

PROJECT NO. 27736

**RULEMAKING ON ALLOWABLE § PUBLIC UTILITY COMMISSION
FEES AND RATES OF §
INDEPENDENT ORGANIZATIONS § OF TEXAS
 §**

**ORDER ADOPTING AMENDMENTS TO §25.362 AND NEW §25.363
AS APPROVED AT THE OCTOBER 9, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, and new §25.363, relating to ERCOT Fees and Other Rates, with changes to the proposed text as published in the August 8, 2003 edition of the *Texas Register* (28 TexReg 6172). The amendment and the new section are adopted under Project Number 27736. The new rule establishes the manner in which ERCOT will maintain its accounts and records, the appropriate expense components to be included in ERCOT's fees and rates, and the method of calculating those rates. The amendment adds related reporting requirements concerning ERCOT expenditures and long term operating plans. Prior requests for fee changes have been conducted by the commission on an ad hoc basis, addressing issues as they arose in those cases. Based upon its experience in those cases, the commission has decided to standardize the information that is required to review the reasonableness and sufficiency of ERCOT's fees. Additionally, the commission has determined that additional reporting by ERCOT is needed for the commission to remain informed about changes in ERCOT's revenues and expenses during the time between fee change applications. By implementing these new reporting requirements and providing more specificity in the elements considered in reviewing ERCOT's fees, the new rule and the amendment will

make commission oversight of ERCOT and the review of its fees more efficient and effective and will facilitate participation by interested persons in reviewing ERCOT's fees. The commission finds that these rules will support the public interest by providing greater regulatory certainty, increasing the efficiency of the commission's review process and helping to maintain reasonable fees for ERCOT's services.

In addition, the commission, under a separate order, also adopts a new procedural rule, §22.252 (relating to Procedure for Approval of ERCOT Fees and Rates). The new procedural rule is being published separately, but was adopted as part of Project Number 27736.

The commission staff conducted a public hearing on these sections on September 10, 2003. Although public comment was invited, no person provided comments at the public hearing.

The commission received written comments on the proposed sections on August 29, 2003 from Reliant Resources, Inc. (RRI) and ERCOT. Reply comments were submitted by ERCOT. All comments, including any not specifically referenced herein, have been fully considered by the commission. The commission has made other minor modifications for the purpose of clarifying its intent and for format or grammatical purposes.

§25.362 Electric Reliability Council of Texas (ERCOT) Governance***§25.362(h)(2), Quarterly reports***

ERCOT found this provision confusing, contending that it was unsure what information it would be required to provide in the quarterly reports. ERCOT suggested that the language should be revised to require it to provide an accounting of budgeted and actual revenues and expenses with an explanation of any significant variances and that only the fourth quarterly report should include a report on the expected use of any unexpended funds.

Commission response

ERCOT's proposed revision to truncate the reporting requirement by requiring it to provide an accounting of budgeted and actual revenues and expenses with an explanation of any significant variance is unacceptable. ERCOT's proposal would prevent the commission from obtaining necessary information about ERCOT's assets and liabilities, as contained in Attachment A – Standard Chart of Accounts of the fee-filing package. This would reduce the commission's ability to monitor ERCOT's accounting and financial condition during the time between fee changes. In addition, the commission declines to accept ERCOT's proposed revision that would require it to only provide an explanation for significant variations between budgeted and actual revenues and expenses. The commission finds that it is important to monitor the changes in timing and

amounts of expenditures and accounts that deviate from their original budgeted amounts, not just "significant" changes in those amounts.

The commission agrees with ERCOT that during the first three quarters of the budget year it would not be useful to report the expected use of funds in the subsequent year. A report should only be required when funds are not expended within the year budgeted. Since funds not expended in one quarter may be subsequently expended in a later quarter during the same year, requiring such a report on a quarterly basis would not provide meaningful information. A report on the use of unexpended funds should only be required for the fourth quarter. The commission modifies the language of the rule on this point.

§25.362 (k), Long-term operations plan

RRI commented that a long-term operations plan would require ERCOT to expend additional costs, time, and labor to provide information that is repetitive of the guidelines and the general descriptions contained in existing statutes, by-laws, and protocols. RRI further noted that the plan would require a long-term forecasting of goals and budgets, which are not necessary since this proposed rule requires a full cost of service review prior to the approval of any new changes in its rates or fees. RRI stated that the long run planning exercise is superfluous in light of the cost of service ratemaking requirements and its elimination would help reduce costs. Therefore, RRI believes this entire subsection should be deleted.

