PROJECT NO. 47545

RULEMAKING PROCEEDING TO ESTABLISH FILING SCHEDULES FOR ELECTRIC INVESTOR-OWNED UTILITIES OPERATING SOLELY INSIDE ERCOT	**§ § § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW §25.247
AS APPROVED AT THE APRIL 12, 2018 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.247, relating to rate review schedule, with changes to the proposed text as published in the December 8, 2017 issue of the *Texas Register* (42 TexReg 6855). The new rule implements the provisions of Senate Bill No. 735 (SB 735) of the 85th Legislature, Regular Session in 2017 by establishing a schedule requiring periodic filings for rate proceedings by investor-owned electric utilities operating solely inside the Electric Reliability Council of Texas (ERCOT). Project Number 47545 is assigned to this proceeding.

The commission received written or reply comments on the proposed rule from AEP Texas Inc.; CenterPoint Energy Houston Electric, LLC; Electric Transmission Texas LLC; Lone Star Transmission, LLC; Oncor Electric Delivery Company LLC; Sharyland Utilities, L.P.; and Texas-New Mexico Power Company (collectively, the Investor-Owned Utilities, or IOUs); the City of Houston (Houston); the Office of Public Utility Counsel (OPUC); the Steering Committee of Cities Served by Oncor (Cities); and Texas Industrial Energy Consumers (TIEC). No party requested a public hearing.

General comments

Houston commented that Texas utilities benefit from a variety of alternative rate mechanisms that undergo a limited review, including the energy efficiency cost recovery factor (EECRF), the advanced metering system (AMS) surcharge, the transmission cost recovery factor (TCRF), and the distribution cost recovery factor (DCRF). Houston further commented that in conjunction with these various ratemaking mechanisms, comprehensive base rate proceedings should occur on a regular basis to better ensure that customer rates are reasonable, utilities do not over-recover costs, rates are based on actual costs, and utilities are financially healthy and investing appropriately in their infrastructure to ensure safe and reliable service. Cities agreed with these points, stating that a requirement for electric utilities to file for a comprehensive rate review on a specified timeline ensures that customers pay regularly refreshed rates and utilities are accountable for establishing a rate base that reflects their most recent financial positions.

TIEC echoed the general concerns expressed by Houston, stating that regularly scheduled rate cases rebalance the interests of ratepayers and utilities, thereby mitigating some of the impacts of the various rate riders and cost recovery factors that have been granted to utilities within ERCOT. TIEC further pointed out that in contrast to a comprehensive rate case, these rate riders enable utilities to increase rates for discrete items while ignoring offsetting cost reductions in other areas, and that rate riders also fail to appropriately adjust items like class cost allocations, the utility's weighted-average cost of capital, and other critical rate components. TIEC submitted that, as a result, rate riders cause a utility's rates over time to no longer reflect reality, often resulting in rates that are inflated, unjust, and unreasonable.

TIEC further commented that the objectives of SB 735 are best served by a straightforward deadline for IOUs to file their next rate cases, as this will ensure that ratepayers receive timely and regular rate reviews and limit utilities' ability to file only when it is to their advantage. TIEC stated that the best approach in this rulemaking is the simplest one: the deadline for a utility's next rate case should be a specified number of months after the final order in its last rate case, and, absent significant changes to other cost-recovery rules such as the transmission cost of service (TCOS) rule and TCRF rule, a period no longer than 48 months between rate cases is necessary to ensure that overall rates remain just and reasonable. TIEC further contended that an even better outcome would be a shorter period of 36 months between rate cases. TIEC argued that the distortions caused by rate riders become worse the longer the time period since a utility last filed a comprehensive rate proceeding, and that this is particularly true with the TCRF mechanism, which does not recognize growth or shrinkage of customer classes over time. TIEC commented that this can lead to severe rate disparities as rates for TCOS fluctuate. TIEC also asserted that the interim TCOS mechanism is seriously flawed, and that the TCOS rule allows utilities to increase transmission rates even when they are overearning and fails to account for changes in cost of debt, accumulated deferred federal income taxes, and other rate components that would reduce transmission rates for customers. TIEC contended that, taken together, these flaws have caused unwarranted increases in transmission rates and have created a strong incentive for utilities to inappropriately use transmission revenues to subsidize distribution rates. TIEC contended that, given the current state of these rules, transmission rates will almost inevitably become unjust and unreasonable if a utility does not file a comprehensive rate case every three to four years.

TIEC additionally commented that the statutory scheduling requirement is specifically intended to limit the utilities' flexibility in choosing whether and when to file a rate case, and that when given full discretion, utilities will always choose to file when they expect rates will increase and will never file when rates should be reduced. TIEC observed that in exchange for regularly scheduled rate reviews, SB 735 eliminated the sunset date on the DCRF ratemaking mechanism and the limitation on the number of times an ERCOT utility can adjust its DCRF between rate cases, and that SB 735 also provides an "off-ramp" that allows utilities to delay their mandatory rate case filings if they are not significantly overearning on a total-company basis. TIEC argued that, given the careful balance that SB 735 was intended to strike, the commission should reasonably limit utilities' flexibility in selecting the filing date for their rate cases and avoid providing utilities with additional, non-statutory mechanisms to postpone their mandatory rate case filings. TIEC stated that if the commission intends to move forward with appropriate changes to the TCOS and TCRF rules, it might be reasonable to allow a longer period between rate cases or give utilities additional flexibility in the filing date; however, under the current status of these rules, any additional mechanisms to extend the published rule's default 48-month period between rate cases should not be adopted.

Commission Response

In the discussion below, the commission takes into account parties' general comments in the context of addressing the rule's specific subsections.

Comments on specific subsections of the rule:

Subsection (b)(1)

The IOUs commented that while the published rule sets each utility's filing deadline at exactly 48 months from the date of its last rate case order, it also allows a utility, in order to use a calendar-year test year, to extend to the first business day of the following May a filing deadline that falls within the seven-month period from October through April. The IOUs submitted that the published rule therefore recognizes the flexibility in allowing the use of a calendar-year test year in setting accurate rates and in the adoption of a filing schedule with the flexibility to accommodate the use of a more recently completed test year. The IOUs stated that this would avoid the use of an inflexible filing schedule that may necessitate the use of either (1) an older, less relevant calendar-year test year, or (2) a non-calendar-year test year, which usually requires estimates of items such as the utility's current and deferred federal income taxes, Texas gross receipts tax, and other expenses, thus making the rate filing less accurate and more contentious.

The IOUs also stated that in their earlier comments in response to the strawman rule proposal, they had advocated for greater flexibility not only in extending a scheduled filing deadline, but also in the commission's ability to initially set a scheduled filing deadline. The IOUs noted that, in particular, they had urged the adoption of a rule that requires the commission to set a utility's next filing deadline in the order issued in the utility's immediately preceding rate case, and that the rule should give the commission discretion to set that deadline at any time between 48 and 60 months after the date of that order.

The IOUs further commented that although the purpose of published subsection (b)(1)'s filing extension to the first business day in May is to give a utility adequate time to prepare its filing using a recently completed calendar-year test year, it risks falling slightly short of achieving that purpose. As in their prior comments in response to the strawman proposal, the IOUs stated that they continue to believe that any filing deadline established pursuant to Public Utility Regulatory Act (PURA) §36.157 should be set in the month of July. The IOUs argued that the requirements in the rate filing package for investor-owned electric utilities are extensive, and that preparing a filing takes considerable time and resources. The IOUs commented that, moreover, all the data necessary to even begin preparing a rate filing package are often not available until the passage of several months after the end of the calendar year and, as a result, even with a filing deadline extension to the first business day in May (which is only four months after the end of the prior calendar year), there is considerable risk that a utility will not have access to all the data from the prior calendar year in time to use that data to complete its filing package by the extended deadline. The IOUs stated that, instead, and notwithstanding the extension proposed in the published rule, they would have to rely on data from an older calendar year to meet the filing deadline. The IOUs commented that, on the other hand, extending a utility's filing deadline to the first business day in July should provide adequate time for the preparation of a rate filing package using data from the most recently completed calendar year. The IOUs also stated that whether the time period between rate cases set by the commission in this proceeding is two years or ten years, the right to extend the end of that time period to a month that would give the IOUs an opportunity to use the most recently completed calendar-year test year would still be in the public interest and would still be requested by the IOUs. The IOUs also noted that the commission always retains the option to initiate a rate inquiry at any time, regardless of the otherwise applicable schedule.

The IOUs additionally argued that extending a utility's filing deadline to the first business day in July would result in the statutory 180-day look-back date (for determining if the mandatory off-ramp extension in PURA §36.157(c) applies) occurring in the first week of January, thereby ensuring that the commission will have adequate time in the fall of the prior year to consider the commission staff's earnings monitoring report (EMR) memorandum filed in that prior year. The IOUs stated that, on the other hand, a May 1 filing date would set the statutory 180-day look-back date at roughly sometime in the last week in October of the prior year. The IOUs noted that in 2017 the commission did not consider the commission staff's EMR memorandum until the open meeting on October 26, and that extending a utility's filing date to the first business day in July would give the commission until the end of the prior year to finalize the EMR review process, thereby avoiding any possible confusion as to whether the utility's EMR filed in that prior year had been "accepted" by the commission as of the statutory 180-day look-back date. The IOUs thus requested that the commission modify the extension period provided in subsection (b)(1) of the published rule to extend the filing date to the first business day in July rather than the first business day in May, as this would add only two extra months to subsection (b)(1)'s proposed extension period while avoiding the various problems discussed above.

Houston stated that it supports the proposed comprehensive base rate review filing schedule of 48 months from the order setting rates in its most recent comprehensive base rate proceeding, and that the proposed filing schedule allows for extension of the filing date, which should address concerns regarding the potential burden to either the utility or the regulator.

TIEC, Cities, and OPUC argued that there is little justification for complicating the straightforward, 48-month deadline between rate cases set forth in the first sentence of proposed subsection (b)(1), and that a strict 48-month deadline would not prevent a utility from using a calendar-year test year, given that the utility could simply file its rate case a few months in advance of the 48-month deadline. TIEC asserted that an even shorter period of 36 months is more reasonable given the current state of the TCOS rule and the TCRF rule, but stated that it was willing to accept a 48-month deadline to give some additional flexibility to the utilities in selecting their test year. OPUC expressed its agreement with these points. TIEC and Cities averred that, moreover, there is nothing inherently superior about using a calendar-year test year, and TIEC noted that over the last decade, IOUs in ERCOT have used calendar-year test years in only about half of their rate cases. TIEC and Cities contended that the IOUs' arguments about the use of a calendar-year test year is an effort to gain additional time and flexibility to choose an advantageous filing date or test year, and that one of the purposes of SB 735 is to limit the utilities' unfettered discretion in rate case filings so that customers are more likely to realize appropriate rate decreases. OPUC echoed these points, commenting that an IOU may file its rate case in advance of the 48-month deadline if the utility is adamant on using a calendar year as a test year, and that the rule should require a filing every 48 months and not allow a utility to delay its rate case filing. OPUC also stated that if the commission is inclined to extend the filing deadline beyond 48 months, the commission should reject the request of the utilities to extend the deadline to 55 months, and should instead keep the extended filing date at May 1 instead of the July 1 date requested by the IOUs.

OPUC and TIEC further opined that the incentive to time filings to obtain an additional seven months between rate cases will impair the natural staggering of rate case filings and impose an unnecessary burden on commission and ratepayer resources, and as more utilities attempt to obtain an additional seven months between mandatory filings, an increasing number of rate case filings would likely be made on the first business day in May. OPUC and TIEC expressed the view that overlapping or "pancaked" rate case schedules will make it more difficult for the commission and intervenors to conduct a robust review, particularly in 185 days, and that in all likelihood, this will result in more rate case deadlines being postponed because the commission does not have the time or personnel to effectively process them concurrently. Cities, OPUC, and TIEC therefore argued that the commission should remove the sentence in proposed subsection (b)(1) that states, "If the date of such commission order falls within the period October 1 through April 30, the electric utility may, in order to use a calendar-year test year, extend the date of the required filing to the first business day in May after the fourth anniversary of the order."

TIEC further commented that another reason the commission should reject the IOUs' proposed deadline extension in subsection (b)(1) is that, in combination with the provisions of subsection (b)(2), it would give each of the IOUs the opportunity to extend its rate case filing deadline by a year if either of its last two EMRs showed a return within 50 basis points of the average return on equity (ROE) of its peer utilities. TIEC stated that this effect is especially apparent under the modified language for subsection (b)(2) as proposed in the IOUs' suggested rule changes. TIEC commented that the IOUs' suggested language triggers a deadline extension based on the utility's ROE in its "most recently accepted EMR, as of 180 days before its scheduled filing date established by this section," but that there are two potential scheduled filing dates established by

proposed subsection (b)(1): one at 48 months after the final order was issued in the utility's last rate case, and the other on the first business day of July following the expiration of 48 months. TIEC stated that, for example, if a utility's 48-month deadline were to fall in early December of 2020, its most recently "accepted" EMR "as of 180 days before its scheduled filing date" would be the EMR it filed in May 2019; however, if the May 2019 EMR did not qualify the utility for an extension, the utility would get another bite at the apple, so to speak, because it also has a scheduled filing date established by subsection (b)(1) on the first business day of July of 2021, when the most recently accepted EMR would be the one filed in May of 2020. TIEC commented that SB 735 was designed to decrease the IOUs' ability to control the timing of their rate case filings, and it would frustrate that purpose to give each IOU the opportunity to postpone its next rate case if either of its last two EMRs showed it earning within 50 basis points of the average of its peers' authorized ROEs. TIEC contended that a simple solution to this problem would be to eliminate the second sentence of proposed subsection (b)(1), which would leave the IOUs with only one potential filing date: 48 months after the final order was issued in their last rate case.

TIEC also commented on the IOUs' restatement of their proposal that the final order in each rate case establish a deadline for the filing of the utility's next rate proceeding between 48 and 60 months later. TIEC stated that the IOUs' suggestion should be rejected because it would not actually expand the commission's authority compared to the published rule, which already allows the commission to postpone a utility's rate case for good cause. TIEC argued that adopting the IOUs' proposed sliding scale for filing deadlines would inject an unnecessary and contentious issue into every rate case proceeding and require the commission to predict the need for a rate case four to five years in advance. TIEC asserted that a simpler and better approach would be to set a

uniform filing deadline at 48 months and extend that deadline as necessary if good cause is shown at a point in time closer to the actual filing date.

TIEC further stated that the IOUs' claim that they need until July (six months after the end of a calendar year) to prepare a rate case using a calendar-year test year is not corroborated by prior filings or statements. TIEC noted that, for example, Oncor's most recent rate case, which used a calendar-year test year ending December 31, 2016, was filed on March 17, 2017. TIEC additionally noted that AEP Texas requested that the commission extend its filing date in proposed subsection (c)(2)(B) until May 1—not July 1—in order to accommodate the use of a calendar-year test year.

The IOUs commented that TIEC's claims that the true effect of the published rule's extension to May 1 is to simply "extend the default period between rate cases from 48 to 55 months," but that in truth, the effect of most extensions will be less than 55 months. The IOUs submitted that if a utility's rate case filing occurs on the first business day of July (as proposed by the IOUs), a final order will likely be issued in January of the following year if it is fully litigated (or any time prior to that if the case is settled), and the utility's next scheduled filing date would then be in January on the fourth anniversary of that order, subject to an extension period of only five to six months to the first business day in July of that year. The IOUs argued that such an outcome would be far better than having to file the rate case in January using a calendar-year test year that is already a year old, and that will be almost two years old by the time the rates based on that test year go into effect.

The IOUs also disagreed with TIEC's claims that the extension in subsection (b)(1) of the published rule "will impair the natural staggering of rate case filings and impose an unnecessary burden on the commission and ratepayer resources." The IOUs asserted that this statement presupposes that all scheduled filing dates are in the same year, which in turn presupposes that the 48-month time period between rate cases has the same starting point for each utility. According to the IOUs, if the starting period for each initial filing is staggered, as it is for the "transition" schedule in subsection (c) of the published rule, then the availability of the extension makes "impairment" of such staggering no more likely than it would be without the availability of the extension. The IOUs stated that, moreover, most rate cases are not fully litigated, and in those cases the commission's final order may be issued any time before the 185-day jurisdictional deadline indicated by PURA §36.102. The IOUs commented that, in any event, as recognized in subsection (b)(3) of the published rule, the commission has the authority under PURA §36.157(d) to further adjust a utility's scheduled filing date because of resource constraints.

Commission Response

The commission agrees with TIEC, Cities, and OPUC that including in the rule a provision that would allow a utility company, under certain circumstances based upon the date of its last rate order, to extend its filing date by several months beyond 48 months would create unnecessary complexity and uncertainty in the scheduling of utility companies' rate proceedings. The commission agrees with these parties that such a provision would complicate and frustrate SB 735's fundamental purpose, which is to establish a definitive filing schedule for IOUs in ERCOT. Although the published rule provided for a filing-deadline extension of up to seven months to allow for the use of a calendar-year test year, the

commission further agrees with these parties that an IOU, if it wishes to use a calendar-year test year, has the option of filing its required rate proceeding earlier than the 48-month deadline if doing so facilitates the use of such a test year. Furthermore, notwithstanding whatever merit the use of a calendar-year test year may provide, the commission recognizes the factual basis of TIEC's comments that approximately half the rate cases for ERCOT IOUs over the last decade have not used calendar-year test years.

The commission also does not find compelling the IOUs' comments regarding the amount of time they assert is necessary to prepare a rate filing package. If the commission finds under PURA §36.151 that the existing rates of an electric utility are unreasonable, then PURA §36.153 requires the electric utility to "file a rate filing package…not later than the 120th day after the date the authority notifies the utility that the authority will proceed with an inquiry under Section 36.151." Moreover, as pointed out by TIEC, the IOUs' concerns about having sufficient time after the end of a calendar year to prepare a rate filing package are belied by the IOUs' other comments indicating that a filing date of May 1, which is 120 days after the end of a calendar year, allows sufficient time for AEP Texas to use a calendar-year test year for its scheduled filing under subsection (c)(2)(B). Accordingly, in light of the provisions of PURA §36.153 and the IOUs' comments, the commission finds unpersuasive the IOUs' concerns regarding the period of time required to prepare a rate filing package.

Additionally, the commission agrees with TIEC that the optional extension period included in the published rule could at times establish two opportunities for a utility to pass SB 735's "off-ramp" test and thereby qualify the utility for the statutory delay in the filing of a rate

proceeding. Such a result is arbitrary and at odds with the purpose of SB 735. Also, eliminating this optional extension period from the adopted rule reduces the potential for the "pancaking" of rate proceedings that could occur with the use of such an extension period and eliminates any incentive for a utility to inappropriately delay the resolution of a rate proceeding for the purpose of obtaining a final order within the window of time that would allow use of the optional extension.

The commission further notes that the provisions of PURA §36.212 and §25.246 require the vertically integrated utilities operating outside of ERCOT to initiate a comprehensive base rate proceeding on or before the fourth anniversary of the date of the final order in the electric utility's most recent comprehensive base rate proceeding. The commission finds that establishing a 48-month requirement in this rule provides consistency among electric utilities operating inside and outside of ERCOT.

For the above reasons, the commission establishes 48 months as the default period of time between a utility's last rate order and the filing deadline for its next comprehensive rate proceeding. The commission adopts changes to the rule language accordingly by removing from subsection (b)(1) the sentence "If the date of such commission order falls within the period October 1 through April 30, the electric utility may, in order to use a calendar-year test year, extend the date of the required filing to the first business day in May after the fourth anniversary of the order." Additionally, as discussed below, the commission adopts conforming changes to subsection (c)(2)(A) of the rule for consistency with the modifications to subsection (b)(1).

Subsection (b)(2)

The IOUs commented that subparagraphs (A) and (B) of subsection (b)(2) apply to different groups of applicable utilities but are otherwise identical. The IOUs opined that both subparagraphs identify the relevant EMR for purposes of the year-to-year filing extension as a utility's "most recently accepted EMR, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions," and that subparagraphs (A) and (B) add an "acceptance" element to the EMR qualifying requirements but omit entirely the "180 days before the date the proceeding is required" qualifying requirement in PURA §36.157(c) for identifying the relevant EMR.

With regard to identifying a utility's "most recent earnings monitoring report," the IOUs stated that the rule should include clearly articulated and plainly evident criteria to avoid future disputes and the expenditure of resources in resolving those disputes. The IOUs commented that subparagraph (C) of proposed subsection (b)(2) is intended to define the elements for, and the effective date of, an "accepted" EMR for purposes of subparagraphs (A) and (B). The IOUs suggested alternative language that defines an accepted EMR as a report filed by a utility pursuant to the commission's EMR rule (§25.73(b)) and that incorporates language relating to the "commission-prescribed" EMR form and instructions and the EMR filing due date in § 25.71(f)(4), thereby eliminating the need for the published rule to refer generically to "commission rules and instructions." In addition, the IOUs suggested language that defines an accepted EMR as not only an EMR that has been filed pursuant to §25.73(b), but also one that has been adjusted (if adjustment is necessary to make it conform to the commission's EMR rule) and reviewed by commission staff in an annual EMR memorandum filed with the commission. The IOUs also suggested language

that limits the authority of commission staff to adjust a utility's filed EMR only if necessary to make the EMR conform to the commission's EMR rule and that requires any such adjustments made by commission staff to be identified in the memorandum containing staff's analysis of the EMR. Finally, the IOUs submitted language that retains the published rule's effective date of an accepted EMR as the filing date of commission staff's EMR memorandum, unless the memorandum states otherwise.

The IOUs stated that their recommended language replaces language they believe is confusing in subparagraph (C), which they assert seems to tie the status of an accepted EMR (i.e., one that, as filed or as adjusted by commission staff, conforms with the commission's EMR rule, and has been reviewed in a staff-filed EMR memorandum) to modifications that the commission may make to the conclusions in staff's memorandum. The IOUs stated that such modifications by the commission could turn the status of an accepted EMR to being unaccepted at any time after the accepted EMR's effective date. The IOUs asserted that the acceptance of an EMR for purposes of qualifying for the statute's mandatory year-to-year extension should not be revocable, given that revocation of an accepted EMR's status at some undetermined, post-EMR acceptance date could render unworkable PURA §36.157(c)'s requirement to use a utility's most recent EMR as of 180 days before the required filing date. The IOUs stated that while the commission should be free to modify staff's conclusions in a filed EMR memorandum, any such modifications should not affect the status of an accepted EMR reviewed in that memorandum.

