

**PROJECT NO. 33812**

<b>RULEMAKING TO IMPLEMENT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>REQUIREMENT OF PURA</b>	<b>§</b>	
<b>§ 39.151(d) CONCERNING</b>	<b>§</b>	
<b>DECERTIFICATION OF AN</b>	<b>§</b>	<b>OF TEXAS</b>
<b>INDEPENDENT ORGANIZATION</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.361 AND NEW §25.364  
AS APPROVED AT THE JULY 2, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.361, relating to Electric Reliability Council of Texas, and new §25.364, relating to Requirements for Decertification of an Independent Organization. The amendment and new rule will establish procedure for the decertification of an independent organization and the transfer of assets to a successor organization pursuant to Public Utility Regulatory Act (PURA) §39.151(d). This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 33812 is assigned to this proceeding.

Chris Carter, Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the amendment and new rule are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment and new rule.

Mr. Carter has determined that for each year of the first five years the amendment and new rule are in effect, the public benefit anticipated as a result of enforcing the amendment and new rule will be the creation of regulatory certainty regarding the steps to be taken in the event that an independent organization must be decertified by the commission. There will be no adverse

economic effect on small businesses or micro-businesses as a result of enforcing the amendment and new rule. Therefore, no regulatory flexibility analysis is required. There are anticipated economic costs to independent organizations that will be subject to the amendment and new rule, but these costs are unavoidable because the amendment and new rule are required by PURA § 39.151(d).

Mr. Carter has also determined that for each year of the first five years the amendment and new rule 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 (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, August 18, 2009 at 10:00 a.m. The request for a public hearing must be received within 31 days after publication.

Initial comments on the amendment and new rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amendment and new rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by,

implementation of the amendment and new rule. The commission will consider the costs and benefits in deciding whether to adopt the amendment and new rule. All comments should refer to Project Number 33812.

The amendment and new rule are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151(d), which requires the commission to adopt a rule to address decertifying an independent organization and selecting and certifying a successor organization.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 39.151(d).

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

(a) – (k) (No change.)

**(l) Decertification.** ERCOT shall be subject to decertification as an independent organization in accordance with §25.364 of this title.

**§25.364. Decertification of an Independent Organization.**

- (a) **Purpose.** This section establishes the procedures for the decertification of an independent organization and the transfer of assets to a successor organization pursuant to Public Utility Regulatory Act (PURA) §39.151(d).
- (b) **Applicability.** This section applies to any organization that the commission has certified as an independent organization pursuant to PURA §39.151.
- (c) **Initiation of proceeding to decertify.** The commission may initiate a proceeding to revoke an independent organization's certification. Prior to initiating a proceeding to revoke a certification, the commission may conduct an audit or study of the performance of an independent organization with respect to its efficiency and effectiveness in carrying out the duties of an independent organization under PURA and this title. Any such audit or study may be conducted or supervised by the commission and shall be funded by the independent organization.
- (d) **Standard for decertification.** The commission may issue an order decertifying an independent organization if it finds that the organization has committed significant

violations of PURA or commission rules or failed to efficiently and effectively carry out the duties of an independent organization.

- (e) **Order revoking certification.** The commission's order revoking certification shall ensure continuity of operations of the independent organization and shall designate the successor organization that will assume the functions of the independent organization. The commission order revoking certification will provide for the independent organization to transfer its assets and liabilities to the successor independent organization designated by the commission.
- (f) **Selection of successor organization.** Prior to the decertification of an independent organization, the commission shall designate, and certify pursuant to PURA §39.151(c), a successor independent organization from among persons that have submitted proposals in response to the commission's request. To the extent that there are duties performed by the current independent organization that are not required by statute, organizations other than a successor independent organization may be designated to assume those functions.
- (g) **Transfer of assets.** The transfer of assets and liabilities from a decertified independent organization to its successor organization shall be made in a way that ensures that the functions of the independent organization continue to be provided reliably and without interruption. The commission may impose specific conditions or requirements upon the transfer of assets and liabilities.
- (h) **Continuity of operations.** To ensure that all of the required functions of the independent organization continue to be carried out during the decertification and transfer process, the commission, upon its own initiative, may order the independent organization or its

successor organization, or both, to perform or continue certain acts related to the organization's operation. These include, but are not limited to, capital investment projects, financing, meeting or renegotiating contractual obligations, and employment of essential personnel.

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

**ISSUED IN AUSTIN, TEXAS ON THE 2<sup>nd</sup> DAY OF JULY 2009 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**