

PROJECT NO. 45131

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
IMPLEMENT HOUSE BILL NO. 1535,	§	
RELATING TO COST RECOVERY	§	OF TEXAS
AND RATE ADJUSTMENT	§	
STANDARDS AND PROCEDURES	§	
FOR CERTAIN NON-ERCOT	§	
UTILITIES	§	

**ORDER ADOPTING NEW §25.246
AS APPROVED AT THE JUNE 29, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.246, relating to Rate Filing Standards and Procedures for Non-ERCOT Utilities, with changes to the proposed text as published in the February 26, 2016 issue of the *Texas Register* (41 TexReg 1317). The new rule implements the provisions of Section Nos. 1 through 3 of House Bill No. 1535 of the 84th Legislature, Regular Session in 2015 (HB 1535). The new rule allows for the use of adjustments to test-year data to include actual information for information originally estimated; defines the update period and provides requirements for an update to test-year information; provides requirements for a post-test-year adjustment for a natural-gas-fired plant; provides requirements to initiate a rate proceeding, including timing and notice requirements; allows for an extension of the automatic rate-case-filing deadline and includes the factors the commission will use in its standard of review in making a determination concerning an extension to the deadline; and, provides requirements and procedures for the relation back of final rates to an effective date 155 days after the filing of the rate application. Project Number 45131 is assigned to this proceeding.

On October 28, 2015, the commission held a workshop to solicit feedback on draft rule language. The commission invited parties to file informal comments after this workshop. For the limited purpose of soliciting feedback on the use of an update period subsequent to a test year, the

commission held a supplemental workshop on May 5, 2016, and parties filed follow-up comments concerning the limited issue discussed in the workshop.

The commission received written comments and/or reply comments on the proposed rule from El Paso Electric Company, Entergy Texas, Inc., Southwestern Electric Power Company, and Southwestern Public Service Company (collectively, Non-ERCOT Utilities); State of Texas agencies and institutions of higher education (State Agencies); Office of Public Utility Counsel (OPUC); Texas Industrial Energy Consumers (TIEC); and Alliance of Xcel Municipalities and Cities Advocating Reasonable Deregulation (AXM and CARD). No party requested a public hearing.

Comments and Reply Comments

Comments on specific sections of the rule:

Subsection (b)(1)(B) Update period

At the supplemental workshop for this rulemaking on May 5, 2016, Staff solicited additional input from stakeholders on the issue of the definition and use of the term “update period” in the proposed rule. Specifically the workshop addressed two questions: 1) Can a utility filing under this section select an update period of any duration and with any ending date, or does the update period’s ending date need to coincide with the end of a test year?; and, 2) For a utility that elects to provide estimated information, does the utility need to update all the information submitted for the test year or is the utility permitted not to update certain information? After discussion of these questions at the workshop, parties were invited to submit informal comments.

Concerning the first question, Non-ERCOT Utilities commented that they read the statute to allow for an update period of any duration and ending date. Non-ERCOT Utilities asserted that the statute allows a utility to select an update period whose ending date coincides with the definition of test year, but could also allow a utility to select a date that does not coincide with the end of a test year. Non-ERCOT Utilities stressed that the flexibility of timing for the update period was a key part of the negotiation and balance struck by the legislature in HB 1535.

TIEC, joined by State Agencies and AXM and CARD, commented that, consistent with 16 Texas Administrative Code §25.231 (TAC) and the Public Utility Regulatory Act (PURA), the commission sets rates based on a test year whose first day coincides with the first day of a calendar or fiscal year quarter. TIEC *et alia* remarked that, if the legislature had intended to change these other sections of law and deviate from long-standing practice, one would think that the legislature would have been more explicit. TIEC *et alia* also supported requiring the update period to end on a calendar or fiscal year quarter for the pragmatic benefit of allowing for comparison of information to other quarterly filings that utilities are required to make.

OPUC commented that the rule must maintain the important ratemaking concept of the ability to compare and reconcile data even though the statute does not explicitly require a utility to have the end of an update period correspond with the end of a test year. Accordingly, OPUC proposed requiring the update period to fall on the end of a calendar month and included suggestions for modified language.

