

PROJECT NO. 34914

RULEMAKING TO AMEND § PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE §25.237 §
FUEL FACTORS § OF TEXAS

ORDER ADOPTING AN AMENDMENT TO §25.237
AS APPROVED AT THE AUGUST 14, 2008, OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §25.237 relating to Fuel Factors with changes to the proposed text as published in the March 7, 2008 issue of the *Texas Register* (33 TexReg 1943). The amendment maintains the traditional fuel factor filing on a fixed schedule and a prescribed filing package and adds the option, and procedure, for a utility to determine its fuel factor using a commission-approved, utility-specific fuel factor formula. In addition, a utility using the traditional method will now be able to revise its fuel factor on a fixed, four-month schedule rather than a fixed, six-month schedule. A utility using the new formula will be able to revise its fuel factor as often as every four months, except for the month of December, and will not be subject to a set schedule. This amendment is adopted under Project Number 34914.

The commission received written comments on the amendment from Xcel Energy, Inc., on behalf of Southwestern Public Service Company (SPS); Entergy Gulf States, Inc. whose name was subsequently changed to Entergy Texas, Inc. (ETI); El Paso Electric Company (EPE); and Texas Industrial Energy Consumers (TIEC).

The commission received written reply comments on the amendment from ETI, TIEC, and SPS.

General Comments – Implementation of Revised Fuel Factor Rule

SPS sought clarification regarding what actions would be necessary to modify its current formula-based fuel factor to utilize the more frequent fuel factor modifications allowed by the rule. SPS asked whether the rule supersedes the current agreement for modification of SPS's commission-approved formulae only at set times twice a year or whether SPS is required to file a petition requesting a commission-approved fuel factor formula in order to take advantage of the more frequent fuel factor modifications. In reply comments, ETI stated it also currently utilizes a formulaic approach developed by agreement that results in a fuel factor adjustment twice a year. ETI stated it would benefit from guidance as to whether the procedural aspects of the rule would apply to ETI without modifying the substance of ETI's current formula.

In reply comments, TIEC stated that in order to modify its existing fuel factor formula, which was approved by commission order, SPS or ETI would need to seek commission approval through a petition under the rule. TIEC stated that enacting the rule should not upset a prior settlement, which was based on give and take between the parties.

Commission Response

ETI and SPS each currently utilize a formula to calculate its fuel factor that is the result of a settlement agreement and that was approved by commission order. Replacement of such a formula with the formula in the rule will require commission approval in a separate proceeding, which may be initiated by the affected utility.

Subsection (a)(1)

TIEC stated that if a formula-based approach was used in lieu of the traditional method, the rule should require that all fuel factor formulas be based on costs and sales for a historical period. In reply comments, SPS stated that it agrees with TIEC that historical costs are more certain than projected costs, but the real issue is whether the fuel expenses that will be incurred during the next three to six months will be accurately reflected in the approved fuel factors. In reply comments, ETI stated that the use of historical or projected costs was best addressed as part of the setting of the utility-specific fuel factor formula.

Commission Response

The traditional fuel factor is determined using projected costs and sales. The formula for a formula-based fuel factor is determined in a contested case. The parties in the contested case can address, at that time, if historical or projected costs and sales are appropriate for the formula being established.

Subsection (a)(2)(A)

EPE stated the commission should allow utilities that are not using a formula-based approach to file on a more frequent basis. EPE proposed to delete limitations on the filing of changes in fuel factors and allow utilities to file for a fuel factor change whenever they deemed appropriate. As an alternative, EPE proposed a schedule providing for revisions every four months, which is discussed in subsection (d) below. In reply comments, SPS supported EPE's suggestion for more frequent filings. SPS stated that the schedule not be set arbitrarily but rather be set taking into account the seasonal trends of each individual utility. In reply comments, TIEC stated that the

rule should not allow utilities to revise formula-based fuel factors more often than traditional fuel factors and it did not oppose the revision of both the traditional fuel factor and the formula-based fuel factor up to three times per year.

Commission Response

The commission concludes that it would be inefficient and would send confusing price signals to customers if fuel factors were changed more frequently than three times per year.

The commission concludes that the opportunity to make fuel factor filings more frequently, on a schedule of three times per year, is in the best interest of customers and utilities. More frequent opportunity to make fuel factor adjustments to respond to significant fluctuations in fuel prices will provide more accurate price signals to customers and minimize over or undercollection of fuel expenses.