OPUC disagreed with the IOUs' comments regarding the determination of when a company's EMR is "accepted," and also with the IOUs' proposal that the published rule not provide the

commissioners an opportunity to accept, reject, or modify the staff's conclusions. OPUC commented that the IOUs' proposed rule language is not reasonable because it entirely precludes the commissioners from having any ability to disagree with staff's conclusions or adjustments and to make modifications. OPUC stated that the commissioners should have the final authority to determine whether a utility is granted a deferment in filing a rate case, and, moreover, the commission should reject the IOUs' suggestion to constrain the staff's ability to make adjustments to an EMR by limiting adjustments only to those necessary to conform the EMR to §25.73(b). OPUC submitted that the commission's EMR process was never intended to replace the requirements of the commission's rate filing package, and that the staff may need to make necessary adjustments to an EMR to accurately depict a utility's financial health depending on specific facts for each utility. OPUC commented that the staff should have the ability to make any adjustment that it deems reasonable and necessary to protect the public interest.

Houston stated that this project is not the appropriate venue to address issues raised by the IOUs related to the content of Staff's EMR memorandum—specifically, the identification of adjustments made by Staff to the EMR.

Commission Response

The commission agrees with the IOUs that it is appropriate to include in subsections (b)(2)(B) and (C) the phrase "180 days before the date the proceeding is required." The added language makes the wording consistent with that of the statute, and the commission adopts the rule language as so modified.

With regard to the IOUs' comments related to the published rule's provisions pertaining to the manner and timing of the "acceptance" of a utility's EMR, the commission concludes that, except as noted in the paragraph below, such provisions are not necessary, could complicate the determination of whether a utility's EMR meets the statutory requirements for allowing an extension of the utility's filing deadline, and, moreover, could be construed as conflicting with the provisions of SB 735. Additionally, the commission agrees with OPUC that the rule should appropriately reflect the fact that the commissioners—not the commission staff—have the final authority to determine whether a utility company is eligible for an extension to its filing deadline. Accordingly, the commission in the adopted rule omits from subsections (b)(2)(A) and (B) the word "accepted," retains in subsections (b)(2)(A) and (B) the language specifying that a utility's EMR shall be "filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rule and instructions," and removes subsection (b)(2)(C).

The commission agrees with the IOUs that the commission staff should appropriately identify in its EMR memoranda any changes it makes to an IOU's EMR, but finds that including in the rule specific requirements to that effect is not necessary.

Subsections (b)(2)(A) and (B)

With regard to the published rule's provisions allowing the commission to extend a utility's rate case filing by one year if the utility can show that it is earning, on a weather-normalized basis, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each transmission-only or transmission and distribution utility, Cities commented that

every utility uses some form of statistical regression analysis model to adjust for normal weather, but that each model is different and reflects the specific service area of each utility. Cities stated that the biggest difference is the period used to determine "normal" weather, and that some utilities use a 10-year average, while others use a 20- or 30-year average. Cities submitted that the commission should prescribe a consistent period to determine "normal" weather to make the earnings comparisons more equitable, and observed that in Project No. 39465 (*Rulemaking Related to Periodic Rate Adjustments*), Cities advocated for, and the commission adopted, a 10-year weather normalization period for calculating DCRF charges, and that the commission has also adopted the most recent ten years of data to determine normal weather for purposes of developing demand growth rates in energy efficiency filings. Cities commented that the commission should strive to maintain consistency with normal weather standards across all programs and rate filings; Cities stated that such an approach is reasonable and promotes a uniform methodology for normalizing data related to weather conditions. Cities argued that the weather-normalized billing determinants for future rate case filings should be the most reasonable estimate of average weather regardless of the normal weather periods used in previous normalization models, and to therefore make earnings comparisons more equitable, the commission should prescribe a 10-year period for calculating weather normalization across all utilities filing rate cases pursuant to this rule; otherwise, the "less than 50 basis points above the average of the most recent commission-approved rate of return on equity" requirement might be measuring "apples and oranges" between utilities, or be subject to manipulation for purposes of meeting this requirement.

Houston and OPUC expressed agreement with Cities' recommendation that the rule should prescribe a consistent period to determine "normal" weather to make the earnings comparisons

more equitable. OPUC echoed Cities' view that the rule should explicitly require a 10-year period for weather normalization, stating that although the commission's EMR instructions include a requirement that the weather normalization calculation should reflect the requirements of §25.243(b)(5) (the DCRF rule) and incorporate a 10-year period, the commission's preference should be explicitly stated in this rule. OPUC contended that the 10-year normalization period accomplishes an accurate reflection of normal weather more effectively because it provides greater sensitivity to recent weather patterns and trends, and that a longer period (such as 20 or 30 years) tends to result in less representative billing determinants, and thus inaccurate revenues. OPUC commented that the EMR should demonstrate whether revenue and sales adjustments should be made to reflect significant changes in sales due to abnormal weather, and that a sizeable under-reporting of revenues could materially impact whether a utility meets the threshold for deferring filing of its rate case.

The IOUs argued that the issue of whether to include in the rule a 10-year weather normalization period for all future comprehensive rate filings is outside the scope of this rulemaking proceeding. The IOUs commented that nothing in the notice for this proceeding that was published in the *Texas Register* included this issue. The IOUs further commented that although this is not an appropriate proceeding in which to act on this issue, a one-size-fits-all, 10-year weather normalization period could be highly disruptive in Texas. The IOUs commented that the weather zones within ERCOT vary widely, and that over the last ten years some have experienced much greater variability than others. The IOUs further stated that the "apples and oranges" label that the Cities applied to utilities that have different weather normalization periods would be just as appropriate to apply to utilities that serve regions with different economic or demographic characteristics (i.e., rural versus

metropolitan; large versus small industrial base; etc.); in other words, there will always be some "apples and oranges" attributes whenever comparisons between different utilities are made.

Commission Response

With regard to the IOUs' comments that this issue is outside the scope of this rulemaking, the commission finds that the notice of this rulemaking made clear that it would enact a schedule pursuant to SB 735 (i.e., new PURA §36.157) and, because subsection (c) of the statute specifically bases an extension of the schedule on the utility's earnings determined "on a weather-normalized basis," all parties to this rulemaking were on-notice that further specifications related to weather-normalization would be possible subjects of the rulemaking. Moreover, the fact that parties addressed this issue at all in their comments affirms that they were on-notice regarding this issue.

The commission agrees with Cities, OPUC, and Houston that it is appropriate to specify in the rule the use of a 10-year period for weather normalization. This clarification eliminates potential controversy and ensures consistency with other commission rules and form instructions. The commission adopts revisions to the rule language accordingly.

Subsection (b)(3)

The IOUs recommended that the good cause, one-year extension authority given to the commission should include the phrase "on a year-to-year basis" not only to make it consistent with the extension language in subsection (b)(2), but also to remove any doubt about whether an extension for good cause under this subsection is available to the commission only once or can be

exercised by the commission if in successive years good cause continues to exist to further extend a utility's scheduled filing date. The IOUs submitted language reflecting their belief that the latter is the intent of the proposed good cause extension.

Houston disagreed with the IOUs' recommendation that the good cause, one-year extension authority given to the commission should include the phrase "on a year-to-year basis," stating that PURA §36.157(d) does not stipulate, as does §36.157(c), that the good cause extension may be applied on a year-to-year basis. Houston recommended that the language remain consistent with the statute.

Cities argued that the IOUs' proposal to grant unlimited extensions to a utility goes directly against the purpose of SB 735, which requires the commission to establish a schedule for electric utilities to file rate cases and also provides the opportunity for the commission to extend the filing date for good cause shown or because of resource constraints. Cities commented that allowing a utility to seek extensions on a yearly basis is at odds with the purpose of the statute, and that if utilities seek and are granted a yearly extension, then future rate cases will be filed just as they are now—at the discretion of the utility. Cities submitted that the statute aims to take away that discretion and provide a reliable schedule for rate case filings, and that by requiring electric utilities to come in for a comprehensive rate review on a specified timeline, customers are assured rates that are regularly refreshed and utilities are held accountable for establishing a rate base that reflects their most recent financial position. Cities argued that the commission should therefore reject the IOUs' proposals for additional extensions.

TIEC commented that the commission should avoid limiting its authority to extend a utility's rate case filing deadline for more or less than a year as it deems necessary for good cause shown or because of resource constraints. TIEC described in its comments how the IOUs expressed concern that proposed subsection (b)(3) is ambiguous as to whether the commission can extend the filing deadline more than once for good cause or resource constraints, and TIEC noted that the IOUs propose adding the clause "on a year-by-year basis" to support the commission's ability to provide an extension more than once. TIEC expressed its belief that a preferable approach to the IOUs' concern is to delete the requirement that each extension be provided "for one year," and asserted that the IOUs' proposal that the commission "may extend the scheduled filing deadline…for one year for good cause shown" creates the ambiguity raised by the IOUs and also unnecessarily restricts the commission's authority compared to what the Texas Legislature (Legislature) intended. TIEC noted that PURA §36.157(d) states only that "the commission may extend the date for the proceeding required by Subsection (b) for good cause shown or because of resource constraints of the commission." TIEC commented that because the commission might need to extend the deadline for only a few months to address resource constraints or other issues, it should not unnecessarily mandate a one-year extension in all instances. TIEC stated that for these reasons, the IOUs' addition of "on a year-to-year basis" should be rejected and subsection (b)(3) should be revised by omitting the phrase "for one year."

Commission Response

The commission agrees with TIEC, Cities, and Houston that the addition of the phrase "on a year-to-year basis" deviates from the statutory language and creates unnecessary

ambiguities. Accordingly, the commission declines to modify the rule language as requested by the IOUs.

Similarly, the published rule's use of the phrase "for one year" is not part of the statutory language, and the commission removes the wording in its adoption of the rule.

Subsection (b)(4)

The IOUs recommended striking the phrase, "the fourth anniversary of the order in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case," and replacing it with the phrase, "its scheduled filing deadline established pursuant to this section." This is the subsection that requires a utility to submit 180-day notice if it qualifies for the year-to-year EMR extension under subsection (b)(2), and the IOUs commented that the proposed language in subsection (b)(4) unintentionally limits its applicability to the 48-month filing deadline established under subsection (b)(1) and would make subsection (b)(4) inapplicable to the "transition" filing deadlines established for a utility under subsection (c) and to extensions to scheduled filing deadlines granted under subsections (b)(2) and (3). The IOUs stated their belief that these proposed changes to the language in subsection (b)(4) encompass all the published rule's provisions affecting scheduled filing deadlines.

Commission Response

The commission declines to revise subsection (b)(4) as proposed by the IOUs and clarifies its intent that the transition filings listed in subsection (c)(2)(B) are not subject to the off-ramp

tests set forth in subsection (b). As discussed below in the response to parties' comments on subsection (c)(2)(B), the commission finds that it is appropriate to include in the rule a schedule for transition filings that is separate and distinct from the filing schedule required by SB 735.

Subsections (c)(1) and (2)(A)

References to subsection (b)(1)

The IOUs suggested revisions to subsections (c)(1) and (2)(A) of the published rule to change the reference "subsection (b)(1) of this section" to "subsection (b) of this section." The IOUs commented that the published rule's subsection (b) as a whole contains the substantive rate case scheduling requirements and extensions, and that referencing only subsection (b)(1) is too limiting because it fails to include the exceptions to subsection (b)(1)'s requirements located in other subsection (b) provisions.

Commission Response

The commission agrees with the IOUs' suggested revisions to subsection (c)(1) and adopts changes to the rule language accordingly. The commission addresses revisions to subsection (c)(2)(A) below.

Subsection (c)(1) and (2)(A)

Conforming language

TIEC commented that if the commission eliminates the second sentence of proposed subsection (b)(1), as recommended by TIEC and several other parties, an additional conforming change

should be made to proposed subsection (c)(2)(A) to remove the phrase "or such date as extended by the provisions of subsection (b)(1) of this section." TIEC stated that this will bring proposed subsection (c)(2)(A) into line with modified subsection (b)(1), which, under TIEC's proposal, would no longer include a provision that would allow for the extension of a rate case filing deadline beyond 48 months.

Commission Response

The commission agrees with TIEC and, consistent with the commission's modifications to subsection (b)(1), adopts revisions to the language in subsection (c)(2)(A).

Subsection (c)(2)(B)

Applicability to "transition" filings

The IOUs suggested revising subsection (c)(2)(B) of the published rule by including the additional language "or such date as extended pursuant to the provisions of subsection (b) of this section" so that the transition filing dates listed for each utility in the chart could qualify for the extension periods provided in subsection (b). The IOUs commented that the published rule allows for extensions only to the periodic rate case filing dates set by subsection (b)(1), but not to the transition rate case filing dates set by subsection (c)(2)(B). The IOUs submitted that the statutory filing extensions in PURA §36.157(c) and (d) and the published rule's corresponding filing extensions in subsections (b)(2) and (3) are intended to be applicable to all required filing deadlines, including the required transition filing deadlines in subsection (c)(2)(B), and that their proposed changes make the rule consistent with the statutory language.

TIEC commented that, contrary to the IOUs' claim that the Legislature intended for the earnings and good cause off-ramps to apply to the transitional rate case filings under proposed subsection (c)(2), the PURA provisions creating those off-ramps specify that they only apply to "the proceeding required by PURA §36.157(b)," and that PURA §36.157(b) states that "the commission by rule shall establish a schedule that requires an electric utility to make periodic filings with the commission to modify or review base rates." TIEC stated that the Legislature therefore intended for the earnings and good cause off-ramps to apply only to the periodic filings under proposed subsection (b)(1), not to the transition filings under proposed subsection (c)(2) that are a product of the commission's general authority to call in the IOUs for rate cases at any time. TIEC pointed out that even the IOUs draw a distinction between the periodic and transition filings under the published rule when they state that the published rule allows for extensions only to the periodic rate case filings set by subsection (b)(1), but not to the transition rate case filing dates set by subsection (c)(2)(B).

TIEC further argued that the commission should reject the IOUs' modifications to proposed subsection (c)(2) because those changes would frustrate the purpose of that section and provide additional unjustified opportunities to extend the filing deadline. TIEC stated that, as drafted, subsection (c)(2) requires each IOU that does not have a rate case pending on the effective date of the rule to file its next rate case on the later of two dates: under (c)(2)(A), 48 months after the final order was issued in the IOU's last rate case (or potentially up to 55 months to accommodate the use of a calendar year test year, as described in the second sentence of published subsection (b)(1)); or, under (c)(2)(B), a specific date set out in a table. TIEC pointed out that the IOUs' suggested language expands the extension in subsection (c)(2)(A) to include any of the provisions in

subsection (b) rather than just subsection (b)(1), and purports to allow the specific filing dates in the table in subsection (c)(2)(B) to be extended pursuant to any of the provisions of subsection (b). TIEC contended that, with these changes, the IOUs are attempting to delay filing even the very first rate cases proposed under this rule by using the earnings or good cause off-ramps in subsections (b)(2) and (3), and that it is essential for customers to have a timely, meaningful opportunity to review the IOUs' rates in light of the serious flaws in the TCOS and TCRF rules, as discussed in TIEC's prior comments. TIEC submitted that even utilities that are not currently overearning on a total-company basis need to have a rate case to fix the existing imbalances between the distribution and transmission sides of their businesses and to correct stale class cost allocations. TIEC argued that the commission should therefore retain the published rule's certainty with respect to the next filing dates of each of the IOUs and reject language that would create arguments about whether the IOUs qualify for off-ramps that would delay their first rate case filings under this rule.

Commission Response

The commission agrees with TIEC that the IOUs' proposed revisions would apply the earnings or good cause off-ramps provided in subsections (b)(2) and (3) to the transition filings in subsection (c), an outcome contrary to fulfilling the purpose of the transition filing dates contained in the table in subsection (c)(2)(B). Accordingly, the commission retains the language used in the published rule.

Subsection (c)(2)(B)

Filing date for AEP Texas

The IOUs commented that the scheduled transition filing deadline for AEP Texas should be moved to May 1, 2019, to give AEP Texas at least an opportunity to use the 2018 calendar year as the test year for that scheduled filing deadline. The IOUs stated that a filing deadline in July would be preferable, because it would give AEP Texas adequate time to prepare its rate filing package using data from the most recently completed calendar year. However, understanding the desire to stagger the initial filing of rate cases, AEP Texas suggested that a May 1, 2019 filing date, while challenging, could allow AEP Texas to file using a 2018 calendar-year test year, unlike an April 1, 2019 filing date.

Commission Response

In subsection (c)(2)(B), the commission adopts a change to the scheduled filing date for AEP Texas from April 1, 2019, to May 1, 2019.

Miscellaneous Issues

Terminology

Houston observed that the published rule's use of the terms "comprehensive rate review" and "comprehensive rate proceeding" differs from the language in SB 735, which uses specific language referring to "base rates," "base rate proceeding," and "comprehensive base rate proceeding." Houston commented that the term "base rate" is already used in several of the commission's rules—such as §25.243 and §25.181—to distinguish it from other types of rates and rate proceedings. Houston opined that the published rule should mirror its enacting statute and use

the term "base rates," and, to comply with SB 735 and eliminate potential confusion, the published rule should use the term "base rate" whenever referring to rate, rate proceeding, or rate review, rather than the term "rate."

Cities disagreed with Houston with regard to the rule's use of terminology, stating that the phrase "comprehensive rate review" encompasses the phrase "base rate proceeding." Cities contended that while Houston is correct that the published rule uses language that is different from that in the statute, the term "base rate proceeding" is more limiting than the language used in the published rule and could result in more piecemeal ratemaking if the rule language excludes rate riders, surcharges, and other various charges from a utility's filing pursuant to this rule. Cities pointed out that utility companies use various rate riders and other periodic rate adjustments between comprehensive base rate proceedings, and, as the Legislature recognized in enacting this statute, utilities will often stay out of base rate proceedings for many years. Cities commented that these adjustments enable utilities to increase rates for specific items or programs without appropriately adjusting other critical rate components, and that what results from these rate riders and cost recovery factors are rates calculated in a piecemeal fashion; these rates are then charged to customers for years without rebalancing and refreshing the base rates. Cities argued that, therefore, while the statute uses the term "base rate," the published rule is more expansive in using the terms "comprehensive rate review" and "comprehensive rate proceeding," and that by using these terms, the commission can require a utility to file a comprehensive rate filing, including rate adjustments, surcharges, and rate riders. Cities stated that the terms are inclusive of base rate proceedings, and that the commission should maintain the terms as proposed to ensure a more holistic rate review.

Commission Response

The commission agrees with Cities and retains in the adopted rule the more expansive language.

Miscellaneous Issues

Company names

Sharyland Utilities, L.P. commented that the listed filing schedule should use the company names "Sharyland Utilities, L.P." and "Sharyland Distribution & Transmission Services, L.L.C.," rather than "Sharyland Utilities LP" and "Sharyland Distribution Services LLC."

Commission Response

Consistent with Sharyland's comments and the reference conventions used for the other IOUs listed in the table in subsection (c)(2)(B), the commission adopts revisions to the rule's references to Sharyland Utilities, LP, and Sharyland Distribution & Transmission Services, LLC.

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

The new section is adopted under Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and

specifically, PURA §36.157, which requires the commission to establish by rule a schedule requiring electric utilities to make periodic filings with the commission to modify or review base rates charged by the electric utility.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §36.157.

§25.247. Rate Review Schedule.

(a) **Application.** This section applies only to an electric utility, other than a river authority, that operates solely inside the Electric Reliability Council of Texas (ERCOT).

(b) **Filing requirements.**

(1) Each electric utility in the ERCOT region must file for a comprehensive rate review within 48 months of the order setting rates in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case. For a transmission and distribution utility, the filing must include information necessary for the review of both transmission and distribution rates.

(2) On a year-to-year basis, the commission shall issue an order extending the filing requirements under paragraph (1) of this subsection by one year if the following conditions are met:

(A) for an electric utility providing transmission-only service, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each transmission-only utility operating in ERCOT; or

(B) for a transmission and distribution utility, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each transmission and distribution utility operating in ERCOT with at least 175,000 metered customers.

(3) The commission may extend the scheduled filing deadline under paragraphs (1) and (2) of this subsection for good cause shown or because of resource constraints of the commission.

(4) An electric utility qualifying for an extension under paragraph (2) of this subsection shall submit notice in the same project as the filing of its most recent earnings monitoring report at least 180 days before the fourth anniversary of the order in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case.

(5) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in an electric utility's earnings monitoring report.

(c) **Transition issues for electric utilities.**

(1) If an electric utility subject to subsection (a) of this section has a comprehensive rate proceeding pending on the effective date of this rule, the electric utility is required to file, after the commission's final order in that pending proceeding, a comprehensive rate proceeding in accordance with subsection (b) of this section. If the pending proceeding is withdrawn, dismissed, or otherwise resolved without a final order, the electric utility shall be subject to the transition timelines in paragraph (2) of this subsection unless the commission orders otherwise.

(2) All electric utilities subject to subsection (a) of this section shall make their initial filings under this section on or before the later of:

(A) 48 months from the order in the electric utility's last comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case; or

(B) the following dates:

Texas-New Mexico Power Company	August 31, 2018
AEP Texas, Inc.	May 1, 2019
CenterPoint Energy Houston Electric, LLC	July 1, 2019
Wind Energy Transmission Texas, LLC	October 1, 2019
Cross Texas Transmission, LLC	February 3, 2020
Sharyland Utilities, LP and Sharyland Distribution & Transmission Services, LLC	July 1, 2020
Lone Star Transmission, LLC	September 1, 2020
Electric Transmission Texas, LLC	February 1, 2021
Oncor Electric Delivery Company, LLC	October 1, 2021

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 §25.247, relating to rate review schedule, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of April 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

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