Commission response

The commission agrees with the comments submitted by TIEC, joined by State Agencies and AXM and CARD, that historically the commission has set rates based on the concept of test year as defined elsewhere in PURA. While the statute does not explicitly define the length of the update period, the statute ultimately provides that the commission must set rates based on either a test year or a test year updated for the most current information. Also, as argued by OPUC, the use of a 12-month period ending on a calendar or fiscal year quarter for rate setting purposes allows for comparison of information submitted by the utility with other quarterly information, such as quarterly filings made with the Federal Energy Regulatory Commission, the Rural Utilities Service, and the Securities and Exchange Commission. Accordingly, the commission has modified the rule to include language similar to that proposed by OPUC.

Subsection (b)(2) Test year update; and Subsection (b)(3) Requirements for test year update

TIEC, joined by State Agencies and AXM and CARD, suggested removing the phrase “adjusted for known and measurable changes” as it appears in subsections (b)(2)(A) and (b)(2)(B) of the proposed rule, and removing the phrase “may be further adjusted for known and measurable changes occurring after the update period, as permitted by PURA and commission rules” from subsection (b)(3). Instead, TIEC *et alia* proposed putting language elsewhere in the rule—as new subsection (b)(5)—to exactly mirror the statute in PURA §36.112(b). TIEC *et alia* wanted to make clear that the commission is not otherwise changing its policy on known and measurable changes. OPUC filed similar comments.

Commission response

The commission agrees with TIEC *et alia* and OPUC and has modified the rule language accordingly.

Subsection (b)(3)(D) Requirements for test year update

TIEC commented that the commission should specify in the rule that the utility must update its billing determinants as of the end of the update period. OPUC expressed its agreement in comments filed after the May 5, 2016 workshop.

Commission response

The commission agrees with TIEC and OPUC and has modified the rule language accordingly.

*Subsection (b)(4) Use of estimates; supplementation of information**Issue of scope of updates*

Non-ERCOT Utilities filed comments before and after the supplemental workshop indicating their position that the rule should provide for the flexibility to retain some test-year information as part of the update. Non-ERCOT Utilities pointed out the possibility of a situation, for example, in which the costs in a particular category do not materially change from the test year to the end of the update period and the expenditure of resources to make that update would only add to the proceeding's overall costs. Non-ERCOT Utilities asserted that such a case where a utility uses some test-year information should be the exception, rather than the rule.

Other parties argued that HB 1535 does not provide for a “pick and choose” option for the utility, whereby at the end of the proceeding some information would be for the test year and other information would be for a 12-month period ending at the end of the update period.

OPUC commented that the commission should clarify that all information must be updated and that, to avoid confusion and promote efficient administration, the update must be filed on the same date. TIEC suggested rule language incorporating the requirement that an update cover all components of a utility’s case.

Following the supplemental workshop, Non-ERCOT Utilities filed comments opposing OPUC’s and TIEC’s suggested addition to subsection (b)(4)(B) requiring that the utility update all components of its rate case. Non-ERCOT Utilities noted that the suggested language goes beyond requiring an update of only estimated information by requiring the utility to update all information. Non-ERCOT Utilities argued that there is no discernible limit to the phrase “for all components of a utility’s filed case” and that the inclusion of such language is contrary to the intent and language of HB 1535.

TIEC replied that if the suggested language from TIEC was deemed by the commission to be overbroad, TIEC would not object to other language that accomplished the goal of requiring all originally estimated information to be updated and, at the end of the update, for all information to be actual information.

Commission response

The commission agrees with TIEC, OPUC, and the other parties who argue that the statute requires a utility to update all information originally estimated and also any attendant impacts of updated information. The commission also agrees with Non-ERCOT Utilities that the suggested language from TIEC and OPUC is overly broad and might require resubmission of every piece of paper originally filed. Accordingly, the commission adopts language in the new rule that requires a utility to update all information originally estimated. The rule requires a utility to update all changes to its cost of service including attendant impacts from changes, but provides that the utility does not need to update every piece of information in the originally filed case.

The commission agrees with OPUC's comment that a requirement of submission of the update on a single business day will provide clarity and relieve cause for confusion. Parties should need to review only one filing (or series of filings on the same day) to find the utility's updated case. The commission has added language to the rule reflecting this clarification.

*Subsection (b)(4) Use of estimates; supplementation of information**Issue of dismissal of docket for failure to update*

OPUC suggested that the commission clarify that the consequence of failing to provide an update is dismissal of the rate case. Similarly, TIEC recommended that the commission should dismiss the proceeding if a utility fails to update all information originally estimated within the 45-day period. OPUC included suggested language consistent with its comments.