ERCOT disagreed with RRI's comments. ERCOT stated that long-term planning and public disclosure of that planning is a valuable tool for ERCOT. ERCOT asserted that the costs of compliance with this portion of the rule would not be significant and that the benefits to be obtained would be worthwhile. While it supported the provision, ERCOT also urged the commission to make certain changes in the language and to make it clear that an ERCOT fee case was not the appropriate forum in which to debate the items included in the long-term plan. ERCOT asserted that the language was unclear and inconsistent with ERCOT terminology in some aspects. ERCOT urged the commission to revise the language to more clearly state its obligations concerning the long-term operations plan and provided language to accomplish that result.

Commission response

The commission disagrees with RRI's assertion that a long-term operations plan is far too costly to warrant and that the entire subsection should be deleted. The commission agrees with ERCOT that the long-term operations plan presents important information for both the commission and any persons interested in the amount and timing of ERCOT fee changes. Therefore, the commission declines to eliminate the requirement from the rule. The commission agrees with ERCOT's comments that the language in the rule may be unclear. In order to clarify the rule, the commission accepts the revisions proposed by ERCOT.

§25.363 ERCOT Fees and Other Rates*§25.363(b), System of accounts and reporting**Chart of accounts*

ERCOT objected to the requirement that it maintain accounts reflecting all expenses in a manner that allows the commission to determine the costs for each activity that is subject to a separate fee. ERCOT argued that, with the exception of its System Administrative Fee, WAN Fee and non-ERCOT LSE Fee, its other fees are insignificant. ERCOT does not currently track the costs associated with those fees and the cost of creating systems to separately account for such costs would outweigh any benefit. ERCOT also disputed the need for a rule provision requiring it to obtain commission approval before implementing new or modified accounts. ERCOT stated that approval of the accounts will be done in the commission project related to adopting a form for the fee-filing application. For these reasons, ERCOT urged the commission to delete the requirements to functionalize its accounts by fee and to obtain commission approval before modifying its accounts.

Commission response

The commission does not want to add undue costs to the ERCOT budget. Nevertheless, the commission needs the ability to match ERCOT's revenues with its costs to determine if excess funds are available for other uses. The commission is not requiring ERCOT to

fully unbundle its fees, but to provide information so that it can track revenue with broad cost causation and allocation. The commission agrees with ERCOT that all fees other than the System Administrative Fee, the WAN Fee and the non-ERCOT LSE Fee are not significant revenue generators. However, the costs that the System Administrative Fee covers are significant and need to be reported in sufficient amount of detail to determine reasonableness. That same level of detail is not necessary for other fees and the rule should not be interpreted to require such detail.

The commission believes that implicit in any review of revenues and costs is the ability to make year-to-year comparisons. However, the commission also understands that modifications and creation of accounts is necessary as circumstances warrant, and therefore believes it can review and approve account changes in any subsequent fee case. Thus, the commission concurs that the proposed rule does not need to separately require ERCOT to seek and obtain commission approval prior to implementing new or modified accounts outside of the approval process for the fee-filing package and has revised the language used in the rule. The revised language allows ERCOT to make some changes but provides that ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

Long-term operations plan

ERCOT suggested modifying the rule to avoid an implication that the commission would approve the long-term plan required by §25.362(b).

Commission response

The commission agrees with ERCOT's modification of the language describing the long-term operations plan and modifies the rule accordingly.

*§25.363(c), Allowable expenses for fees and rates**Future Test Year*

ERCOT supported the provisions of the rule allowing it to use a future test year in determining its fees. ERCOT asserted that, because it is currently undergoing a period of expansion, the ability to use a future test year enables it to ensure that its fees will produce revenue that matches its expected costs. ERCOT did not propose any changes to the rule concerning this topic.

Commission response

The commission notes that the rule requires the use of a historic test year, but allows the use of a future test year "if ERCOT demonstrates that the scope of its activities and functions has been expanded by the commission or the market participants, resulting in higher future costs." The commission agrees with ERCOT that the flexibility to use a future test year is important during this start-up period, but the commission expects that,

once ERCOT's operations become more stable, the use of a future test year will become more rare. ERCOT's comments do not require any changes to the rule.

Allowable expenses

ERCOT stated that it appreciates the provisions in the rule allowing it to recover some expenses related to charitable contributions and public service announcements. However, ERCOT felt that the language of the rule was confusing and proposed revisions to state that the expenses are allowed, rather than stating that they are not disallowed, and to correct some typographical errors.

Commission response

The commission agrees with ERCOT's suggestion to add clarity to the language of the rule but declines to adopt the specific language proposed by ERCOT. The commission believes that the limitations for public service announcements should be kept and has accepted ERCOT's suggestion to list them as allowed expenses. However, the commission does not agree with ERCOT's suggestion to list charitable contributions as an allowable expense. The commission finds that, in most instances, charitable contributions are not "costs" incurred by ERCOT in performing the functions required by PURA §39.151 and it is not appropriate to allow mandatory fees to be extended for charitable contributions. Accordingly, the commission is deleting any language that would indicate that such contributions would automatically be included as allowable

expenses in setting ERCOT's fees. By not allowing contributions to be included as an expense, the commission is not preventing or discouraging ERCOT's employees from making voluntary contributions to charities of their choosing. The commission has also corrected the typographical errors noted by ERCOT.

The commission is also adding language to subsection (c)(3)(F) of this section to indicate that an expense will be disallowed if it is not sufficiently supported by the fee-filing package and accompanying evidence that ERCOT files with its application. This requirement is based upon other commission rules that require the submission of a fee-filing package and that place the burden of proof on an applicant to support its application. The language is added to provide an explicit recitation of the requirement created by those rules and does not add any new substantive requirements.

The new section and amendment are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (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 grants the commission oversight and review authority over independent organizations, like ERCOT, and authorizes the commission to establish reasonable and competitively neutral rates for such organizations.

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

§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 Act (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 and procedures that constitute statements of general policy and 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, in the case of new protocols or revisions to protocols, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.
- (2) The commission shall process requests for review of ERCOT protocols, procedures, and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).

- (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, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the board of directors shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.
- (e) **Access to information.** This subsection governs access to information held by ERCOT and access to information held by the commission that it receives from ERCOT.
- (1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to 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. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT will notify the requester of the expected delay and the anticipated date that the documents may be available. ERCOT's procedures regarding access to records shall be consistent with this section.

- (A) Information submitted to or collected by ERCOT pursuant to requirements of the protocols or operating guides shall be protected from public disclosure only if it is designated as Protected Information pursuant to the Protocols, except as otherwise provided in this subsection.
- (B) On its own motion or the petition of an affected party, including commission staff, the commission may, after providing reasonable notice to affected parties and an opportunity to be heard, amend the definition of "Protected Information" or the designation of "Items Not Considered Protected Information" under the ERCOT Protocols. In considering such an amendment, the commission may review the specific information under consideration or a general description of such information.
- (C) The procedures adopted by ERCOT under this subsection shall include provisions for promptly responding to a request from the commission or commission staff for information that ERCOT collects, creates or maintains in order to provide the commission access to information that the commission or commission staff determines is necessary to assess market power and the development and operation of competitive wholesale and retail markets; to evaluate possible violations of laws, rules, protocols, or codes of conduct; or to carry out the commission's responsibilities for oversight of ERCOT.

- (2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act (TPIA).
- (A) If the commission receives from a member of the Texas Legislature a request for information that the commission has or has access to that is designated as "Protected Information" under the ERCOT Protocols, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated §552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify ERCOT, and, if applicable, 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.
- (B) If the commission receives a request for information that the commission has or has access to that has been designated as Protected Information under the Protocols the commission shall make a good faith effort to provide notice of the request to the affected market participant and ERCOT within three business days of receipt of the request. If the third-party provider of the information objects to the release of the information, the commission shall offer to facilitate an informal resolution between the requestor and the third party. If informal resolution of an

information request is not possible, the commission will process the request in accordance with the TPIA.

- (C) In the absence of a request for information, if the commission staff seeks to release information that the commission has or has access to that has been designated as Protected Information under the Protocols, the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under the TPIA.
- (D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information 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.
- (E) Except as otherwise provided in subparagraph (A) of this paragraph, if either the commission or the attorney general determines that the disclosure of information designated as Protected Information under the ERCOT Protocols is appropriate,

the commission shall provide notice to the entity that provided the information and to ERCOT at least three business days prior to the disclosure of the Protected 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 three business days, prior to such disclosure).

