

PROJECT NO. 27736

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

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §25.362
AND NEW §25.363 AS APPROVED AT THE JULY 25, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes 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. The proposed new rule will establish the manner in which ERCOT maintains its accounts and records and will determine the appropriate expense components to be included in ERCOT's fees and rates and the method of calculating those rates. The proposed amendment will add related reporting requirements concerning ERCOT expenditures and long term operating plans. Project Number 27736 is assigned to this proceeding.

The commission is also proposing new procedural rule §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) to address the procedure for reviewing ERCOT fee changes. The proposed new procedural rule is being published separately in this issue of the *Texas Register* but will be considered as part of Project Number 27736.

Richard Lain, Financial Analyst, Financial Review Division of the Public Utility Commission, 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.

Richard Lain 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 additional certainty concerning the appropriate expense components to be included in the fees and rates of ERCOT. The new rule and amendment will also provide additional information concerning ERCOT's expenditures and long-term operations plans and will enable the commission and interested persons to have greater insight into the operations of ERCOT. By providing additional certainty, the new rule and amendment will also help to reduce the issues that may be raised in commission proceedings to establish the level of ERCOT's fees and rates and reduce the cost of participating in such proceedings. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Richard Lain 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 Wednesday, September 10, 2003, at 10:00 a.m.

Comments on the proposed amendment and new section (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 21 days after publication. Reply comments may be submitted within 30 days after publication. 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 these sections. All comments should refer to Project Number 27736.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

The new section and amendment are proposed 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) - (g) (No change.)

(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.

~~(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 for the report year; ~~and~~

(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; ~~and~~

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

(k) **Long-term operations plan.** Annually, by September 30th, ERCOT shall file a long-term operations plan. At a minimum the long-term operations plan shall provide the following information:

(1) A definition of the responsibilities and role of ERCOT, the transmission and distribution utilities (TDUs), and retail electric providers (REPs) in the electric market;

- (2) A description of the long-term roles and responsibilities of ERCOT such as single control area, customer registration, transaction clearinghouse, load forecasting and reserve margin planning, transmission planning, and transmission system additions and upgrades;
- (3) Estimated annual budgets over a three, five, and ten-year time frame;
- (4) Life cycle costs for the customer registration system and all other systems supported by the ERCOT administrative fee;
- (5) Long-term goals for all ERCOT activities;
- (6) Performance measures for ERCOT's functions as described in PURA §39.151(a) to allow for an annual evaluation of ERCOT's performance in meeting these goals; 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 and long-term operations plan approved by the commission. 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 must seek and obtain commission approval of any new or modified account prior to implementing the new or modified account.

(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, 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; and

(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/TRO Council) to which ERCOT is presently a member.

(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, fraternal, or clubs or organizations in excess of 0.1% of the annual ERCOT revenue requirement, or \$100,000, whichever is less;

(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 that this prohibition does not include public service announcements and community education efforts (not to

exceed 0.05% of the annual ERCOT revenue requirement or \$50,000, whichever is less) or direct advertising for the specific purpose of recruiting employees, but does include advertising in an indirect fashion to increase name recognition with potential employees; and

(F) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest.

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 28th DAY OF JULY 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**