Non-ERCOT Utilities opposed OPUC's and TIEC's suggested mechanism for dismissal of a docket if a utility fails to timely update its case. Non-ERCOT Utilities submitted that the remedy proposed by OPUC and TIEC for failure to comply with the deadline is severely out of proportion with the legitimate interests of the parties. Non-ERCOT Utilities expressed concerns that the proposed language from TIEC and OPUC could unnecessarily lead to the dismissal of a docket for lack of an update to merely one or just a couple of numbers in a massive filing, or for a transcriptional error, or for a case whose update was not filed until 46 days after the initial filing. Non-ERCOT Utilities commented that a more appropriate and proportional remedy would be to treat failure to timely update in the same manner as a material deficiency under 16 TAC §22.75(c).

In reply, TIEC noted that the statute includes a strict 45-day deadline.

Commission response

The commission agrees with Non-ERCOT Utilities and retains the language as published.

Proposed Subsection (b)(5)(B) (Adopted Subsection (b)(6)(B)) Post-test year adjustment for newly constructed or acquired natural-gas-fired plant

Non-ERCOT Utilities suggested that the phrase "as determined by the commission" should be added to the rule to keep the rule consistent with the statute. Non-ERCOT Utilities commented that, although it could be said that the proposed rule language includes this limitation by implication, this additional phrase was a carefully negotiated aspect of the statute.

AXM and CARD replied that the rule should fully mirror HB 1535 and the statute by placing a comma before the additional language. AXM and CARD believe that the omission of a comma could unfortunately give rise to the erroneous argument that the phrase “as determined by the commission” modifies only the phrase “including any offsetting revenue” in the rule.

Commission response

The commission agrees with Non-ERCOT Utilities and AXM and CARD and has added in the suggested language so that the rule now mirrors the wording in HB 1535 and the statute.

Subsection (c)(1)(B) Timing

State Agencies commented that subsection (c)(1)(B) should provide a materiality threshold above a utility’s authorized rate of return beyond which a utility would be presumed to be overearning. TIEC commented that the inclusion of such a materiality threshold could provide a benefit to customers. TIEC opposed setting a bright line return on equity or base point threshold below which the commission could not decide that a utility’s overearning is material and require a rate case. TIEC clarified that adoption of a materiality threshold beyond which a utility is presumed to be overearning in no way prevents the commission from making a determination of overearning for a utility whose earnings do not exceed the bright line threshold. TIEC also acknowledged the disadvantages to any bright line percentage or basis point approach and thought that leaving the determination of materiality up to the commission’s discretion on a case-by-case basis is a reasonable resolution.

Non-ERCOT Utilities opposed State Agencies' suggestion of a materiality threshold for presumed overearning, arguing that any number of facts and circumstances bear on whether the level of a utility's earnings are excessive at any given point in time, and also whether that level of earnings is reasonably expected to continue. Non-ERCOT Utilities noted that TIEC's comments ultimately agreed that Staff's approach is reasonable.

Commission response

The commission agrees with Non-ERCOT Utilities and retains the language as published.

Subsection (c)(2)(A) Extension of rate-case-filing deadline

Issue of Clarification of Phrase "At the time of such filing"

OPUC supported subsection (c)(2)(A) of the proposed rule subject to confirming that the phrase "at the time of such filing" is referring to the filing made "on or before the third anniversary of the date the final order in the utility's most recent comprehensive base rate proceeding" and not the filing that follows the 120-day notice provided by the commission under subsection (c)(3)(A)(i) of the rule.

Non-ERCOT Utilities replied that they agree with OPUC's reading of the rule and that the proposed rule already reflected such a reading by providing, "If the utility seeks an extension, at the time of such filing it shall provide all relevant information to meet its burden in showing that an extension is justified."

Commission response

The commission confirms that the phrase “at the time of such filing” in subsection (c)(2)(A) refers to the filing made on or before the third anniversary of the date of the final order in the utility’s most recent comprehensive base rate proceeding and not to any other filing.

*Subsection (c)(2)(A) Extension of rate-case-filing deadline**Issue of Frequency of Exceptions*

State Agencies commented that extensions to the deadline for filing a rate case every four years should be granted sparingly and that the commission should add language to the rule stating so. TIEC commented that there should be a very high burden for a utility to show that a rate case is not necessary when the statutory deadline arrives.

