

PROJECT NO. 54844

**MINOR AND CONFORMING RULE § PUBLIC UTILITY COMMISSION
UPDATES 2023 §
§ OF TEXAS**

CHAPTER 25

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO
§25.31, §25.231, §25.238, §25.240, §25.271, §25.301, §25.483, AND §25.486
AS APPROVED AT THE APRIL 27, 2023 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.31 relating to Information to Applicants and Customers, §25.231, relating to Cost of Service; §25.238, relating to Purchased Power Capacity Cost Recovery Factor (PCRF); §25.240, relating to Contribution Disclosure Statements in Appeals of Municipal Utility Rates, §25.271, relating to Foreign Utility Company Ownership by Exempt Holding Companies, §25.301, relating to Nuclear Decommissioning Trusts; §25.483, relating to Disconnection of Service, and §25.486, relating to Customer Protections for Brokerage Services.

The proposed amendments are administrative in nature to update contact resources used by persons with hearing or speech difficulties and also to make other minor and conforming amendments.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed rules will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rules will repeal an existing regulation, but it will replace that regulation with a similar regulation;
- (7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rules they are being proposed to replace; and
- (8) the proposed rules will not affect this state's economy.

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Public Benefits

Iliana De La Fuente, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the sections.

Iliana De La Fuente has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide individuals with hearing or speech difficulties with accurate agency contact resources. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

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

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must

be received by May 26, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 26, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 54844, Chapter 25.

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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

§25.31. Information to Applicants and Customers.

(a) **Information to applicants.** Each electric utility ~~must~~ provide this information to applicants when they request new service or transfer existing service to a new location:

- (1) the electric utility's lowest-priced alternatives available at the applicant's location. The information ~~must~~ begin with the lowest-priced alternative and give full consideration to applicable equipment options and installation charges;
- (2)-(3) (No change.)

(b) **Information regarding rate schedules and classifications and electric utility facilities.**

- (1) Each utility ~~must~~ notify customers affected by a change in rates or schedule of classifications.
- (2) Each electric utility ~~must~~ maintain copies of its rate schedules and rules in each office where applications are received.
- (3) Each electric utility ~~must~~ post a notice in a conspicuous place in each office where applications are received, informing the public that copies of the rate schedules and rules relating to the service of the electric utility, as filed with the commission, are available for inspection.
- (4) Each electric utility ~~must~~ maintain a current set of maps showing the physical locations of its facilities that includes an accurate description of all facilities (substations, transmission lines, etc.). These maps ~~must~~ be kept by the electric utility in a central location and will be available for commission

inspection during normal working hours. Each business office or service center mustshall have available up-to-date maps, plans, or records of its immediate service area, with other information as may be necessary to enable the electric utility to advise applicants, and others entitled to the information, about the facilities serving that locality.

(c) Customer information packets.

- (1) The information packet mustshall be entitled "Your Rights as a Customer". Cooperatives may use the title, "Your Rights as a Member".
- (2) The information packet, containing the information required by this section, mustshall be mailed to all customers on at least every other year at no charge to the customer.
- (3) The information mustshall be written in plain, non-technical language.
- (4) The information mustshall be provided in English and Spanish; however, an electric utility is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the utility is exempt from the Spanish language requirement, it mustshall notify all customers through a statement in both English and Spanish, in the packet, that the information is available in Spanish from the electric utility, both by mail and at the electric utility's offices.
- (5) The information packet mustshall include all of the following:
 - (A) (H) (No change.)

- (I) the customer's right to file a complaint with the electric utility, the procedures for a supervisory review, and right to file a complaint with the commission, regarding any matter concerning the electric utility's service. The commission's contact information: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, internet address: www.puc.state.tx.us, ~~TTY (512) 936-7136~~, and Relay Texas (toll-free) 1-800-735-2989, ~~mustshall~~ accompany this information;
- (J)-(P) (No change.)
- (Q) a statement that funded financial assistance may be available for persons in need of assistance with their electric utility payments, and that additional information may be obtained by contacting the local office of the electric utility, Texas Department of Housing and Community Affairs, or the Public Utility Commission of Texas. The main office telephone number (toll-free number, if available) and address for each state agency ~~mustshall~~ also be provided; and
- (R) information that explains how a residential customer can be recognized as a critical load customer, the benefits of being a critical load customer in an emergency situation, and the process for being placed on the critical load list. For the purposes of this section a "critical load residential customer" ~~isshall~~ ~~be~~ defined as a residential customer who has a critical need for electric

service because a resident on the premises requires electric service to maintain life.

§25.231. Cost of Service.

(a) (No change.)

(b) **Allowable expenses.** Only those expenses which are reasonable and necessary to provide service to the public ~~will~~ be included in allowable expenses. In computing an electric utility's allowable expenses, only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses.

(1) **Components of allowable expenses.** Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal electric utility service and in maintaining electric utility plant used by and useful to the electric utility in providing such service to the public. Payments to affiliated interests for costs of service, or any property, right or thing, or for interest expense ~~will~~ not be allowed as an expense for cost of service except as provided in the Public Utility Regulatory Act §36.058.

(B) Depreciation expense based on original cost and computed on a straight line basis as approved by the commission. Other methods of depreciation may be used when it is determined that such depreciation methodology is a more equitable means of recovering the cost of the plant.

- (C) Assessments and taxes other than income taxes.
- (D) Federal income taxes on a normalized basis. Federal income taxes ~~must~~ be computed according to the provisions of the Public Utility Regulatory Act §36.060.
- (E) Advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service ~~must~~ not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the electric utility for services rendered to the public. The following expenses ~~must~~ be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:
- (i)-(iv) (No change.)
- (F) Nuclear decommissioning expense. The following restrictions ~~must~~ apply to the inclusion of nuclear decommissioning costs that are placed in an electric utility's cost of service.
- (i) An electric utility owning or leasing an interest in a nuclear-fueled generating unit ~~must~~ include its cost of nuclear decommissioning in its cost of service. Funds collected from ratepayers for decommissioning ~~must~~ be deposited monthly in irrevocable trusts external to the electric utility, in accordance with §25.301 of this title (relating to Nuclear Decommissioning Trusts). All funds held in short-term investments must bear interest. The level of the annual cost of

decommissioning for ratemaking purposes will be determined in each rate case based on an allowance for contingencies of 10% of the cost of decommissioning, the most current information reasonably available regarding the cost of decommissioning, the balance of funds in the decommissioning trust, anticipated escalation rates, the anticipated return on the funds in the decommissioning trust, and other relevant factors. The annual amount for the cost of decommissioning determined pursuant to the preceding sentence ~~must~~ be expressly included in the cost of service established by the commission's order.

- (ii) In the event that an electric utility implements an interim rate increase, including an increase filed under bond, an incremental change in decommissioning funding ~~must~~ be included in the increase.
- (iii) An electric utility's decommissioning fund and trust balances will be reviewed in general rate cases. In the event that an electric utility does not have a rate case within a five-year period, the commission, on its own motion or on the motion of ~~the commission's Office of Regulatory Affairs~~, the Office of Public Utility Counsel, or any affected person, may initiate a proceeding to review the electric utility's

decommissioning cost study and plan, and the balance of the trust.

- (iv) An electric utility ~~must~~shall perform, or cause to be performed, a study of the decommissioning costs of each nuclear generating unit that it owns or in which it leases an interest. A study or a redetermination of the previous study ~~must~~shall be performed at least every five years. The study or redetermination should consider the most current information reasonably available on the cost of decommissioning. A copy of the study or redetermination ~~must~~shall be filed with the commission and ~~a copy~~copies provided to ~~the commission's Office of Regulatory Affairs and~~ the Office of Public Utility Counsel. An electric utility's most recent decommissioning study or redeterminations ~~must~~shall be filed with the commission within 30 days of the effective date of this subsection. The ~~five-year~~ requirement for a new study or redetermination ~~must~~shall begin from the date of the last study or redetermination.

- (G) Accruals credited to reserve accounts for self-insurance under a plan requested by an electric utility and approved by the commission. The commission ~~may~~shall consider approval of a self insurance plan in a rate case in which expenses or rate base treatment are requested for a such a plan. For the purposes of this section, a self insurance plan is a

plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with property and liability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, and are not paid or reimbursed by commercial insurance. The commission will approve a self insurance plan to the extent it finds it to be in the public interest. In order to establish that the plan is in the public interest, the electric utility must present a cost benefit analysis performed by a qualified independent insurance consultant who demonstrates that, with consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance and the ratepayers will receive the benefits of the self insurance plan. The cost benefit analysis ~~must~~ present a detailed analysis of the appropriate limits of self insurance, an analysis of the appropriate annual accruals to build a reserve account for self insurance, and the level at which further accruals should be decreased or terminated.

(H) Postretirement benefits other than pensions (known in the electric utility industry as "OPEB"). For ratemaking purposes, expense associated postretirement benefits other than pensions (OPEB) ~~must~~ be treated as follows:

- (i) OPEB expense ~~must~~ be included in an electric utility's cost of service for ratemaking purposes based on actual payments made.

- (ii) An electric utility may request a one-time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP). Rate recognition of OPEB expense on an accrual basis ~~must~~ shall be made only in the context of a full rate case.
- (iii) An electric utility ~~will~~ shall not be allowed to recover current OPEB expense on an accrual basis until GAAP requires that electric utility to report OPEB expense on an accrual basis.
- (iv) For ratemaking purposes, the transition obligation ~~must~~ shall be amortized over 20 years.
- (v) OPEB amounts included in rates ~~must~~ shall be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. The trust ~~must~~ shall be established no later than six months after the order establishing the OPEB expense amount included in rates. The electric utility ~~must~~ shall make deposits to the fund at least once per year. Deposits on the fund ~~must~~ shall include, in addition to the amount included in rates, an amount equal to fund earnings that would have accrued if deposits had been made monthly. The funding requirement can be met with deposits made in advance of the recognition of the expense for ratemaking purposes. The electric utility ~~must~~ shall, to the extent permitted by the Internal Revenue Code, establish

a postretirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

- (vi) When an electric utility terminates an OPEB trust fund established pursuant to clause (v) of this subparagraph, it ~~must~~ notify the commission in writing. If excess assets remain after the OPEB trust fund is terminated and all trust related liabilities are satisfied, the electric utility ~~must~~ file, for commission approval, a proposed plan for the distribution of the excess assets. The electric utility ~~must~~ not distribute any excess assets until the commission approves the disbursement plan.

- (2) **Expenses not allowed.** The following expenses ~~must~~ never be allowed as a component of cost of service:

(A)-(J) (No change.)

- (c) **Return on invested capital.** The return on invested capital is the rate of return times invested capital.

- (1) **Rate of return.** The commission ~~will~~ allow each electric utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and ~~will~~ fix the rate of return in accordance with the following principles.

- (A) The return should be reasonably sufficient to assure confidence in the financial soundness of the electric utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of changes affecting opportunities for investment, the money market, and business conditions generally.
- (B) The commission ~~may~~shall consider efforts by the electric utility to comply with the statewide integrated resource plan, the efforts and achievements of the electric utility in the conservation of resources, the quality of the electric utility's services, the efficiency of the electric utility's operations, and the quality of the electric utility's management, along with other applicable conditions and practices.
- (C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the electric utility to attract new capital. The rate of return must be high enough to attract necessary capital but need not go beyond that. In each case, the commission ~~will~~shall consider the electric utility's cost of capital, which is the weighted average of the costs of the various classes of capital used by the electric utility.
- (i) (No change.)

- (ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.
 - (I) Common stock capital. The cost of common stock capital ~~must~~ shall be based upon a fair return on its market value.
 - (II) Preferred stock capital. The cost of preferred stock capital is the actual cost of preferred stock at the time of issuance, plus an adjustment for premiums, discounts, and refunding and issuance costs.
- (2) **Invested capital; rate base.** The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as set out in subparagraphs (A)-(F) of this paragraph.
 - (A) Original cost, less accumulated depreciation, of electric utility plant used by and useful to the electric utility in providing service.
 - (i) Original cost ~~must~~ shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it ~~would~~ shall have been dedicated to public use, whether by the electric utility which is the present owner or by a predecessor.

