

PROJECT NO. 37262

RULEMAKING PROCEEDING	§	PUBLIC UTILITY COMMISSION
CONCERNING INTERNET	§	
BROADCASTING OF MEETINGS OF	§	OF TEXAS
THE ELECTRIC RELIABILITY	§	
COUNCIL OF TEXAS	§	

**ORDER ADOPTING NEW §25.366
AS APPROVED AT THE JANUARY 14, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.366, relating to Internet Broadcasting of Public Meetings of an Independent Organization with changes to the proposed text as published in the October 9, 2009 issue of the *Texas Register* (34 TexReg 6966). The new rule implements the newly enacted Public Utility Regulatory Act (PURA) §39.1511(c), which requires the commission to ensure that an independent organization certified pursuant to PURA §39.151 will make publicly accessible without charge live Internet video of all public meetings subject to PURA §39.1511 for viewing from an Internet website. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). The new §25.366 is adopted under Project Number 37262.

A public hearing was not requested and the commission received written comments from two parties, Office of Public Utility Counsel (OPC) and the Electric Reliability Council of Texas (ERCOT).

Comment Summary

OPC commented that the proposed rule accurately reflects the intent of the House Bill 1783 because it understood the Internet broadcasting requirements of the rule to apply to the public

meetings of not only the ERCOT Board and the two major board committees (the Human Resources (HR) and Governance Committee and the Finance and Audit Committee), but also the meetings of the Technical Advisory Committee (TAC), and the five TAC subcommittees (Wholesale Market Subcommittee - (WMS), Retail Market Subcommittee - (RMS), Protocol Revision Subcommittee - (PRS), Commercial Operations Subcommittee - (COPS), and Reliability and Operations Subcommittee - (ROS)). To the extent that coverage of the committees and subcommittees mentioned above are proven to be cost-prohibitive, OPC would support a rule that allows for the Internet broadcasting requirements to be limited to the ERCOT Board and the TAC. OPC also recommended the addition of a definition subsection to clarify the term "public meeting" for purposes of the rule.

ERCOT disagreed with OPC's suggestion that the public meetings as described in the proposed rule include the meetings of the TAC or any of its subcommittees, particularly because none of the ERCOT Board members currently serve as members of TAC or TAC subcommittees. ERCOT also noted that revisions to the ERCOT bylaws (including Section 4.3), prohibiting ERCOT Directors and Segment Alternates from serving as members of TAC or TAC subcommittees, have been approved by the ERCOT Board and will be submitted to ERCOT's Corporate Members for approval at their annual meeting on December 15, 2009. ERCOT also believed that the annual meeting of ERCOT's Corporate Members should not be subject to the broadcasting requirements of PURA §39.1511(c). ERCOT recommended that the definition of public meetings should be clarified to only include the board meeting and the four board committee meetings (Finance & Audit, H.R. & Governance, Special Nodal Program, and

Nominating Committees) and to exclude meetings of TAC, TAC subcommittees, or the annual meeting of ERCOT's Corporate Members.

Commission Response

The commission concludes that the public meetings subject to the broadcast requirements of PURA §39.1511(c) only includes meetings of the governing body of an independent organization, and meetings of any committee or subcommittee of the governing body of the independent organization. The commission agrees with ERCOT that, in the case of ERCOT, these public meetings should be limited to the meetings of the ERCOT Board of Directors and the committees of the board, currently, Finance & Audit, H.R. & Governance, Special Nodal Program, and Nominating Committees. The commission notes that the broadcasting requirements of the rule would also apply to the meetings of any subsequently created committees of the governing body of an independent organization. The commission disagrees with OPC that the broadcast requirements of PURA §39.1511(c) apply to TAC or TAC subcommittees. The commission notes ERCOT's comments that ERCOT Board members do not currently serve as members of TAC or TAC subcommittees and are not expected to do so in the future and notes that the revisions to the ERCOT bylaws prohibiting membership of ERCOT Board members on the TAC or its subcommittees have been approved by ERCOT's Corporate Members. Therefore, the commission declines to adopt OPC's recommendation because there is no statutory requirement that the broadcasting requirements of the rule apply to TAC or any of its subcommittees. The commission also agrees with ERCOT that the annual meeting of ERCOT's Corporate Members is not subject to the broadcasting requirements of the rule

because it is a meeting that is not convened by the board; rather, this annual meeting is analogous to the meeting of shareholders of a corporation. The commission concludes that there is no statutory requirement in PURA §39.1511(c) that the broadcasting requirements of the rule apply to the annual meeting of ERCOT's Corporate Members.

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.151, which grants the commission broad oversight over an independent organization including the authority to approve rates that may be charged by the independent organization to recover its costs; PURA §39.1511, which sets forth the requirements that an independent organization must satisfy to ensure that the public meetings of the governing body of an independent organization are open to the public; and specifically, PURA §39.1511(c), which requires the internet broadcasting of public meetings of an independent organization.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.1511.

§25.366. Internet Broadcasting of Public Meetings of an Independent Organization.

- (a) **Purpose.** This section establishes the requirements for the Internet broadcasting of public meetings of an independent organization pursuant to Public Utility Regulatory Act (PURA) §39.1511(c).
- (b) **Applicability.** This section applies to any organization that the commission has certified as an independent organization pursuant to PURA §39.151.
- (c) **Internet Broadcasting.** An independent organization shall make publicly accessible without charge live Internet video of all public meetings for viewing from a link posted to the organization's Internet website. For purposes of this subsection, public meetings are meetings of the governing body of an independent organization, and meetings of any committee or subcommittee of the governing body of the independent organization but do not include meetings of the governing body of a regional reliability entity operating under the authority of the Energy Policy Act of 2005. A governing body or a committee or a subcommittee subject to this section may enter into executive session closed to the public and without live Internet video to address sensitive matters such as confidential information related to personnel matters, contracts, or lawsuits, competitively sensitive information, information related to the security of the regional electrical network, or other information that is required to be protected from release to the public.
- (d) **Cost Recovery by the Independent Organization.** The independent organization may recover the costs of complying with this section through fees approved by the commission.

This agency hereby certifies that the adoption 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 new §25.366 relating to Internet Broadcasting of Public Meetings of an Independent Organization is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 15th day of JANUARY 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER