interest on overbillings and underbillings in §23.45(h) of this title (relating to Billing).~~ Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment.

When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the ~~TSP-service provider~~.

- (3) In the event the transmission service customer fails, for any reason other than a billing dispute as described in subparagraph (A) of this paragraph, to make payment to the ~~TSPservice provider~~ on or before the due date, and such failure of payment is not corrected within 30 calendar days after the ~~TSP-service provider~~ notifies the customer to cure such failure, ~~a default by~~ the customer shall be deemed to be in default ~~exist~~.

- (A) Upon the occurrence of a default, the ~~TSPservice provider~~ may initiate a proceeding with the commission to terminate service. In the event of a billing dispute between the ~~TSPservice provider~~ and the transmission service customer, the ~~TSPservice provider~~ will continue to provide service during the pendency of the proceeding, as long as the customer:

(i) - (ii) (No change.)

- (B) If the transmission service customer fails to meet the requirements in subparagraph (A) of this paragraph, then the ~~TSPservice provider~~ will provide notice to the customer and to the commission of its intention to terminate service.

- (C) Any dispute arising in connection with the termination or proposed termination of service shall be referred to the alternative dispute resolution process described in §25.203 of this title (relating to Alternative Dispute Resolution (ADR)).

~~(4) Any person who knowingly makes use of an ancillary service required by the independent system operator without the agreement of the party providing that service shall pay to such service provider an amount equal to three times the otherwise applicable charge. In no case shall a service provider knowingly provide such an ancillary service without prior arrangements with the customer, nor shall a service provider unilaterally impose such an ancillary service on an unwilling purchaser.~~

(b) **Indemnification and liability.**

(1) Neither a transmission service customer nor TSPservice provider shall be liable to the other for damages for any act that is beyond such party's control, including any event that is a result of an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or by the making of necessary repairs upon the property or equipment of either party.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, a transmission service customer and TSPservice provider shall assume all liability for, and shall indemnify each other for, any losses resulting from negligence or other fault in the design, construction, or operation of their respective facilities. Such liability shall include a transmission service customer or TSP'sservice provider's monetary losses, costs and expenses

of defending an action or claim made by a third person, payments for damages related to the death or injury of any person, damage to the property of the ~~TSPservice provider~~ or transmission service customer, and payments for damages to the property of a third person, and damages for the disruption of the business of a third person. This paragraph does not create a liability on the part of a ~~TSPservice provider~~ or transmission service customer to a retail customer or other third person, but requires indemnification where such liability exists. The indemnification required under this paragraph does not include responsibility for the ~~TSP'sservice provider's~~ or transmission service customer's costs and expenses of prosecuting or defending an action or claim against the other, or damages for the disruption of the business of the service provider or customer. The limitations on liability set forth in this subsection do not apply in cases of gross negligence or intentional wrongdoing.

- (c) **Creditworthiness for transmission service ~~and ancillary services~~.** For the purpose of determining the ability of a ~~transmission service~~ customer to meet its obligations related to transmission ~~and ancillary services~~ and any other obligation in Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas ~~Transmission and Distribution~~), a ~~TSPservice provider~~ may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices.

- (1) The ~~TSPservice provider~~ may require a transmission service customer to provide and maintain in effect during the term of service, an unconditional and irrevocable letter of credit in a reasonable amount as security to meet its responsibilities and obligations under Division 1 of this subchapter or an alternative form of security proposed by the customer and acceptable to the service provider and consistent with commercial practices established by the Uniform Commercial Code that reasonably protects the ~~TSP-service provider~~ against the risk of non-payment.
- (2) (No change.)

§25.203. Alternative Dispute Resolution (ADR).