- (ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation ~~must~~ be computed on a straight line basis or by such other method approved under subsection (b)(1)(B) of this section over the expected useful life of the item or facility.
 - (iii) Payments to affiliated interests ~~must~~ not be allowed as a capital cost except as provided in the Public Utility Regulatory Act §36.058.
- (B) Working capital allowance to be composed of, but not limited to the following:
- (i) (No change.)
 - (ii) Reasonable prepayments for operating expenses. Prepayments to affiliated interests ~~will~~ be subject to the standards set forth in the Public Utility Regulatory §36.058.
 - (iii) A reasonable allowance for cash working capital. The following ~~applies~~ ~~shall~~ ~~apply~~ in determining the amount to be included in invested capital for cash working capital:
 - (I) Cash working capital for electric utilities ~~must~~ in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II)-(III) (No change.)

(IV) For all investor-owned electric utilities a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-)-(-c-) (No change.)

(-d-) All funds received by the electric utility except electronic transfers ~~mustshall~~ be considered available for use no later than the business day following the receipt of the funds in any repository of the electric utility (e.g. lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For electric utilities the balance of cash and working funds included in the working cash allowance calculation ~~mustshall~~ consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense ~~mustshall~~ be calculated by measurement of the

interval between the mid-point of the annual service period and the actual payment date of the electric utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount ~~must~~ shall be included in rate base.

(V) (No change.)

(C) (No change.)

(D) Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base ~~must~~ shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that:

(i) the electric utility has proven that:

(I) (No change.)

(II) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress ~~must~~ shall not be allowed for any portion of a major project which the electric utility has failed to prove was efficiently and prudently planned and managed; or

(ii) (No change.)

- (E) Self-insurance reserve accounts. If a self insurance plan is approved by the commission, any shortages to the reserve account will be an increase to the rate base and any surpluses will be a decrease to the rate base. The electric utility ~~must~~ maintain appropriate books and records to permit the commission to properly review all charges to the reserve account and determine whether the charges being booked to the reserve account are reasonable and correct.
- (F) (No change.)

§25.238. Purchased Power Capacity Cost Recovery Factor (PCRFF).

(a) (No change.)

(b) (No change.)

(c) **Establishment, adjustment, and termination of a PCRFF.**

(1) (No change.)

(2) The application in which the utility applies for the establishment, adjustment, or termination of a PCRFF rider ~~must~~ be limited to issues related to the establishment, adjustment, or termination of the PCRFF rider.

(3) The PCRFF ~~must~~ not include:

(A)-(D) (No change.)

(4) Upon the establishment of a utility's PCRFF, the utility ~~must~~ annually file an application for an adjustment of the PCRFF. The cost year used in an annual PCRFF adjustment ~~must~~ be the 12-month period that immediately follows the cost year used to set the existing PCRFF. In addition, the utility ~~must~~ file the application to adjust the PCRFF promptly after the relevant cost-year data become available. The commission may establish a schedule for the filing of such applications.

(5) A utility may terminate its PCRFF as part of any annual PCRFF adjustment proceeding. The final order including the termination of a PCRFF ~~must~~ specify the date by which the utility ~~must~~ be required to file an application

for the final reconciliation of the costs and revenues associated with the terminated PCRf.

- (6) (No change.)
- (7) A utility's request to establish, adjust, terminate, or reconcile a PCRf ~~must~~ include the utility's direct testimony supporting the request.

(d) **Pre-approval of purchased power agreements.**

- (1)-(3) (No change.)
- (4) An application in which the utility applies for pre-approval of purchased power capacity agreements under this subsection ~~must~~ be limited to issues related to the pre-approval of such agreements.
- (5) A utility may apply for pre-approval of purchased power agreements under this subsection no more than once per year, and no more than three times between comprehensive base-rate proceedings.

(e) **Notice of PCRf proceeding.**

- (1) Within one commission working day of filing an application limited to establishing, adjusting, or terminating a PCRf, a utility ~~must~~ provide notice of the application in accordance with the following:

(A) **Method of notice.**

- (i) The utility ~~must~~ serve notice of the application on the parties to the utility's last PCRf reconciliation proceeding or, if

there has been no PCRFR reconciliation proceeding, on the parties to the utility's last comprehensive base-rate proceeding.

(ii) The utility ~~mustshall~~ issue a news release and post the news release on its website.

(B) **Content of notice.** Notice provided pursuant to paragraph (1) of this subsection ~~mustshall~~ include the following:

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

(iii) The date of the intervention and hearing request deadline. The date of the intervention and hearing request deadline ~~mustshall~~ be 30 days after the application was filed, except that if the date would fall on a day that is not a commission working day, the intervention and hearing request deadline ~~mustshall~~ be the first commission working day after the 30th day after the application was filed;

(iv)-(vi) (No change.)

(vii) The statement, "Persons who wish to intervene in the proceeding for this application, or who wish to provide their comments concerning this application, should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals ~~maywith text telephones (TTY)~~

~~may call (512) 936-7136 or~~ use Relay Texas (toll-free) 1-800-735-2989.”

- (C) **Proof of notice.** Within five commission working days from the filing of the application limited to establishing or adjusting a PCRFB, the utility ~~must~~shall file proof in the form of an affidavit that it complied with this paragraph.
- (2) If a utility applies to reconcile a PCRFB in a base-rate proceeding, the appropriate method and proof of notice set forth in §22.51 of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) ~~must~~shall apply. The notice ~~must~~shall include a description of the requested change to the PCRFB.
- (3) If a utility applies to reconcile a PCRFB outside of a base-rate proceeding, the method of notice set forth in §25.235(b)(1)(B) of this title (relating to Fuel Costs-General) ~~applies~~shall~~—apply~~. The proof of notice set forth in §25.235(b)(3) of this title ~~must~~shall apply. The notice ~~must~~shall include a description of the requested reconciliation of the PCRFB.
- (f) **Procedural schedule.** Upon the filing of an application limited to the annual adjustment of a PCRFB pursuant to this section, the presiding officer ~~must~~shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows, except where good cause supports a different procedural schedule:

(1)-(2) (No change.)

(g) **Exclusion from fuel factor.** Costs that are recovered through a PCRf ~~must~~ shall be excluded in calculating the utility's fixed fuel factor as defined in §25.237 of this title (relating to Fuel Factors).

