

PROJECT NO. 25959

RULEMAKING ON OVERSIGHT OF	§	PUBLIC UTILITY COMMISSION
INDEPENDENT ORGANIZATIONS	§	
IN THE COMPETITIVE ELECTRIC	§	OF TEXAS
MARKET	§	
	§	

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §25.361
AND NEW §25.362 AS APPROVED FOR PUBLICATION AT THE
SEPTEMBER 25, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.361, relating to Electric Reliability Council of Texas (ERCOT), and new §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. The proposed new rule and amendment will provide standards for the operation of an independent organization in the ERCOT region. In addition to these rules, the commission is also proposing a new procedural rule, §22.251, relating to Review of Electric Reliability Council of Texas Action. Comments will be requested on this proposal through a separate notice. Project Number 25959 is assigned to this proceeding.

Connie Corona, Director, Electric Policy Analysis, Policy Development 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.

Ms. Corona 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 sections will be to provide guidelines under which an independent organization certified by the commission

is expected to operate. Providing clear guidelines should enhance the effectiveness of ERCOT in carrying out its important responsibilities in the electric industry in Texas. PURA §39.151(c) requires the commission to certify an independent organization or organizations to perform functions necessary to the operation of a competitive retail electric market. By proposing new §25.362, the commission seeks to make clear its expectations for the management of such an independent organization. At the same time, the independent organization should have the latitude to develop and implement its own specific policies and procedures, under guidelines established by the commission. As such, the commission finds it to be in the public interest to set forth such guidelines in this proposed section.

The commission is proposing that ERCOT be required to provide information to the commission, even if the information is designated as Protected Information under the ERCOT Protocols. It is also proposing procedures for resolving issues relating to the protection or disclosure of such information. It is contemplated that if these provisions are adopted as proposed, they would supercede the existing confidentiality agreement between the commission and ERCOT. The commission considered proposing rules concerning the review of requests for changes in the fees that ERCOT charges, but has decided to defer this matter. It is expected that ERCOT will request a change in its administrative fee, to be effective in 2003, and that a new rule dealing with that subject could not be adopted quickly enough to have any bearing on the processing of that request. Prudent management of its resources by ERCOT is a matter of concern to the

commission, but conducting a rulemaking proceeding on this subject would be more appropriate in early 2003 than now.

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.

Ms. Corona 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.

The commission staff will conduct a public hearing on this rulemaking under 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, December 3, 2002 at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new and amended sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. The commission requests

that interested parties comment on whether the proposed new rules conform fully with its existing rules relating to ERCOT. 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 sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 25959.

The commission specifically requests that interested persons comment on the following questions:

1. How should proposed §25.362(g) be changed to accommodate ERCOT's transition from a stakeholder board to a hybrid stakeholder/independent Board?
2. Is the requirement in proposed §25.362(i)(3) for a third-party auditor consistent with the Non-unanimous Settlement in Docket Number 23320, *Petition of the Electric Reliability Council of Texas for Approval of the ERCOT Administrative Fee*, Item No. 10, which requires ERCOT to retain an internal auditor?
3. Should proposed §25.362 include a requirement that ERCOT adopt a mechanism for allocating administrative penalty liabilities, such as applying it to line-items in

the ERCOT budget or assessing it to members? If "yes," to whom, and/or to what ERCOT budget items, should such a mechanism apply? Do other ISO's have such mechanisms?

The new and amended sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 §39.151 which requires the commission to certify an independent organization to perform functions necessary for the operation of a competitive electric market.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §35.004, §39.151, and §39.155.

§25.361. Electric Reliability Council of Texas (ERCOT).

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

(c) **Functions.** ERCOT shall operate an integrated electronic transmission information network and carry out the other functions prescribed by this section.

ERCOT shall:

- (1) administer, on a daily basis, the operational and market functions of the ERCOT system, including scheduling of resources and loads, and transmission congestion management, as set forth in the ERCOT protocols;
- (2) serve as the single point of contact for the initiation of transmission transactions;
- (3) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;
- (4) direct the curtailment and redispatch of ERCOT generation and transmission transactions on a non-discriminatory basis, consistent with ERCOT protocols;
- (5) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;
- (6) coordinate and schedule planned transmission facility outages;

- (7) perform system screening security studies, with the assistance of affected TSPs;
- (8) plan the ERCOT transmission system, in accordance with subsection (f) of this section;
- (9) administer ~~registration~~ procedures for the registration of market participants;
- (10) administer the customer registration system;
- ~~(11)(10)~~ administer the renewable energy program;
- ~~(12)(11)~~ monitor generation planned outages;
- (13) disseminate information relating to market operation and the availability of services, in accordance with the ERCOT protocols;
- ~~(14)(12)~~ submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT with emphasis on critical transmission projects, alternatives for meeting system needs, and recommendations for meeting system needs, pursuant to PURA §39.155 (relating to Commission Assessment of Market Power); and
- ~~(15)(13)~~ perform any additional duties required under the ERCOT protocols.

(d) - (f) (No change.)

(g) **Information and coordination.** Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this section and the ERCOT protocols. ERCOT shall maintain the confidentiality of competitively sensitive information as specified in §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) entrusted to it. ERCOT shall also disseminate information relating to market prices and the availability of services, in accordance with the ERCOT protocols. Providers of transmission and ancillary services shall also maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.

(h) - (k) (No change.)

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

- (a) **Purpose.** This section provides standards for the operation of an independent organization within the ERCOT region.
- (b) **Application.** This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under the Public Utility Regulatory (PURA) §39.151.
- (c) **Adoption of rules by ERCOT and commission review.** ERCOT shall adopt and comply with procedures concerning the adoption and revision of protocols, rules, or other statements of general policy that have an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system.
- (1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and an evaluation by ERCOT of the costs and benefits to the organization, market participants, and wholesale and retail customers.
- (2) The commission shall process requests for review of ERCOT rules and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Action).