- (a) **Obligation to use alternative dispute resolution.** Subject to the right to seek direct commission review pursuant to subsection (f)(+) of this section, in the event that a dispute arises under Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas) and the dispute is not subject to the alternative dispute resolution procedures established in the commission-approved Electric Reliability Council of Texas (ERCOT) protocols, ~~over the provision of transmission service, including the curtailment of such service, or ancillary services or the pricing or other terms or conditions of such services,~~ the parties to the dispute shall engage in mediation or other alternative means for resolving the dispute, prior to filing a complaint with the commission.
- (b) **Referral to senior representatives.** Such disputes shall be referred for resolution to a designated senior representative of each of the parties to the dispute. The senior dispute representative shall be an individual who has authority to resolve the dispute. The senior dispute ~~Such~~ representatives shall make a good faith effort to resolve the dispute on an informal basis as promptly as practicable. ~~In attempting to resolve the dispute within a mutually agreeable time period, they may seek the informal advice of the independent system operator (ISO) regarding resolution of the dispute. The informal advice of the independent system operator is not binding on either party.~~

- (c) **Mediation or arbitration.** If the senior dispute representatives~~In the event parties are unable to resolve the dispute under subsection (b) of this section, the parties shall either: refer the matter to arbitration in accordance with the procedures in this subsection or, upon agreement of all parties, shall engage in mediation with the assistance of a neutral third party of their choice who has training or experience in mediation.~~
- (1) refer the matter to arbitration, upon agreement of all involved parties;
~~or~~~~The independent system operator shall administer the arbitration. The independent system operator shall maintain a commission approved list of qualified persons available to serve on arbitration panels who are knowledgeable in electric utility matters, including electricity transmission and bulk power issues, to be selected from a list of persons proposed by owners and users of the transmission system wishing to participate in the development of the list. The independent system operator shall select at least one name submitted by each stakeholder for the list. The independent system operator shall also maintain a separate list of attorneys experienced in arbitration that may be available to chair the arbitration panels.~~
- (2) upon the request of one party, engage in mediation with the assistance of a neutral third party, mutually selected by all parties concerned, who has training or experience in mediation.~~A party shall initiate arbitration by filing a letter with the independent system operator requesting that arbitration be scheduled. A copy of the letter shall be served upon the~~

~~other party to the dispute at the same time the letter is filed with the independent system operator. The independent system operator shall provide the parties the list of persons qualified to serve on arbitration panels and list of persons available to chair arbitration panels, within ten working days of receipt of the letter.~~

~~(3) Only parties to the dispute may participate in the arbitration.~~

(d) **Arbitration.** If the parties choose to refer the matter to arbitration, pursuant to subsection (c) of this section:

(1) The commission shall maintain a commission-approved list of qualified persons available to serve on arbitration panels who are knowledgeable in electric utility matters, including electricity transmission and bulk power issues. The commission shall also maintain a separate list of **qualified persons** experienced in arbitration that may be available to chair the arbitration panels.

(2) A party shall initiate arbitration by filing a letter with the commission requesting that arbitration be scheduled. A copy of the letter shall be served upon the other party to the dispute at the same time the letter is filed with the commission.

(3) Only parties to the dispute may participate in the arbitration.

(4)~~(d)~~ **Arbitration panel.** Any arbitration initiated under this section shall be conducted before a three-member arbitration panel. Each party shall choose one arbitrator from the commission-approved list of panel

members. In the event there are more than two parties to the dispute, the parties shall jointly select the two arbitrators. The two arbitrators chosen by the parties shall choose the chairman of the arbitration panel. If the two arbitrators chosen by the parties are unable to agree on the selection of a chairman, they will be dismissed and the parties shall select two different arbitrators from the approved list. The arbitrators are not required to choose the chairman from the names of persons on the [commission's independent system operator's](#) list of panel members so long as the person chosen ~~is an attorney who~~ is qualified as an arbitrator. Panel members chosen shall not have any current or past substantial business or financial relationships with any party to the arbitration (other than previous arbitration experience). The chairman of the panel shall make all necessary arrangements for arbitration to commence within ten working days of completion of the panel.

(5)(e) **Procedures.** The arbitrators shall provide each of the parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable commission rules. The panel may request that the parties provide additional technical information relevant to the dispute. The arbitration panel shall render a decision within 30 calendar days from the closing of the evidentiary record of the arbitration and shall notify the

parties in writing of such decision and the reasons therefor. The decision shall not be considered precedent in any future proceeding.