Non-ERCOT Utilities replied that HB 1535 creates no presumption against extensions of the rate case filing deadline, nor does it state or hint at any elevated standard of proof governing these requests.

Commission response

The commission agrees with Non-ERCOT Utilities that the statute does not contain any presumption against an extension to the deadline. Accordingly, the commission retains the language as published.

*Subsection (c)(2)(A) Extension of rate-case-filing deadline**Issue of Whether a Contested Case Hearing Is Allowed or Required*

Non-ERCOT Utilities commented that subsection (c)(2)(A) should add language to the draft rule explicitly providing, “A contested case hearing is not required in determining whether to order an extension of the rate case filing deadline under this subsection.” This suggested language was included in the strawman proposal for the workshop held October 28, 2015, but, after receipt of informal comments from parties, was removed from the proposed rule. Non-ERCOT Utilities argued that the addition of such language would still allow for the option of a contested case hearing, while supporting the conclusion that a contested case hearing will be the exception, rather than the rule.

TIEC, AXM and CARD, and State Agencies disagreed with Non-ERCOT Utilities’ suggested additional language. TIEC urged the commission to adopt the rule language as proposed and not prematurely limit its discretion to determine what constitutes a “reasonable opportunity to present materials and argument” by stating that an ill-defined, contested case hearing is not required. TIEC further noted that the suggested language from Non-ERCOT Utilities does not give clear guidance for what actually is required, thus adding ambiguity to the rule. AXM and CARD argued that the proposed rule allows for resolution of a request for extension of the filing deadline via a contested case hearing or some other way; AXM and CARD expressed concern that the suggested language could give rise to the perception that a contested case hearing is not required and therefore unavailable to the parties. State Agencies noted that the suggested language was not a part of HB 1535 and submitted that the addition was neither necessary nor helpful. State Agencies asserted that a contested case hearing is one possibility for addressing whether an extension of the rate case filing deadline is warranted, but there is no indication that the legislature intended for it to be the chosen method more or less often than any other.

Commission response

The commission agrees with TIEC, AXM and CARD, and State Agencies that the suggested additional language adds confusion instead of clarity to the proposed rule. The commission retains the language as published.

Subsection (c)(2)(B)(iv) Standard of review

Non-ERCOT Utilities commented that subsection (c)(2)(B)(iv) should include language clarifying that the commission may use the continued appropriateness of allocation of costs and rate design, but only “provided that the utility shall not be required to include a class cost of service study, with the level and detail contained in a study produced as part of a rate case, as a component of the information presented to justify an extension of the deadline.” Non-ERCOT Utilities argued that a full cost of service study would require significant time and resources, and thus should be avoided. They asserted that information such as sales and demand data, along with updated cost allocation factor data, would be sufficient for the commission to make a determination under subsection (c)(2).

TIEC applauded the inclusion of the “continued appropriateness of the utility’s allocation of costs and rate design” and “any other factors the commission deems relevant to its determination” as some of the factors the commission may consider in making a determination.

TIEC and State Agencies disagreed with Non-ERCOT Utilities’ suggested additional language. TIEC and State Agencies both replied that they believe the commission should leave open the option of considering a class cost of service study in making its determination, but that the rule

should neither require nor preclude such a study. TIEC further noted that the suggested language from Non-ERCOT Utilities is unworkably vague, as the “level of detail” required in a rate case class cost of service study is subjective and variable.

Commission response

While the commission acknowledges that in many cases the inclusion of updated sales, demand, cost allocation, and billing determinant data may be sufficient for the commission to make a determination, the commission agrees with TIEC and State Agencies that the rule should neither require nor preclude a full class cost of service study. Therefore, the commission retains the language as published.

Subsection (c)(3)(A)(i) Notice to the utility

OPUC commented that the commission should clarify the timing of when the commission will provide notice to a utility under subsection (c)(3)(A)(i). OPUC stated it should be clear that the utility will initiate a base rate case by the fourth anniversary of its last base rate case final order, and not by a date four months after such anniversary. OPUC recommended additional language consistent with its comments. AXM and CARD expressed general agreement with OPUC, but recommended slightly different language.