(h) **PCRf formula.**

(1) The PCRf for each rate class ~~must~~ shall be calculated using the following formula:

$$\text{PCRf} = \{(((\text{PPC}_{\text{CY}} + \text{AAC}_{\text{CY}} + \text{APC}_{\text{M}}) * \text{TRAF}_{\text{CY}}) - \text{OSM}_{\text{CY}}) * \text{CAF}_{\text{CY}}\} - \{(\text{PPC}_{\text{RC-CLASS}} + \text{APC}_{\text{RC-CLASS}} - \text{OSM}_{\text{RC-CLASS}}) * \text{LGR}\} - \{((\text{PCIC}_{\text{RC-CLASS}} * \text{ROR}_{\text{AT}}) + \text{PCDEP}_{\text{RC-CLASS}} + \text{PCFIT}_{\text{RC-CLASS}} + \text{PCOT}_{\text{RC-CLASS}}) * \text{LGI}\} + \text{CTU} / \text{CBDE}$$

Where:

PPC_{CY} = Cost-year purchased power capacity costs from entities that are not affiliates, in accordance with subsection (c)(3) of this section.

AAC_{CY} = Cost-year purchased power capacity costs from entities that are affiliates and which costs are incurred from agreements that have been pre-approved by the commission in a proceeding under subsection (d) of this section as of the date of the filing of the instant PCRf application.

APC_{M} = The lesser of:

- purchased power capacity costs from affiliates used to set base rates in the utility's last comprehensive base-rate proceeding, or
- cost-year purchased power capacity costs from affiliates less AAC_{CY} .

OSM_{CY} = Cost-year margins from wholesale power capacity sales transactions.

$TRAF_{CY}$ = Cost-year value of the Texas retail jurisdiction production demand allocation factor, using the same type of production demand allocation factor used to set rates in the utility's last comprehensive base-rate proceeding.

CAF_{CY} = Cost-year value of the corresponding rate class production demand allocation factor, using the same type of production demand allocation factor used to set rates in the utility's last comprehensive base-rate proceeding.

$PPC_{RC-CLASS}$ = Purchased power capacity costs from entities that are not affiliates, allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

$APC_{RC-CLASS}$ = Purchased power capacity costs from affiliates allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

$OSM_{RC-CLASS}$ = Margins from wholesale power capacity sales allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

LGR = The greater of (CBD_{CY} / CBD_{RC}) or 1.

CBD_{CY} = Cost-year rate class billing determinants.

CBD_{RC} = Rate class billing determinants used to calculate base rates from the utility's last comprehensive base-rate proceeding.

$PCIC_{RC-CLASS}$ = Net production capacity invested capital allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

ROR_{AT} = The after-tax rate of return used to set base rates from the utility's last comprehensive base-rate proceeding.

$PCDEP_{RC-CLASS}$ = Depreciation expense, as related to gross production capacity, allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

$PCFIT_{RC-CLASS}$ = Federal income tax, as related to net production capacity invested capital, allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding.

$PCOT_{RC-CLASS}$ = Other taxes, as related to net production capacity invested capital, allocated to the rate class and used to set base rates from the utility's last comprehensive base-rate proceeding, and not including municipal franchise fees.

LGI = The greater of $((CBD_{CY} - CBD_{RC}) / CBD_{RC})$ or 0.

CTU = The rate class under/(over)-recovery, including interest, as calculated in subsection (i) of this section.

CBD_E = Estimated PCRf rate year class billing determinants.

- (2) Where the cost year used in setting a PCRf includes a change in base rates due to a comprehensive base-rate proceeding, parameters in the PCRf formula that refer to values from the utility's last comprehensive base-rate proceeding

~~must~~ be calculated by prorating the values from the relevant base rate-proceedings across the cost-year.

- (i) **True-up.** After establishment of an initial PCRf, a subsequent PCRf cost year is expected to contain portions of two different PCRf rate years. Therefore, for purposes of calculating class over- or under-recoveries for use in a proceeding to adjust the PCRf, previous PCRf revenue requirements from PCRf rate years in effect during the cost year ~~must~~ be prorated across the cost year. For each rate class, the difference between the prorated cost-year PCRf revenue requirement that previous PCRfs were set to recover from that class and the actual cost-year PCRf revenues recovered from that class, with interest on the balance calculated at the rate established annually by the commission pursuant to §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments), ~~must~~ be credited or charged to that class when calculating the adjusted PCRf. In the event that a PCRf rider is terminated, any over- or under-recovery amounts, with interest applied, ~~must~~ be included in a separate rider.

(j) **Reconciliation of PCRf expenses.**

- (1) The reasonableness and necessity of expenses recovered through the PCRf ~~must~~ be reviewed, and such costs and corresponding PCRf revenues ~~must~~ be reconciled, as part of any proceeding initiated under §25.236(b) of this title. Upon motion and showing of good cause, a PCRf reconciliation proceeding may be severed from or consolidated with other proceedings.

- (2) (No change.)
- (3) Any refunds or surcharges resulting from a PCRf reconciliation, with interest applied, ~~mustshall~~, in the annual PCRf proceeding immediately subsequent to the filing of the final order in the reconciliation proceeding, be incorporated into the true-up balances described in subsection (i) of this section. In the event that no PCRf rider is in effect subsequent to a PCRf reconciliation, such refunds or surcharges, with interest applied, ~~mustshall~~ be included in a separate rider.

(k) **Transition Issues.**

For a utility subject to a commission order to transition to retail competition as of the effective date of this section, the utility's existing power cost recovery factor in its tariff approved under the prior rule ~~continuesshall~~ ~~continue~~ to be effective until the effective date of new unbundled retail delivery tariffs for the utility, at which time the power cost recovery factor ~~mustshall~~ be terminated. Any over- or under-recovery amounts, with interest applied, ~~mustshall~~ be included in a separate rider to the utility's retail delivery tariffs to be established in the proceeding that approves such tariffs and ~~mustshall~~ be credited or charged to customers as appropriate. The utility ~~mustshall~~ file monthly reports with the commission showing all such amounts until no remaining amounts remain to be credited or charged, at which time the utility ~~mustshall~~ file a final report with the commission.

§25.483. Disconnection of Service.

(a) **Disconnection and reconnection policy.** Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative ~~may~~**shall** perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it ~~must~~**shall** comply with the requirements in this section. Nothing in this section requires a REP to request that a customer's service be disconnected.

(b) **Disconnection authority.**

(1) (No change.)