- (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.**
- (1) **Annual report.** Beginning with the 2002 calendar year, ERCOT shall file an annual report with the commission, not later than 120 days after the end of the year. 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 for the report year;
 - (D) The annual board-approved budget; and
 - (E) Any other information the commission may deem necessary.
- (2) **Quarterly reports.** ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:
- (A) All internal audit reports that were produced during the reporting quarter;

- (B) A report on performance measures, as prescribed by the commission;
 - (C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:
 - (i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;
 - (ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;
 - (iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and
 - (D) Any other information the commission may deem necessary.
- (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 non-compliance.
- (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 non-compliance;
 - (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 non-compliance.
- (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 protocols or procedures adopted by ERCOT that conflict with the provisions of 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.
- (k) **Long-term operations plan.** Annually, by October 31st, ERCOT shall file a long-term operations plan. At a minimum, the long-term operations plan shall provide the following information:

- (1) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, centralized control and power scheduling, centralized commercial functions, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers;
- (2) An overview of the major systems, including both hardware and software, operated by ERCOT, including descriptions of the functionality provided, estimates of remaining useful life, estimates of ongoing maintenance and upgrade costs, and evaluations of the performance of each system;
- (3) A description of major capital projects completed in the current budget year and those expected to be completed in the next budget year, including an explanation of why each project is needed to assist ERCOT in meeting its responsibilities;
- (4) A schedule summarizing ERCOT's sources and uses of funds for a six-year period beginning with the last historic calendar year and projections for the next five calendar years;
- (5) Long-term goals for all ERCOT activities;
- (6) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations, as set forth in PURA and the commission rules, during the current budget year; and
- (7) Any other information or activity required by the commission.

§25.363. ERCOT Fees and Other Rates.

- (a) **Scope.** This section applies to all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under the Public Utility Regulatory Act (PURA) §39.151. Charges for wholesale market services acquired by ERCOT in accordance with its protocols are not governed by this section, but may be revised in accordance with §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance).
- (1) A fee or rate that was in effect on the effective date of this section shall remain in effect and shall not be changed without commission approval.
 - (2) ERCOT must seek and obtain commission approval of any new or modified rate or fee prior to implementing the new or modified rate or fee.
- (b) **System of accounts and reporting.** For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the fee-filing application approved by the commission and the long-term operations plan. The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each activity for which a separate fee is charged. ERCOT may

not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

- (c) **Allowable expenses for fees and rates.** Fees and rates shall be based upon ERCOT's cost of performing its required functions as described in PURA §39.151(a). To determine the reasonable cost of performing its functions, ERCOT shall use a historical test year, except that ERCOT may use a future test year if ERCOT demonstrates that the scope of its activities and functions has been expanded by the commission or the market participants, resulting in higher future costs. To determine if the costs are reasonable and necessary, the commission shall review ERCOT's costs for consistency compared to the ERCOT long-term operations plan, to costs incurred by market participants and other independent system operators for similar activities, and to any other information and data considered appropriate by the commission.
- (1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151, shall be included in allowable expenses.
- (2) Allowable expenses, to the extent they are reasonable and necessary may include, but are not limited to the following general categories:
- (A) Operating expenses, which include salaries and related benefits, direct advertising for the specific purpose of recruiting employees, legal and consulting services, hardware and software maintenance

and licensing, insurance, employee training and travel, and depreciation;

- (B) Facility and equipment costs, and other long-lived investments;
- (C) Debt service (interest plus principal reduction) and other reasonable and necessary costs of capital to fund investments in property and facilities, and other capital expenditures that are used and useful in performing the functions of an independent organization;
- (D) Expenses associated with fees and dues charged by organizations setting electric or energy business practices and communications standards (*e.g.*, North American Electric Reliability Council ("NERC"), North American Energy Standards Board ("NAESB"), and ISO/RTO Council) to which ERCOT is presently a member; and
- (E) Actual expenditures for public service announcements and community education efforts, provided that the total sum of all such items allowed in the cost of service shall not exceed 0.05% of the annual ERCOT revenue requirement or \$50,000, whichever is less.

(3) The following are not allowable as a component of expenses:

- (A) Legislative advocacy expenses, whether made directly or indirectly;

- (B) Funds expended in support of political candidates, movements or causes;
- (C) Funds expended promoting religious causes;
- (D) Funds expended in support of or in acquiring membership in social, recreational, or fraternal clubs or organizations;
- (E) Funds expended for advertising, marketing, or other promotions, which includes, but is not limited to:
 - (i) promotional goods;
 - (ii) efforts to increase name recognition;
 - (iii) radio, television, newspaper or other media advertising; except as otherwise expressly authorized; and
- (F) any expenditure found by the commission to be unreasonable, unnecessary, not in the public interest, or not sufficiently supported by the fee-filing package and accompanying evidence.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that amendments to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, and new §25.363, relating to ERCOT Fees and Other Rates, are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 13th DAY OF OCTOBER 2003.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Julie Parsley, Commissioner

Paul Hudson, Commissioner