Non-ERCOT Utilities replied that HB 1535 gave the commission leeway on the exact timing of the commission’s notice but requires the utility to file “not later than the 120th day after the date the commission notifies the utility.” Non-ERCOT Utilities pointed out the possibility of a situation in which circumstances arise where the commission may wish to give the notice to file the rate case on a different schedule from that proposed by OPUC and AXM and CARD.

TIEC replied that it believes that a utility is statutorily required to file its base rate filing package by the four-year deadline regardless of whether the utility has received notice from the commission, and that late notice from the commission would not extend the deadline. TIEC otherwise agreed that the suggestion from OPUC and AXM and CARD was reasonable and would improve the rule.

Commission response

The commission agrees with Non-ERCOT Utilities and retains the language as published. It is the commission’s intent that, if a utility seeks an extension to the mandatory rate case filing deadline under subsection (C)(2)(A), the commission will make a determination in that proceeding with time to allow for 120-day notice to the utility before the four-year anniversary of the final order in the utility’s most recent comprehensive base rate case.

Subsection (c)(3)(B) Notice to parties

OPUC filed a comment requesting confirmation that the phrase “at the time the utility submits its filing to the commission requesting an extension” is referring to the filing made “on or before the third anniversary of the date the final order in the utility’s most recent comprehensive base rate proceeding” under subsection (c)(2)(A).

Non-ERCOT Utilities replied that they agree with OPUC’s reading of the rule and that such intent is made clear by existing language in the proposed rule.

Commission response

The commission confirms OPUC’s reading of the rule. The phrase “at the time the utility submits its filing to the commission requesting an extension” referenced in subsection (c)(3)(B) refers to the filing made on or before the third anniversary of the date of the final order in the utility’s most recent comprehensive base rate proceeding and not to any other filing. No change to the rule is required.

*Subsection (d)(1) Relation back of rates**Issue of Clarifying Temporary Rates in the Relation Back of Rates*

AXM and CARD commented that the commission should clarify in the rule that, while final rates will relate back to the 155th day after the utility’s filing, there is no change in rates during the suspension period unless the commission otherwise approves temporary or interim rates. AXM and CARD proposed language consistent with their comments.

Commission response

The commission agrees with AXM and CARD and has modified the rule accordingly.

Subsection (d)(3) Relation back of rates

OPUC commented that the two instances of the phrase “historical usage and demand” in subsection (d)(3) of the proposed rule differ in that the first use qualifies the term with “recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary,” but that the second use of the term, in the context of all other customers, is qualified differently. OPUC requested that the commission add the same qualification to the second use of “historical usage and demand” relating to all other customers, or that the commission

otherwise clarify this ambiguity in the rule. OPUC noted that the language in question is not included in the statute. OPUC requested confirmation of its interpretation of this section of the proposed rule.

Disagreeing with OPUC's proposed change to subsection (d)(3), Non-ERCOT Utilities replied that the proposed rule correctly considers the calculations for customers who receive service at transmission voltage levels, for seasonal agricultural customers, and for all other customers. Non-ERCOT Utilities referred to 16 TAC §25.236(e)(4), relating to Recovery of Fuel Costs, which calculates surcharges or refunds for customers who receive service at transmission voltage levels and seasonal agricultural customers "based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary," but calculates surcharges or refunds for all other customers "based on the historical kilowatt-hour usage of their rate class."

Commission response

The commission agrees with Non-ERCOT Utilities that the language closely corresponds with the provision for calculating fuel surcharges or refunds, but the commission notes that it is very unlikely that any adjustment for line losses will be necessary for the calculation of surcharges or refunds under the rule. However, the commission agrees with OPUC that it is appropriate to add the same qualification in both instances so as to reduce the potential for ambiguity, and has modified the language accordingly.

Subsection (d)(3) Relation back of rates; and Section 25.246(b)(1) Adjustments to test year information

Issue of Clarifying Relation Back of Rates for a Rate Case Using Updated Information

AXM and CARD suggested that there is ambiguity between the date on which the final rates will be “effective” for consumption under subsection (d)(3) and a utility’s “proposed effective date” under PURA §36.108. AXM and CARD proposed additional language that they argued resolves this potential ambiguity.

Commission response

The commission disagrees with AXM and CARD about the potential for ambiguity and retains the language as published.