(2) Except as provided in subsection (d) of this section, all REPs ~~may~~**shall have** ~~the authority to~~ authorize the disconnection of residential and small non-residential customers pursuant to commission rules. Prior to authorizing disconnections for non-payment in accordance with this paragraph, a REP ~~must~~**shall:**

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

(c) (No change.)

(d) **Disconnection without prior notice.** Any REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

(1) Where a known dangerous condition exists for as long as the condition exists.

Where reasonable, given the nature of the hazardous condition, the REP, or its agent, ~~must~~ shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2)-(5) (No change.)

(e) **Disconnection prohibited.** A REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~ shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

(1)-(7) (No change.)

(f) **Disconnection on holidays or weekends.**

(1) A REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~ shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service.

- (2) Unless a dangerous condition exists or the customer requests disconnection, a TDU ~~must~~shall not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.
- (g) **Disconnection of Critical Care Residential Customers.** A REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.
- (1) Each time a Critical Care Residential Customer seeks to avoid disconnection of service under this subsection, the customer ~~must~~shall accomplish all of the following by the stated date of disconnection:
- (A) Have the person's attending physician (for purposes of this subsection, the "physician" ~~means~~shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar medical professional) contact the REP to confirm that the customer is a Critical Care Residential Customer;
- (B)-(C) (No change.)
- (2) The prohibition against service disconnection of a Critical Care Residential Customer provided by this subsection ~~lasts~~shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and

the customer, emergency (secondary) contact listed on the commission-approved application form, or attending physician. If the Critical Care Residential Customer does not accomplish the requirements of paragraph (1) of this subsection:

- (A) The REP mustshall provide written notice to the Critical Care Residential Customer and the emergency contact listed on the commission-approved application form of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice mustshall be a separate mailing or hand delivered notice with a stated date of disconnection with the words “disconnection notice” or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words “disconnection notice” or similar language in the subject line mustshall be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice mustshall comply with the requirements of subsections (l) and (m) of this section; and
- (B) Prior to disconnecting a Critical Care Residential Customer, a TDU mustshall contact the customer and the emergency contact listed on the commission-approved application form. If the TDU does not reach the customer and emergency contact by phone, the TDU mustshall visit the premises, and, if there is no response, mustshall leave a door hanger

containing the pending disconnection information and information on how to contact the REP and TDU.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU ~~must~~ shall delay the disconnection and promptly communicate the information to the REP. The TDU ~~must~~ shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.

(4) If a TDU refuses to disconnect a Critical Care Residential Customer pursuant to this subsection, it ~~must~~ shall cease charging all transmission and distribution charges and surcharges, except securitization-related charges, for that premises to the REP.

(h) **Disconnection of Chronic Condition Residential Customers.** A REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~ shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential

Customers), except as provided in this subsection. The REP ~~must~~ notify the Chronic Condition Residential Customer and the emergency contact listed on the commission-approved application form with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice ~~must~~ be a separate mailing or hand delivered notice with a stated date of disconnection with the words “disconnection notice” or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words “disconnection notice” or similar language in the subject line ~~must~~ be also be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice ~~must~~ comply with the requirements of subsections (l) and (m) of this section.

(i) **Disconnection of energy assistance clients.**

(1) A REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~ not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection

notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

- (2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP ~~must~~ shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.
 - (3) A REP ~~must~~ shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.
 - (4) (No change.)
- (j) **Disconnection during extreme weather.** A REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~ shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP ~~must~~ shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.
- (1) The term “extreme weather emergency” ~~means~~ shall mean a day when:
 - (A)-(B) (No change.)
 - (2) A TDU ~~must~~ shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in

its service area. The initial notice ~~must~~ include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) **Disconnection of master-metered apartments.** When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section ~~must~~ send a notice to the customer as required by this subsection. At the time such notice is issued, the REP, or its agents, ~~must~~ also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP ~~must~~ post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice ~~must~~ be in large type and ~~must~~ read: “Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection).”

(l) **Disconnection notices.** A disconnection notice for nonpayment ~~must~~:

(1)-(3) (No change.)

(4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice ~~must~~ also advise the customer to contact the provider for more information.

(m) **Contents of disconnection notice.** Any disconnection notice ~~must~~ include the following information:

(1)-(4) (No change.)

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: “If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals ~~with text telephones (TTY)~~ may contact the commission ~~at (512) 936-7136~~ through Relay Texas at 1-800-735-2989. Complaints may also be filed electronically at www.puc.texas.gov/ocp/complaints/complain.cfm.”

(6)-(8) (No change.)

(n) **Reconnection of service.** Upon a customer’s satisfactory correction of the reasons for disconnection, the REP ~~must~~ request the TDU, municipally owned utility, or

electric cooperative to reconnect the customer's electric service as quickly as possible. The REP ~~must~~shall inform the customer when reconnection is expected to occur in accordance with the timelines set forth in this subsection and in §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities). For premises without a provisioned advanced meter with remote disconnect/reconnect capabilities, if a REP submits a standard reconnect request and the TDU completes the reconnect the same day, the TDU ~~may~~shall assess a standard reconnect fee. A TDU may assess a same-day reconnect fee only when the REP expressly requests a same-day reconnect and a REP may pass through a same-day reconnect fee to the customer only when the customer expressly requests a same-day reconnect. A REP ~~must~~shall send a reconnection request no later than the timelines in this subsection. The TDU ~~must~~shall complete the reconnection in accordance with the timelines in §25.214 of this title.

- (1) For payments made before 12:00 p.m. on a business day, a REP ~~must~~shall send a reconnection request to the TDU no later than 2:00 p.m. on the same day.
- (2) For payments made after 12:00 p.m. but before 5:00 p.m. on a business day, a REP ~~must~~shall send a reconnection request to the TDU by 7:00 p.m. on the same day.
- (3) For payments made after 5:00 p.m. but before 7:00 p.m. on a business day, a REP ~~must~~shall send a reconnection request to the TDU by 9:00 p.m. on the same day.
- (4) For payments made after 7:00 p.m. on a business day, a REP ~~must~~shall send a reconnection request to the TDU by 2:00 p.m. on the next business day.

- (5) For payments made on a weekend day or a holiday, a REP ~~must~~ send a reconnection request to the TDU by 2:00 p.m. on the first business day after the payment was made.
 - (6) In no event ~~must~~ a REP fail to send a reconnection notice within 48 hours after the customer's satisfactory correction of the reasons for disconnection as specified in the disconnection notice.
- (o) **Electric service disconnection of a non-submetered master metered multifamily property.**
- (1) (No change.)
 - (2) A REP ~~must~~ send a written notice of service disconnection to a municipality before authorizing disconnection of service to a non-submetered master metered multifamily property for nonpayment if:
 - (A)-(B) (No change.)
 - (3) No later than January 1st of every year, a municipality wishing to receive notice of disconnection of electric service to a non-submetered master metered multifamily property ~~must~~ provide the commission with the contact information for the municipality's authorized representative referenced by paragraph (2) of this subsection by submitting that person's name, title, direct mailing address, telephone number, and email address in a P.U.C. Project Number to be established annually for that purpose. The email address provided by the municipality may be for a general mailbox accessible by the authorized representative established for the purpose of receiving such notices.

- (4) After January 1st, but no later than January 15th of every year, the commission ~~must~~ post on its public website the contact information received from every municipality pursuant to paragraph (3) of this subsection. The contact information posted by the commission ~~must~~ remain in effect during the subsequent 12-month period of February 1 through January 31 for the purpose of the written notice of disconnection required by paragraph (2) of this subsection.
- (5) The retail electric provider ~~must~~ email the written notice required by this subsection to the municipality's authorized representative not later than the 10th day before the date electric service is scheduled for disconnection. Additional notice may be provided by third-party commercial carrier delivery or certified mail.
- (6)-(7) (No change.)

§25.240. Contribution Disclosure Statements in Appeals of Municipal Utility Rates.

- (a) **Pursuant to Chapter 33, Subchapter D.** Each party to an appeal proceeding under the Public Utility Regulatory Act (PURA), Chapter 33, Subchapter D must file a statement with the commission disclosing all expenditures made by that party and all contributions made to that party, whether the expenditures or contributions are financial or in-kind, related to preparation of and filing of a petition for appeal, the preparation of expert testimony, and legal representation in the proceeding. The municipality whose rates are the subject of the appeal, [commission staff](#)~~the Office of Regulatory Affairs~~, and the Office of Public Utility Counsel are not required to file a statement. The statement must list with particularity the name and address of each contributor and provide a description of each contribution. The statement will be available to the public. The statement must be filed within 30 days after a final appealable order is entered by the commission or the petition of appeal is withdrawn.
- (b)-(c) (No change.)

§25.271. Foreign Utility Company Ownership by Exempt Holding Companies.

(a)-(b) (No change.)

(c) **Safe harbor investments.** The following safe harbor provisions ~~apply shall be~~ **applicable** to investments in FUCOs by exempt holding companies that are affiliated with electric utilities subject to the regulatory jurisdiction of the commission:

(1) The commission ~~must shall~~ certify to the SEC that the commission has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority, provided that all holding companies of electric utilities that are subject to the regulatory jurisdiction of this commission ~~must shall~~ have filed with the commission corporate undertakings, signed under oath by an authorized executive officer of the holding company agreeing to adhere to the covenants and to make the filings specified in paragraph (2) of this subsection.

(2) The holding company ~~must shall~~ adhere to the following covenants:

(A)- (F) (No change.)

(G) That the holding company will file with the commission quarterly a report listing the total amount of the aggregate investments by the holding company and its subsidiaries and the percentage of the holding company's consolidated net worth, from the company's most recent SEC form 10-Q, represented by such investments;

(i) "Aggregate investment" means all amounts invested, or committed to be invested, in exempt wholesale generators

located outside the United States (foreign EWGs) and FUCOs, for which there is recourse, directly or indirectly, to the holding company. Among other things, the term ~~mustshall~~ include preliminary development expenses that culminate in the acquisition of a foreign EWG or a FUCO.

(ii) Such report ~~mustshall~~ be filed no later than ten days following the filing of the 10-Q for the quarter.

(H) That in the event the holding company anticipates making any investment in a FUCO that would result in the aggregate investment as defined in subparagraph (G) of this paragraph of such holding company exceeding 30% of the consolidated net worth of such holding company, the holding company ~~mustshall~~ so advise the commission before a final commitment to ownership of such FUCO is made;

(I)-(L) (No change.)

(d) **Other investments.** For any occasion for which a holding company has undertaken to notify the commission of an event specified in subsection (c)(2)(H) or (K) of this section, the following provisions apply:

(1) The holding company ~~mustshall~~ provide the following information, to the extent such information is reasonably available at the time of submission of the filing, at least 30 days before the date when it anticipates making a final commitment to ownership of a FUCO not already covered by a certification letter:

(A)-(D) (No change.)

(E) A statement that the electric utility has effective written policies and accounting procedures which insure that any use by the FUCO of assets or personnel of an affiliate of the electric utility, or other transactions between the FUCO and an affiliate of the electric utility ~~will~~ not negatively affect Texas ratepayers; and a statement that the electric utility will demonstrate in each subsequent rate proceeding before the commission, and each subsequent audit, that no FUCO investment increased the cost of capital or revenue requirement of the electric utility;

(F)-(H) (No change.)

(2) The notification prescribed in this subsection may be submitted less than 30 days before the date when the holding company anticipates making a final commitment to ownership of a FUCO not already covered by a certification letter upon a showing of good cause. Good cause for purposes of the preceding sentence ~~must~~ be deemed to include, without limitation, a representation that the holding company lacked the information required to make a submission at an earlier date or a representation that making the submission at an earlier date would have unreasonably jeopardized the ability of the holding company to go forward with the contemplated investment.

(3) (No change.)

(e) **Post-investment reporting.** The electric utility ~~must~~ comply with the following post-investment reporting obligations:

- (1) With respect to any investment in a FUCO for which an informational filing was made pursuant to subsection (d)(1) of this section, the electric utility or holding company ~~must~~ notify the commission no later than ten days after the holding company makes a final commitment to ownership of a FUCO that such a commitment has been made. Such notice ~~must~~ include any material corrections, additions, and supplementation of previously-provided information; and
- (2) For any FUCO investment covered by a certification, the electric utility or holding company ~~must~~ notify the commission no later than 30 days after any material change in the circumstances or nature of an investment in a FUCO. Such notice ~~must~~ include all appropriate corrections, additions, and supplementation of previously-provided information. A material change would include, but is not limited to, any change that would have an adverse impact of greater than 1.0% of consolidated net worth most recently reported; full or partial divestiture of the investment; a catastrophic event that destroys a significant amount of FUCO property or results in loss of life that could result in a significant liability claim; a change in the laws or government policy having a material impact on the FUCO; or an event which would place a significant restriction on the repatriation of earnings of the FUCO.
- (3) Unless included in SEC reports, each exempt utility holding company which directly or indirectly holds an interest in FUCOs or foreign EWGs ~~must~~ provide the following information: A consolidating statement of income of the exempt holding company and its subsidiary companies for the last calendar

year, together with a consolidating balance sheet of the exempt holding company and its subsidiary companies as of the close of such calendar year.

- (A) The information ~~must~~shall be provided in English, monetary amounts in U.S. dollars, and according to generally accepted accounting principles.
- (B) Such information must be received by the commission annually no later than March 15.

(f) Commission standards for granting or maintaining certification.

- (1) (No change.)
- (2) With respect to any investment in a FUCO for which an informational filing was made pursuant to subsection (d)(1) of this section, the commission ~~must~~shall determine on a case-~~by-~~case basis whether to issue a certification to the SEC or maintain a previously issued certification. The commission ~~must~~shall endeavor to make such a determination prior to the date when the holding company anticipates having to make a final commitment to ownership of the FUCO. If the commission determines that it does not intend to continue certification, it may inform the SEC that maintaining a previously-issued certification would be inappropriate.
- (3) The commission ~~must~~shall notify the holding company requesting the certification or retention of certification of its decision within 45 days of receiving the request. If no action is taken by the commission within 45 days of receiving the request, the certification ~~is~~shall be deemed granted or affirmed.

- (4) Any information submitted by a holding company pursuant to this section may be submitted by the holding company under seal. Each page tendered under seal ~~must~~ have the words "Confidential Information" typed or stamped on its face. The holding company ~~must~~ clearly identify each portion of the application alleged to be Confidential Information; identify the exemption to the Public Information Act, Texas Government Code Annotated, Chapter 552 (Vernon Supp. 1998), applicable to the alleged Confidential Information; and provide a detailed explanation of why the alleged Confidential Information is exempt from public disclosure under the Public Information Act. If the commission receives a Public Information Act request for disclosure of Confidential Information, then the Executive Director ~~must~~ promptly so notify the holding company. The Executive Director ~~must~~ timely request an Attorney General's opinion as to whether the information falls within any of the exemptions identified in Subchapter C of the Public Information Act. The Executive Director ~~must~~ promptly provide to the holding company a copy of an Attorney General opinion regarding the claim of confidentiality. If an Attorney General opinion recommends disclosure of Confidential Information, either in whole or in part, then the Executive Director ~~must~~ not release such information for ten calendar days, in order to allow the holding company time to pursue any legal remedies that it may have. The holding company may require the execution of an appropriate confidentiality agreement prior to providing access to such confidential information to ~~commission staff the Legal Division of the Office of Regulatory Affairs~~ or any other interested party. The form of any such

confidentiality agreement ~~must~~^{shall} be approved by [commission staff legal counsel](#) ~~the Legal Division~~ prior to filing and included with the informational filing.

§25.301. Nuclear Decommissioning Trusts.**(a) Duties of electric utilities.**

- (1) Each electric utility collecting funds for a nuclear decommissioning trust ~~must~~ assure that the nuclear decommissioning trust is managed so that the funds are secure and earn a reasonable return; and, that the funds provided from the utility's cost of service, plus the amounts earned from investment of the funds, will be available at the time of decommissioning.
- (2) Each electric utility collecting funds for a nuclear decommissioning trust ~~must~~ place the funds in an external, irrevocable trust fund. The utility ~~must~~ appoint an institutional trustee and may appoint an investment manager(s). Unless otherwise specified in subsection (b) of this section, the Texas Trust Code controls the administration and management of the nuclear decommissioning trusts, except that the appointed trustee(s) need not be qualified to exercise trust powers in Texas.
- (3) The utility ~~must~~ retain the right to replace the trustee with or without cause. In appointing a trustee, the electric utility ~~must~~ have the following duties, which will be of a continuing nature:
 - (A)-(E) (No change.)
- (4) The utility ~~must~~ retain the right to replace the investment manager with or without cause. In appointing an investment manager, the utility ~~must~~ have the following duties, which will be of a continuing nature:
 - (A)-(E) (No change.)

(b) **Agreements between the electric utility and the institutional trustee or investment manager.**

(1) The utility ~~must~~ execute an agreement with the institutional trustee. The agreement ~~must~~ include the restrictions in subparagraphs (A) - (E) of this paragraph and may include additional restrictions on the trustee. An electric utility ~~must~~ not grant the trustee powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section.

(A) (No change.)

(B) A trustee ~~must~~ have a continuing duty to review the trust portfolio for compliance with investment guidelines and governing regulations.

(C) A trustee ~~must~~ not lend funds from the decommissioning trust with itself, its officers, or its directors.

(D) A trustee ~~must~~ not invest or reinvest decommissioning trust funds in instruments issued by the trustee, except for time deposits, demand deposits, or money market accounts of the trustee. However, investments of a decommissioning trust may include mutual funds that contain securities issued by the trustee if the securities of the trustee constitute no more than five percent of the fair market value of the assets of such mutual funds at the time of the investment.

(E) The agreement ~~must~~ comply with all applicable requirements of the Nuclear Regulatory Commission.

- (2) The utility ~~mustshall~~ execute an agreement with the investment manager. (If the trustee performs investment management functions, the contractual provisions governing those functions must be included in either the trust agreement or a separate investment management agreement.) The agreement ~~mustshall~~ include the restrictions set forth in subparagraphs (A) - (E) of this paragraph and may include additional restrictions on the manager. An electric utility ~~mustshall~~ not grant the manager powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section.
- (A) An investment manager ~~mustshall~~, in investing and reinvesting the funds in the trust, comply with subsection (c) of this section.
- (B) (No change.)
- (C) An investment manager ~~mustshall~~ have a continuing duty to review the trust portfolio to determine the appropriateness of the investments.
- (D) An investment manager ~~mustshall~~ not invest funds from the decommissioning trust with itself, its officers, or its directors.
- (E) The agreement ~~mustshall~~ comply with all applicable requirements of the Nuclear Regulatory Commission.
- (3) A copy of the trust agreement, any investment management agreement, and any amendments ~~mustshall~~ be filed with the commission within 30 days after the execution or modification of the agreement, and copies provided to the commission's ~~Office of Regulatory Affairs'~~ Legal Division and ~~Rate Regulation Financial Review~~ Division and the Office of Public Utility Counsel. All

previously executed agreements and amendments must be filed within 30 days of the effective date of this section.

- (4) Within 90 days after the effective date of this section, a utility that is a party to a trust agreement or an investment management agreement that is not in compliance with this section ~~must~~shall revise the agreement to comply with this section.

(c) Trust investments.

- (1) **Investment portfolio goals.** The funds should be invested consistent with the following goals. The utility may apply additional prudent investment goals to the funds so long as they are not inconsistent with the stated goals of this subsection.

(A) (No change.)

- (B) In keeping with prudent investment practices, the portfolio of securities held in the decommissioning trust ~~must~~shall be diversified to the extent reasonably feasible given the size of the trust.

(C)-(D) (No change.)

- (2) **General requirements.** The following requirements ~~must~~shall apply to all decommissioning trusts. Where a utility has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit. For purposes of this section, a commingled fund is defined as a professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

- (A) Fees limitation. The total trustee and investment manager fees paid on an annual basis by the utility for the entire portfolio including commingled funds ~~must~~ not exceed 0.7% of the entire portfolio's average annual balance.
- (B) Diversification. For the purpose of this subparagraph, a commingled or mutual fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in commingled or mutual funds. Once the portfolio of securities (including commingled funds) held in the decommissioning trust(s) contains securities with an aggregate value in excess of \$20 million, it ~~must~~ be diversified such that:
- (i) no more than 5.0 % of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities, and;
 - (ii) the portfolio ~~must~~ contain at least 20 different issues of securities. Municipal securities and real estate investments ~~must~~ be diversified as to geographic region.
- (C) Qualified trusts. The utility may invest the decommissioning funds by means of qualified or unqualified nuclear decommissioning trusts; however, the utility ~~must~~, to the extent permitted by the Internal Revenue Service, invest its decommissioning funds in "qualified" nuclear decommissioning trusts, in accordance with the Internal Revenue Service Code §468A.
- (D)- (E) (No change.)

(F) Investment limits in equity securities. The following investment limits ~~must~~ apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value.

- (i) (No change.)
- (ii) When the weighted average remaining life of the liability ranges between 5 years and 2.5 years, the equity cap ~~must~~ be 30%. Additionally, during all years in which expenditures for decommissioning the nuclear units occur, the equity cap ~~must~~ also be 30%;
- (iii) When the weighted average remaining life of the liability is less than 2.5 years, the equity cap ~~must~~ be 0%;
- (iv) (No change.)
- (v) Should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the utility ~~must~~, as soon as practicable, reduce the market value of the non-fixed income investments below the cap. Such reductions may be accomplished by investing all future contributions to the fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(G) A decommissioning trust ~~must~~ not invest in securities issued by the electric utility collecting the funds or any of its affiliates; however, investments of a decommissioning trust may include commingled funds that

contain securities issued by the electric utility if the securities of the utility constitute no more than 5.0% of the fair market value of the assets of such commingled funds at the time of the investment.

(3) **Specific investment restrictions.** The following restrictions ~~mustshall~~ apply to all decommissioning trusts. Where a utility has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit.

(A) Fixed-income investments. A decommissioning trust ~~mustshall~~ not invest trust funds in corporate or municipal debt securities that have a bond rating below investment grade (below "BBB-" by Standard and Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased and ~~mustshall~~ reexamine the appropriateness of continuing to hold a particular debt security if the debt rating of the company in question falls below investment grade at some time after the debt security has been purchased. Commingled funds may contain some below investment grade bonds; however, the overall portfolio of debt instruments ~~mustshall~~ have a quality level, measured quarterly, not below a "AA" grade by Standard and Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government ~~mustshall~~ be considered as having a "AAA" rating.

(B) Equity investments.

(i) At least 70% of the aggregate market value of the equity portfolio, including the individual securities in commingled funds, ~~mustshall~~

have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities ~~must~~ have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 index assuming equal weighting of each ranked security in the index. If the quality rating, measured quarterly, falls below the minimum quality standard, the utility ~~must~~ as soon as practicable and prudent to do so, increase the quality level of the equity portfolio to the required level.

(ii) A decommissioning trust ~~must~~ not invest in equity securities where the issuer has a capitalization of less than \$100 million.

(C) Commingled funds. The following guidelines ~~must~~ apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by nuclear decommissioning trust funds include United States equity-indexed funds, actively managed United States equity funds, balanced funds, bond funds, real estate investment trusts, and international funds.

(i) (No change.)

(ii) In evaluating the appropriateness of a particular commingled fund, the utility has the following duties, which ~~must~~ be of a continuing nature:

(I)-(III) (No change.)

- (iii) The payment of load fees ~~must~~ shall be avoided.
- (iv) Commingled funds focused on specific market sectors or concentrated in a few holdings ~~must~~ shall be used only as necessary to balance the trust's overall investment portfolio mix.

§25.486 Customer Protections for Brokerage Services.

(a) - (j) (No change.)

(k) **Client Access and Complaint Handling.**

(1) **Client Access.** Each broker must ensure that clients have reasonable access to its service representatives to make inquiries and complaints, discuss charges on bills or any other aspect of the brokerage services provided to the client by the broker, terminate an agreement to provide services, and transact any other pertinent business. A broker must promptly investigate client complaints and advise the complainant of the results. A broker must inform the complainant of the commission's informal complaint resolution process and the following contact information for the commission within 21 days of receiving the complaint: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, ~~TTY (512) 936-7136~~, and Relay Texas (toll-free) 1-800-735-2989.

(2) (No change.)

(3) **Informal Complaints.**

(A) A person may file an informal complaint with the commission by contacting the commission at: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)

936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, ~~TTY (512) 936-7136~~, and Relay Texas (toll-free) 1-800-735-2989.

(B)-(G) (No change.)

(4) (No change.)

(1) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 27TH DAY OF APRIL 2023 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**