~~(6)~~**(f)** **Basis for decision.** The arbitrators shall be authorized only to interpret and apply the provisions of the commission's rules relating to transmission ~~and ancillary~~ services, the commission-approved ERCOT protocols~~independent system operator's rules~~, the TSP's electric utility's transmission tariff, and any service agreement entered into under that tariff. ~~The arbitrators and~~ shall have no power to modify or change any of the above in any manner.

~~(4)~~—The arbitrators may agree with the positions of one or more of the parties, or may recommend a compromise position.

~~(7)~~~~(2)~~ If any party to the arbitration files a complaint before the commission, ~~the~~The arbitration panel decision shall be filed in the commission's Central Records and shall be considered by the commission in preparing a Preliminary Order in the complaint proceeding, ~~should either party file a complaint regarding the arbitrated matters.~~ The complaint shall be docketed and may be referred to the State Office of Administrative Hearings. The decision may be admitted in evidence in any such complaint proceeding.

~~(8)~~~~(g)~~ **Costs.** Each party shall be responsible for the following costs, if applicable:

~~(A)~~~~(4)~~ its own costs incurred during the arbitration process;

~~(B)(2)~~ its pro rata share of the costs of the three arbitrators, pooled and shared evenly among the parties.

~~(e)(h)~~ **Effect of pending alternative dispute resolution arbitration.** The transaction which is the subject of the dispute shall be allowed to go forward pending the resolution of the dispute to the extent system reliability is not affected.

~~(f)(i)~~ **Effect on rights under law.** Nothing in this section shall restrict the rights of any party to file a complaint with the commission under relevant provisions of the Public Utility Regulatory Act or with the Federal Energy Regulatory Commission under the Federal Power Act or the right of a TSPan electric utility to seek changes in the rates or terms for transmission or ancillary services, following the completion of the alternative dispute resolution procedures in this section.

(1) Use or application of the arbitration provisions in this subsection does not affect the jurisdiction of the commission over any matters arising under this section.

~~(2) — Nothing in this section shall restrict the right of a market participant to file a petition seeking direct relief from the commission without first utilizing the alternative dispute resolution process where an action by or the independent system operator might inhibit the ability of an electric utility to provide continuous and adequate service to its customers.~~

~~(2)(3)~~ Because of the imminent threat to the health and welfare of a TSP'san electric utility's customers in the event of a reliability problem, a

petitioner's dispute will be heard by the commission in an emergency session except in those instances where a quorum of the commission is not present. In those instances where a quorum is not present, the chairman of the commission shall have the authority to issue an interim order to resolve the dispute so as to protect the reliability of the system, with the order remaining in effect until such time as a quorum is present.

~~(j) **Applicability of ADR to the ISO.** Complaints against the ISO shall be subject to the ADR provisions and procedures established in this section.~~

PROPOSED REPEALS:

- §25.193. Procedures for Modifying Transmission Rates.**
- §25.194. Determining Peak Load and Transmission Adequacy.**
- §25.197. ERCOT Independent System Operator.**
- §25.201. Ancillary Services.**
- §25.204. Summary of Required Filings.**

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. Independent Organizations.

§25.361. Electric Reliability Council of Texas (ERCOT).

(a) **Applicability.** This section applies to the Electric Reliability Council of Texas (ERCOT). It also applies to transmission service providers (TSPs) and transmission service customers, as defined in §25.5 (relating to Definitions), with respect to interactions with ERCOT. TSPs include river authorities and other electric utilities, municipally owned utilities, and electric cooperatives. Transmission service customers include municipally-owned utilities, electric cooperatives, power generation companies, retail electric providers, federal power marketing agencies, exempt wholesale generators, qualifying facilities, power marketers, or other persons whom the commission has determined to be eligible transmission service customers.

(b) **Purpose.** ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) §39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the

region. In addition, ERCOT may, on the introduction of customer choice in the ERCOT power region, acquire generation-related ancillary services on a nondiscriminatory basis on behalf of entities selling electricity at retail in accordance with PURA §35.004(e).