- (d) **Access to meetings.** ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, topics to be discussed during open and closed portions of the meetings and making and retaining a permanent record of the meetings.
- (e) **Access to information.** ERCOT shall adopt and comply with procedures for persons to request access to records relating to the governance and budget of the organization, market operation, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available.
- (1) To the extent it collects market information pursuant to its protocols or operating guides, ERCOT shall provide the commission or the commission staff with the information the commission or the commission staff deems necessary to assess market power and the development and operation of competitive wholesale and retail markets in ERCOT; evaluate possible violations of laws, rules, or codes of conduct; and carry out the commission's responsibilities for oversight of ERCOT.
- (2) Commercial, financial or operating information submitted to or collected by ERCOT pursuant to requirements of the protocols or operating guides that is designated as Protected Information pursuant to the Protocols shall

be withheld from public disclosure except as otherwise provided in this subsection.

- (3) The commission may, upon its own motion or the petition of an affected party, and with reasonable notice to affected parties, require ERCOT to:
 - (A) Disclose information designated by the Protocols as Protected Information; or
 - (B) Withhold disclosure of information that the Protocols do not designate as Protected Information.
- (4) Information received by the commission under this subsection is subject to release pursuant to the provisions of this section and the Texas Public Information Act (TPIA).
- (5) Upon receipt of a request for information maintained by the commission that is designated as "Protected Information" under the ERCOT Protocols from a member of the Texas Legislature, the commission shall provide the information to the requestor subject to the provisions of Texas Government Code Annotated §552.008(b)(1)-(4). With the permission of the requesting member of the Texas Legislature, the commission shall notify ERCOT and the entity that provided the information to ERCOT of the existence of the request, the identity of the requestor, and the substance of the request.

- (6) Commission officers, employees, consultants, agents, and attorneys provided access to Protected Information pursuant to this paragraph shall not disclose such information, except as provided in this subsection.
- (7) Except as provided in paragraphs (5) and (6) of this subsection, the commission shall provide notice to ERCOT and the entity that provided the information to ERCOT if it receives a request for Protected Information that the commission has obtained from ERCOT at least 72 hours prior to the disclosure of the requested information (or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of Protected Information earlier than within 72 hours, prior to such disclosure). The commission shall cooperate with ERCOT and any entity that provided the information to ERCOT in seeking to protect the Protected Information from public disclosure by confidentiality agreement, protective order, aggregation of information, or other reasonable measures. Notwithstanding the foregoing, however, nothing shall preclude the commission from considering the release of Protected Information in accordance with paragraph (3) or (8) of this subsection.
- (8) If the commission receives a request under the TPIA for information that has been designated as Protected Information, the commission shall, within ten days of receipt of the request, provide notice of the request to ERCOT and to the entity that provided the information to ERCOT. Any

person who seeks to protect information from public disclosure must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion. After an opportunity has been provided to the requestor and the entity that provided the information to ERCOT to present information or comment to the commission on whether information is subject to protection from public disclosure under the TPIA, a person designated by the commission may make a determination as to whether the information sought is subject to public disclosure under the TPIA. In addition, pursuant to the provisions of the TPIA, the commission may request an opinion from the Office of the Attorney General as to whether the information is subject to protection from public disclosure under the TPIA.

- (f) **Conflicts of interest.** ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.

(g) **Qualifications for membership on governing board.** ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and

- (B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection.
 - (3) The procedures adopted under paragraph (2) of this subsection shall:
 - (A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection; and
 - (B) Specify how decisions concerning the qualification of an individual will be made.
 - (4) A decision concerning an individual or organization's qualification is subject to review by the commission.
- (h) **Required reports.** Beginning with the conclusion of the 2002 calendar year, ERCOT shall file an annual report with the commission not later than 120 days after the end of each calendar year.
- (1) The annual report shall include:
 - (A) An independent audit of ERCOT's financial statements for the report year;
 - (B) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year and a schedule showing the variance between actual and budgeted revenues and costs;

- (C) An independent audit of ERCOT's market operation conducted during the report year; and
 - (D) The annual board-approved budget.
- (2) ERCOT shall file quarterly reports no later than 45 days after the end of the first, second and third quarters, which shall include:
 - (A) All internal audit reports that were produced during the reporting quarter, and
 - (B) A report on performance measures, as prescribed by the commission.
- (i) **Compliance with rules or orders.** ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, the commission's substantive rules, or a commission order. If ERCOT fails to comply with PURA, the commission's substantive rules, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.
 - (1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.

- (2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.
- (3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.
- (4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.
- (5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.
- (6) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the instance of non-compliance or related instances of noncompliance.
- (7) In assessing penalties, the commission shall consider the following factors:
 - (A) Any prior history of non-compliance;
 - (B) Any efforts to comply with and to enforce the commission's rules;
 - (C) The nature and degree of economic benefit or harm to any market participant or electric customer;
 - (D) The damages or potential damages resulting from the instance of non-compliance or related instances of noncompliance;

- (E) The likelihood that the penalty will deter future non-compliance;
and
 - (F) Such other factors deemed appropriate and material to the particular circumstances of the instance of non-compliance or related instances of noncompliance.
- (8) The commission may initiate a compliance proceeding or other enforcement proceeding upon its own initiative or after a complaint has been filed with the commission that alleges that the ERCOT has failed to comply with PURA, the commission's substantive rules, or a commission order.
- (9) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.
- (j) **Priority of commission rules.** This section supersedes any procedures or protocols adopted by ERCOT that conflict with the provisions of this section. Except as otherwise provided in this section, the adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.

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 SEPTEMBER 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**