In this rulemaking the commission fully considered all comments offered at the workshops and submitted on record in the docket, including any not specifically referenced herein. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The commission adopts this new rule under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This new rule implements the provisions of PURA §§36.112, 36.211, and 36.212 into the Texas Administrative Code.

Cross Reference to Statutes: PURA §§14.002, 36.112, 36.211, and 36.212.

§25.246. Rate Filing Standards and Procedures for Non-ERCOT Utilities.

- (a) **Application.** The provisions of this section apply only to an electric utility that operates solely outside of the Electric Reliability Council of Texas.
- (b) **Adjustments to test year information.**
- (1) **Definitions.**
- (A) **Test year --** The period defined in §25.5(134) of this title (relating to Definitions).
- (B) **Update period --** For a utility that elects to file under paragraph (2)(B) of this subsection, the period beyond the end of the test year, for which period the electric utility initially submits estimated information and later submits actual information to be used in establishing its base rates. The update period chosen by the utility must end on the last day of a calendar or fiscal year quarter, and not later than the 30th day before the date the applicable rate proceeding is filed.
- (2) **Test year election.** In establishing the base rates of an electric utility under the Public Utility Regulatory Act (PURA), Chapter 36, Subchapter C or D, the commission shall determine the utility's revenue requirement based on, at the election of the utility:
- (A) information submitted for a test year; or
- (B) information submitted for a test year updated to include actual information for the update period regarding increases and decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales.

- (3) **Requirements for test year update.** The updated information authorized to be submitted by paragraph (2)(B) of this subsection shall be subject to the following additional standards:
- (A) expenses authorized by §25.231(b) of this title (relating to Cost of Service) for inclusion in revenue requirement shall reflect the 12-month period ending on the final day of the update period;
 - (B) components of rate base as defined by §25.231(c)(2) of this title shall be included through the end of the update period;
 - (C) the electric utility's cost of capital shall be updated to reflect any transactions affecting those items that occur between the end of the test year and the end of the update period; and
 - (D) the utility's sales revenues, customer count, and billing determinants shall reflect the 12-month period ending on the final day of the update period.
- (4) **Use of estimates; supplementation of information.**
- (A) An electric utility that includes estimated information for the update period in the initial filing of a rate proceeding shall supplement that filing with actual information not later than the 45th day after the date the initial filing was made. The update must provide actual information for all information originally estimated. The utility shall update every component of its cost of service that changed, including flow-through effects and attendant impacts of changes. The utility need not, however, update or refile every piece of information in the originally filed case. The utility shall file the entire update on a single business day.

- (B) The commission shall extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing made under subparagraph (A) of this paragraph, except that the extension period may not exceed 45 days.
- (5) **Known and measurable changes.** In establishing the base rates of an electric utility, an electric utility that makes an election under paragraph (2) of this subsection is not precluded from proposing known and measurable adjustments to the utility's historical rate information as permitted by PURA and the commission's rules.
- (6) **Post-test year adjustment for newly constructed or acquired natural-gas-fired power plant.** In addition to the test year update authorized by paragraph (2)(B) of this subsection, and without limiting the availability of known and measurable adjustments otherwise permitted by PURA and commission rules, the commission shall allow an electric utility to make a known and measurable adjustment for a newly constructed or acquired natural-gas-fired generation facility.
- (A) The commission is required to allow a known and measurable adjustment under this paragraph only if the natural-gas-fired generation facility is in service before the effective date of new rates.
- (B) A known and measurable adjustment under this paragraph shall include the utility's prudent capital investment in the facility, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts associated with the newly

constructed or acquired natural-gas-fired generation facility, including any offsetting revenue, as determined by the commission.

- (C) Notwithstanding the requirements of §25.231(c)(2)(F)(i)(II) of this title, the commission shall allow an adjustment under this paragraph regardless of whether the investment is less than 10% of the utility's rate base before the date of the adjustment.

(c) **Requirement to initiate rate proceeding.**

- (1) **Timing.** An electric utility is required to make filings with regulatory authorities as required by PURA, Chapter 33, Subchapter B, and shall file a rate-filing package under PURA, Chapter 36, Subchapter D, to initiate a comprehensive base rate proceeding before all of the utility's regulatory authorities in the following circumstances:

- (A) on or before the fourth anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding; or
- (B) if the commission determines, before the deadline described in subparagraph (A) of this paragraph, that the utility has earned materially more than the utility's authorized rate of return on investment, on a weather-normalized basis, in the utility's two most recent consecutive commission earnings monitoring reports.
- (C) If a rate-filing package is required to be submitted under this subsection, the utility's rate filing shall reflect a test year, which at the election of the utility may be updated pursuant to subsection (b)(2)(B) of this section, and may be

otherwise adjusted for known and measurable changes as permitted by PURA and commission rules.