(c) **Functions.** ERCOT shall operate an integrated electronic transmission information network and carry out the other functions prescribed by this section.

ERCOT shall:

- (1) administer, on a daily basis, the ERCOT transmission tariffs, including determining whether a person is eligible for transmission service;
- (2) serve as the single point of contact for the initiation of transmission transactions;
- (3) maintain the reliability and security of the ERCOT electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;
- (4) receive and approve scheduling of ERCOT generation and transmission transactions;
- (5) direct the curtailment and redispatch of ERCOT generation and transmission transactions on a non-discriminatory basis, consistent with ERCOT protocols;
- (6) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;
- (7) coordinate and schedule planned transmission facility outages;

- (8) perform any system security study, with the assistance of affected TSPs;
 - (9) plan the ERCOT transmission system, in accordance with subsection (e) of this section;
 - (10) administer the alternative dispute resolution procedures in §25.203 of this title (relating to Alternative Dispute Resolution (ADR)), except for those instances of alternative dispute resolution provided in the ERCOT protocols;
 - (11) administer registration procedures for market participants;
 - (12) administer the renewable energy program;
 - (13) monitor generation planned outages;
 - (14) submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT, alternatives for meeting system needs, and recommendations for meeting system needs, pursuant to PURA §39.155 (relating to Commission Assessment of Market Power); and
 - (15) perform any additional duties required under the commission-approved ERCOT protocols.
- (d) **Commercial functions.** ERCOT shall not dispatch generation facilities, but shall have full authority to direct the redispatch of generation facilities under the circumstances specified in Subchapter I, Division 1 of this chapter (relating to Transmission and Distribution). ERCOT shall determine and purchase the amount of ancillary services required to maintain and ensure the reliability of the

network. All commercial functions required to ensure reliability and adequacy of the transmission network are to be conducted in accordance with the ERCOT protocols.

(e) **Planning.** ERCOT shall conduct transmission system planning and exercise comprehensive authority over the planning of bulk transmission projects that affect the transfer capability of the ERCOT transmission system. ERCOT shall supervise and coordinate the other planning activities of TSPs.

(1) ERCOT shall evaluate and make a recommendation to the commission as to the need for any transmission facility over which it has comprehensive transmission planning authority.

(2) A TSP shall coordinate its transmission planning efforts with those of other TSPs, insofar as its transmission plans affect other TSPs.

(3) ERCOT shall submit to the commission any subsequent revisions or additions to the planning guidelines and procedures prior to adoption. ERCOT may seek input from the commission as to the content and implementation of its guidelines and procedures as it deems necessary.

(f) **Information and coordination.** Providers of transmission and ancillary services and customers of such service providers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this section and as provided in the ERCOT protocols. ERCOT shall have a fiduciary responsibility to maintain the confidentiality of competitively sensitive information entrusted to

it. ERCOT shall also disseminate information relating to market prices and the availability of services, in accordance with the ERCOT protocols. Providers of transmission and ancillary services shall also maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission or ancillary services customer.

(g) **Interconnection standards.** In performing its functions related to the reliability and security of the ERCOT electrical network, ERCOT may prescribe reliability and security standards for the interconnection of generating facilities that use the ERCOT transmission network. Such standards shall not adversely affect or impede manufacturing or other internal process operations associated with such generating facilities, except to the minimum extent necessary to assure reliability of the ERCOT transmission network.

(h) **ERCOT administrative fee.** Transmission service customers shall incur an administrative fee for transmission service, payable to ERCOT. Changes in the fee or application of new fees are subject to commission approval.

(i) **Reports.** Each TSP and transmission service customer in the geographic region of ERCOT shall on an annual basis provide historical information concerning peak loads and resources connected to the TSP's system. ERCOT shall periodically file with the commission reports concerning its governance, operations and budget, the reliability of the ERCOT electrical network, and its

transmission planning efforts, including a list of any transmission projects that it recommends.

(j) **Anti-trust laws.** The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.

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

**ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF FEBRUARY 2001 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**