Subsection (a)(2)(B)

ETI stated its belief that more frequent changes in the fuel factor would better track changes in fuel and purchased power prices and ultimately would facilitate a more timely recovery of fuel expenses, reduce litigation, and provide more accurate price signals to customers. SPS expressed concern that utilities seeking a fuel factor modification pursuant to a commission-approved formula would need the ability to request fuel factor modifications more often than once every four months. SPS made a suggestion that would allow a fuel factor change up to four times a year instead of the proposed three times per year. SPS provided specific language as follows:

- (B) Pursuant to subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner

than three months after ~~the issuance of a final order approving its most recent fuel factor adjustment.~~ its most recent petition.

In reply comments, TIEC stated that the rule should not allow utilities to revise formula-based fuel factors more often than traditional fuel factors and it did not oppose the revision of both the traditional fuel factor and the formula-based fuel factor up to three times per year.

Commission Response

The commission concludes that allowing formula-based fuel factors to be redetermined as often as every four months will be adequate to help the utility to recover its current fuel costs and at the same time send accurate fuel price trend information to the utility's customers.

Subsection (a)(3)(B)

EPE expressed confusion regarding surcharges and refunds due to the deletion of one sentence and parts of two other sentences. The deleted sentence identified the schedule that the utilities use to request a surcharge or refund. EPE stated support for the deletion if it meant that a utility could request a surcharge or refund at any time. However, EPE referred to §25.236(e)(6), which requires surcharges and refunds to be processed in accordance with the filing schedules in §25.237(d) and the deadlines in §25.237(e). EPE wanted to clarify the intent of the conflicting language. In reply comments, SPS agreed that the ambiguities pointed out in EPE's comments should be resolved.

Commission Response

The commission will allow a utility to petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. A utility must petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. The commission has changed the rule to make clear that the rule overrides §25.236(e)(6).

Subsection (c)(1)

EPE stated that paragraph (1) applies only to non-formula-based factors and paragraph (2) applies only to formula-based factors. EPE stated that the language originally contained in paragraph (2) should still apply to paragraph (1). EPE stated that the removal on the limitation of scope might mean that intervenors and Staff are free to raise any other issue that they want to raise. EPE provided specific language to address its concern:

(c) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows:

(1) The scope of a fuel factor revision proceeding under Subsection (a)(1)(A) is limited to the issue of whether the petitioning electric utility has appropriately calculated its estimated eligible fuel expenses and load. In a proceeding to revise fuel factors pursuant to Subsection (a)(1)(A), an electric utility has the burden of proving that:

Commission Response

The commission rejects the language EPE proposes to include. The amended rule follows the language that was in the original rule and no changes are intended. Nothing in the amendment is intended to change the scope of a fuel factor proceeding.

Subsection (c)(2)

TIEC stated that utilities using a fuel factor formula should have the burden to prove in each revision proceeding that its monthly system sales, off-system sales, and sales by customer class and voltage are reasonable. This would protect customers to the same extent as the current rule and is necessary to avoid over-incentivizing the formula-based method.

In reply comments, ETI stated that it could be presumed that the fuel factor formula developed under the rule would contain system and off-system sales information so there would be no need to independently assess such data to set a new fuel factor rate in each instance. In reply comments, SPS stated that it believed that with the expedited nature of a formula-based fuel factor revision proceeding, system sales, off-system sales, and sales by customer class and voltage are issues that are properly addressed in the proceeding requesting a commission approved formula or a fuel reconciliation proceeding.

Commission Response

System sales, off-system sales, and sales by customer class and voltage are fairly stable components in determining a revised fuel factor. As long as sales remain stable, redetermining the fuel factor is possible by revising the more volatile fuel component.

Significant changes in sales can be evaluated, as needed, in the contested fuel factor proceeding.

Subsection (d)

TIEC stated that formula-based fuel factors should be revised only as frequently as traditional fuel factors, which is twice per year under both the current and proposed rule. If the Commission allows more frequent revisions, TIEC stated that the rule should clearly state that formula-based fuel factors should be adjusted no more often than quarterly. In reply comments, TIEC commented that it did not object to EPE's request that utilities be allowed to adjust traditional fuel factors up to three times per year. TIEC also stated that the language in the proposed rule that addresses when a utility can revise its formula-based factor is confusing and creates uncertainty. TIEC supported the filing schedule proposed by EPE for both traditional factors and formula-based factors. EPE proposed the following schedule in §25.237(d)(1) for utilities to make fuel factor revision filings as part of its suggestion under §25.237(a)(2) to allow revisions more often than once every six months:

Utility	Months in which filing could be made		
El Paso Electric Company	February	June	October
Entergy Texas, Inc.	March	July	November
Southwestern Public Service Company	April	August	December
Southwestern Electric Power Company	May	September	January

ETI stated that natural gas and power markets can exhibit volatility that cause over/under-recoveries to grow over a short period of time and more frequent fuel factor revisions will reduce the need for interim refunds and surcharges.