- (2) **Extension of rate-case-filing deadline.** A utility is required to make a rate filing by the deadline set forth in paragraph (1)(A) of this subsection unless the commission grants an extension of the deadline. The commission may extend the deadline set forth in paragraph (1)(A) of this subsection and set a new deadline if the commission determines that a comprehensive base rate case would not result in materially different rates. The utility shall have the burden to prove that a delay in the rate-case-filing deadline is warranted and shall submit all requisite information to meet such burden.

- (A) On or before the third anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding, the utility shall submit a filing to the commission indicating whether the utility seeks an extension to the deadline described in paragraph (1)(A) of this subsection. If the utility seeks an extension, at the time of such filing it shall provide all relevant information to meet its burden in showing that an extension is justified. The commission shall give interested parties a reasonable opportunity to present materials and argument before making a determination under this paragraph; the Administrative Law Judge(s) assigned to the docket concerning the extension shall set procedural guidelines, including discovery limits and deadlines allowing the commission sufficient time to provide notice pursuant to paragraph (3)(A)(i) of this subsection.

(B) **Standard of review.** In determining whether to extend the time period for the filing of a base rate proceeding, the commission may consider matters such as the following:

- (i) the results of recent earnings monitoring reports for the utility, including such adjustments to those reports as may be found appropriate by the commission;
- (ii) recent and expected levels of expenses, sales revenues, and capital investment for the utility;
- (iii) recent and projected financial results for the utility;
- (iv) continued appropriateness of the utility's allocation of costs and rate design;
- (v) capital market conditions;
- (vi) whether there has been a material change in circumstances since the utility's base rates were last established by the commission; and
- (vii) any other factors the commission deems relevant to its determination.

(3) **Notice.**

(A) **Notice to the utility.** The utility must make the filings described in paragraph (1) of this subsection not later than the 120th day after the date the commission provides written notice to the utility:

- (i) that a filing under paragraph (1)(A) of this subsection will be required; or

- (ii) that the condition of material over-earning described by paragraph (1)(B) of this subsection exists.

The 120-day period provided by this subsection may be extended by the commission for good cause.

- (B) **Notice to parties.** If the utility seeks an extension to the filing deadline pursuant to paragraph (2) of this subsection, the utility shall provide, at the time the utility submits its filing to the commission requesting an extension, notice to all persons who were parties to the utility's most recent base rate proceeding.

(d) **Relation back of rates.**

- (1) In a rate proceeding under PURA, Chapter 36, Subchapter D, or if requested by an electric utility in the utility's statement of intent initiating a rate proceeding under PURA, Chapter 36, Subchapter C, notwithstanding PURA §36.109(a), the final rate set in the proceeding, whether a rate increase or rate decrease, shall be made effective for consumption on and after the 155th day after the date the rate-filing package is filed. Unless the commission approves temporary rates under PURA §36.109(a), the utility's new rates will not be implemented until the commission issues its final order approving new rates.
- (2) The commission shall:
 - (A) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 155th day after the date the rate-filing package is filed; or

- (B) authorize the electric utility to collect a surcharge from customers to recover the amount by which the money collected on or after the 155th day after the utility files its rate-filing package is less than the money that would have been collected under the rate finally ordered.
- (3) The commission may require refunds or surcharges of amounts determined under paragraph (2) of this subsection over a period not to exceed 18 months, along with appropriate carrying costs. The commission shall make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding. Customers who receive service at transmission voltage levels, as well as any groups of seasonal agricultural customers as identified by the electric utility, shall be subject to refund or surcharge rates calculated based upon their individual historical usage and demand recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary. All other customers shall be subject to refund or surcharge rates calculated based upon the historical usage and demand of all customers served under the same tariffed rate schedule recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary.
- (4) An electric utility may not assess more than one surcharge authorized by paragraph (2)(B) of this subsection at the same time.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §25.246, relating to Rate Filing Standards and Procedures for Non-ERCOT Utilities, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of JUNE 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER