

**PROJECT NO. 29478**

<b>PROCEEDING TO AMEND PUC</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RULE RELATING TO VALUATION</b>	<b>§</b>	
<b>PANEL IN A TRUE-UP</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PROCEEDING, SUBSTANTIVE RULE</b>	<b>§</b>	
<b>25.263(f)</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.263  
AS APPROVED AT THE MARCH 26, 2004 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.263, relating to True-up Proceeding. The proposed amendment will delete the conflict of interest provisions relating to the employment of a valuation panel to ascertain the existence of and value of a control premium for any power generation company that uses the partial stock valuation method to determine the market value of its generation assets, in connection with determining its stranded costs. The commission will instead consider appropriate conflict of interest standards in selecting persons to serve on the valuation panel. Project Number 29478 is assigned to this proceeding.

Jess Totten, Director, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Totten has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a broader group of persons who would be eligible to serve on the valuation panel and a more accurate determination of the market value of stranded costs. There will be no adverse economic effect on small

businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Totten has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, April 13, 2004 at 9:30 a.m.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 29478.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility

Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.262, which authorizes the commission to employ a valuation panel to determine whether a control premium exists and the value of the control premium for a power generation company that uses the partial stock valuation method to determine its market value.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.262.

**§25.263. True-up Proceeding.**

(a) - (e) (No change.)

(f) Quantification of market value of generation assets.

(1) Market value of generation assets shall be quantified using one or more of the following methods:

(A) - (B) (No change.)

(C) Partial stock valuation method. The following method of market valuation using a control premium may be used to value generation assets.

(i) - (iii) (No change.)

~~(iv) None of the financial experts chosen for the panel shall have participated, or be employed by an investment house or brokerage house which has participated, in the business separation, securitization, or other activities related to the implementation of PURA Chapter 39 on behalf of the utility for which the market valuation is being determined.~~

~~(iv)~~(v) If the panel determines that a control premium exists for the retained interest, the panel shall determine the amount of the control premium, and the commission shall adopt the determination, but may not use the control premium to increase the value of the assets by more than 10%.

~~(v)(vi)~~ The costs and expenses of the panel, as approved by the commission, shall be paid by each transferee corporation.

~~(vi)(vii)~~ The determination of the commission, based on the finding of the panel and other admitted evidence, conclusively establishes the value of the common stock of each transferee corporation.

~~(vii)(viii)~~ The average book value of each transferee corporation's debt and preferred stock securities during the 30-day period chosen by the commission to determine the market value of common stock shall be added to the market value of its stock.

~~(viii)(ix)~~ The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by the transferee corporation from any entity other than the electric utility or its APGC.

~~(ix)(x)~~ The market value of the assets resulting from the procedures required by clauses (i) - ~~(viii)(ix)~~ of this subparagraph establishes the market value of the generation assets transferred by the electric utility or APGC to each transferee corporation.

(D) (No change.)

(2) (No change.)

(g) - (m) (No change.)

(n) **Proceeding subsequent to the true-up.**

- (1) The TDU shall file an application to adjust its rates within 60 days following the issuance of a final, appealable order ~~in~~ its true-up proceeding. In the proceeding, the commission may adjust the TDU's rates and any CTC, in accordance with PURA §39.262(g), and any excess mitigation credit. The commission may also allocate the recovery responsibility for such rates and any CTC to the TDU's customer classes.
- (2) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 26th DAY OF MARCH 2004 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**