Commission Response

The commission concludes that the request of the parties to schedule traditional fuel factor revisions more often than at six-month intervals is reasonable. Traditional fuel factor revisions will be on a set-schedule with a four-month interval. Formula-based fuel factor revisions will not have a set schedule but may occur as often as once every four months, except for the month of December. December is eliminated because the expedited procedural schedule and the holiday schedule do not allow the parties sufficient time to review and process an application.

Subsection (d)(2)

EPE proposed language to be added in §25.237(d)(2) to clear up confusion they found in §25.237 (a)(3)(B) discussed above. Its proposal was as follows:

- (2) Petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(B) of this section or petitions to make a refund or surcharge pursuant to subsection (a)(3)(B) of this section may be filed in any month except December.

EPE stated it would be preferable to allow utilities to make surcharges and refunds whenever needed rather than limiting them to two (or three) windows per year for making such filings.

TIEC disagreed with EPE's suggestion of allowing utilities to file petitions for refunds and surcharges at their discretion. TIEC proposed that utilities be required to follow the prescribed monthly filing schedule for both fuel factor revisions and surcharges and refunds, as provided for under the current rule.

Commission Response

The proposed language insert is unnecessary because of the change to the rule described in subsection (a)(3)(B) above. The rule will allow a utility to petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. A utility must petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. The commission rejects TIEC's proposal to limit refunds and surcharges to a prescribed schedule. Instead, the rule appropriately ties refunds and surcharges to a materiality requirement.

Subsection (e)

TIEC stated that the procedural schedule for formula-based revisions should be the same as the procedural schedule for traditional fuel factors. TIEC also stated that the rule should not allow interim approval of fuel factor formula revisions. TIEC also stated that the procedural schedule for utilities that use the formula-based approach is unclear because the rule is silent on what happens if there is an objection within 10 days. TIEC stated that if an objection is made, the interim relief should not be granted and the timelines in the rule would apply.

ETI stated that one of the goals of the formula-based approach, in addition to administrative efficiency, was to capture more recent fuel prices. ETI also stated that the streamlined, procedurally-attractive nature of the new formula-based approach would be a benefit to customers because it would more closely track fuel costs and mitigate the need for interim surcharges and refunds. ETI also stated that interim approval pending completion of publication of notice is an efficient process that still allows the opportunity for a request for hearing should any party believe that the utility failed to properly follow the formula in place at that time. ETI also stated that in the event of an objection, interim rates may go into effect if consistent with the utility's formula, subject to refund after hearing.

Commission Response

Formula-based fuel factor revision applications have a limited amount of variable data and can be reviewed and verified within 10 days of filing. The rule allows interim approval of formula-based fuel factor revision if no objection is filed within 10 days after the petition is filed. Objections are seldom filed in formula-based petitions; however, if the presiding officer finds an objection appropriate, collection of the revised fuel factor rates will not begin until the final order is issued. Traditional fuel factor applications contain much more data and normally require 30-45 days to review. Due to the amount of data and review, traditional petitions are often contested and result in a negotiated settlement. It is reasonable to finalize the fuel factor rate to be placed into effect, without interim approval, so that mixed signals are not sent to customers.

EPE proposed that refunds and surcharges for a utility using a formula-based fuel factor be approved on an interim basis, like a fuel factor change filed pursuant to the formula. TIEC commented on EPE's proposal and reiterated that it does not support the expedited schedule set forth in the rule. TIEC stated that to the extent the commission adopts the schedule as proposed, proposals for refunds and surcharges for utilities using a fuel-factor formula should proceed under the schedule for processing traditional fuel factors. A surcharge or refund should not be implemented on an interim basis because such cases are often contested, and parties must be given ample time to review the petition.

Commission Response

The commission rejects EPE's request for interim approval of surcharges and refunds. Surcharges and refunds are normally contested issues and there is no reason to grant interim approval just to save one to two months of procedural time. Many surcharge and refund petitions are resolved by settlement and the negotiated amounts are usually different than the requested amounts. It will cause less confusion for customers if the amount to be surcharged or refunded is not changed during the approval process.

All comments, including those not specifically discussed herein, were fully considered by the commission.

The amendment to §25.237 is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of

its powers and jurisdiction; and PURA §36.203, which authorizes the commission to adopt rules that provide for the timely adjustment of a utility's fuel factor.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §36.203.

§25.237. Fuel Factors.

- (a) **Use and calculation of fuel factors.** An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.
- (1) An electric utility may determine its fuel factor in dollars per kilowatt-hour pursuant to either subparagraph (A) or (B) of this paragraph. Fuel factors must account for system losses and for the difference in line losses corresponding to the voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.
- (A) Fuel factors may be determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect.
- (B) Fuel factors may be determined using a commission-approved, utility-specific fuel factor formula. Fuel factor formulas may be approved or revised only in a general rate change proceeding or a proceeding to consider an application to establish a fuel factor formula with notice and an opportunity for a hearing.
- (2) An electric utility may initiate a change to its fuel factor as follows:

- (A) Pursuant to subsection (a)(1)(A) of this section, an electric utility may petition to adjust its fuel factor as often as once every four months according to the schedule set out in subsection (d) of this section.
 - (B) Pursuant to subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than four months after the filing of its most recent fuel factor adjustment petition.
 - (C) Notwithstanding subsection (a)(2)(A) of this section, an electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.
 - (D) An electric utility's fuel factor may be changed in any general rate proceeding.
- (3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:
- (A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any disallowed costs resulting from a reconciliation proceeding will be reflected in the calculation of the utility's recoverable fuel and over/(under) collections.
 - (B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may

be made without changing an electric utility's fuel factor. Notwithstanding §25.236(e)(6) of this title, an electric utility may petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. Notwithstanding §25.236(e)(6) of this title, an electric utility shall petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(b) Petitions to revise fuel factors.

- (1) An electric utility using the fuel factor methodology set forth under subsection (a)(1)(A) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(A) of this section during the first five business days of the months specified in subsection (d) of this section. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include the commission-prescribed fuel factor application, a tariff sheet reflecting the proposed fuel factors and supporting testimony that includes the following information:

- (A) For each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available,
 - (i) the revenues collected pursuant to fuel factors by customer class;
 - (ii) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and
 - (iii) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.
 - (B) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided.
- (2) An electric utility using the fuel factor formula methodology set forth under subsection (a)(1)(B) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(B) of this section at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include:
- (A) a tariff sheet reflecting the proposed fuel factors;
 - (B) workpapers supporting the calculation of the revised fuel factors;

- (C) calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided; and
 - (D) any computer generated documents must be provided in their native electronic format with all cells and internal formulas disclosed.
- (c) **Fuel factor revision proceeding.** Burden of proof and scope of proceeding are as follows:
- (1) In a proceeding to revise fuel factors pursuant to subsection (a)(1)(A) of this section, an electric utility has the burden of proving that:
 - (A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;
 - (B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and
 - (C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the voltage at which the electric service is provided.
 - (2) The scope of a fuel factor revision proceeding under subsection (a)(1)(B) of this section is limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors. In a proceeding to revise fuel factors pursuant to subsection (a)(1)(B) of this section, an electric utility has the burden of proving that:

- (A) the electric utility has calculated its proposed fuel factors in compliance with the commission-approved fuel factor formula; and
 - (B) the proposed fuel factors utilize a commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided.
- (d) **Schedule for filing petitions to revise fuel factors.** A petition to revise fuel factors or to initiate or revise a fuel factor formula may be filed with any general rate proceeding.
- (1) Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(A) of this section may only be filed in accordance with the following schedule:
 - (A) February, June and October : El Paso Electric Company;
 - (B) March, July and November : Entergy Texas, Inc.;
 - (C) April, August and December : Southwestern Public Service Company;
 - (D) May, September and January : Southwestern Electric Power Company;
 - and
 - (E) March, July and November : any other electric utility not named in this subsection that uses one or more fuel factors.
 - (2) Petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(B) of this section may be filed in any month except December.

(e) **Procedural schedules.**

- (1) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(A) of this section, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:
 - (A) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and
 - (B) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

- (2) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(B) of this section, the presiding officer shall set a procedural schedule as follows:
 - (A) the presiding officer shall issue an order approving the proposed fuel factors on an interim basis no later than 12 days after the date the petition was filed, if no objection to interim approval is filed within 10 days after the date the petition was filed;
 - (B) if no hearing is requested within 30 days after the petition was filed, the presiding officer shall, after submission of proof of notice by the electric utility, issue an order approving the fuel factors without hearing or action by the commission; and
 - (C) if a hearing is requested within 30 days after the petition was filed, the hearing will be held no earlier than the first business day after the 45th day after the petition was filed and a final order will be issued within 90 days

after the petition was filed, subject to submission of proof of notice by the electric utility.

- (f) **Emergency revisions to the fuel factor.** If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.237 relating to Fuel Factors is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the _____ day of August 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE CARUTHERS PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER