

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS
AUSTIN, TEXAS

IN THE MATTER OF THE OPEN MEETING)
OF THURSDAY, NOVEMBER 7, 2002)

OPEN MEETING
THURSDAY, NOVEMBER 7, 2002

BE IT REMEMBERED THAT AT 9:50 a.m., on
Thursday, the 7th day of November, 2002, that the
above-entitled matter was heard at the Offices of the
Public Utility Commission of Texas, William B. Travis
Building, 1701 North Congress Avenue, Commissioners'
Hearing Room, Austin, Texas, before CHAIRMAN REBECCA
KLEIN and COMMISSIONER BRETT PERLMAN; and the
following proceedings were reported by Lou Ray,
William C. Beardmore and Nancy Salinas, Certified
Shorthand Reporters of:

1 postcard that was allowable previously. And,
2 Connie, as I understand, that was an option in
3 the prior version of the rule -- is that
4 right -- or was it mandatory?

5 MS. CORONA: It was mandatory in
6 the rule, but in Staff's discussions with the
7 utilities at that time, we worked out some
8 alternatives to that because of the costs that
9 were involved.

10 CHAIRMAN KLEIN: Okay. I was fine
11 with the rule as filed.

12 COMM. PERLMAN: Yeah, I consented
13 it. So I'm fine.

14 CHAIRMAN KLEIN: I'll entertain a
15 motion to approve it as filed.

16 COMM. PERLMAN: So moved.

17 CHAIRMAN KLEIN: And approved.

18 Thanks, Connie.

19

20 AGENDA ITEM NO. 11

21

22 PROJECT NO. 26556 - RULEMAKING TO AMEND
23 PUC SUBST. R. 25.41 RELATING TO PRICE
TO BEAT

24

25 CHAIRMAN KLEIN: Agenda Item No.

1 11. This is the price-to-beat rule, and this is
2 in its proposed form. I know, Brian, you had, I
3 guess, one workshop on this, I believe. I think
4 we're going in the right direction. In fact, I
5 was looking in the rule itself on Page 3 where
6 it's highlighting the different -- the effects
7 of the different periods of days -- 10-day,
8 20-day, 30-day -- that, you know, the 20-day
9 version as it's proposed in the rule, anyway, is
10 almost as beneficial in some time periods as is
11 the 10-day period.

12 So I thought that was a little
13 surprising to me. But that kind of information
14 is very useful for me, and that, initially, was
15 the kind of analysis and the quantitative data
16 that helps go towards this. So I'm glad we have
17 at least that.

18 I think that there is one thing that I
19 would like to try to evolve in this rule, and
20 that has to do with the electricity index. I
21 would propose that we put in here for comment
22 another question -- an additional question in
23 the preamble, and that question would read,
24 "What objective criteria should the Commission
25 consider adopting with respect to what

1 constitutes a sufficiently liquid electricity
2 commodity index or trading hub?"

3 The Commission desires comments on
4 specific criteria such as the volume of trades,
5 the number of participants, the spread between
6 bid and (inaudible) prices, et cetera. And I
7 think what's the most useful for us is to be
8 able to understand what, if any, of these
9 criteria we should incorporate a rule as we go
10 forward to try to benchmark against as
11 an electricity price index creates itself.

12 I think there is just, you know,
13 incremental value in the fact that we -- and,
14 you know, I'm certainly supportive of that and
15 the value that -- the fact that we have just
16 lifted the restriction as far as a price index
17 and its prospect being pre-2004 and not
18 exclusively contemplated after the true-up.
19 Okay. Good.

20 Well, I'll be anxious for the comments
21 and also the different ideas as far as Item
22 No. 5 that you have here in the context of what
23 adjustments might be had to the price to beat
24 after a true-up proceeding and any viable
25 options there. So...

1 MR. LLOYD: Commissioners, there
2 are a few changes. We filed a memo -- it was
3 filed this morning -- on some wording changes.
4 We had intended to give the Commission more
5 flexibility in the way it was written, but,
6 arguably, provided them less. So the changes in
7 the memo we would recommend making to the
8 proposed rule with one slight additional change
9 to that -- that we would add the word
10 "thereafter" after "practicable" in each of
11 those sentences just to be clear that we're not
12 trying to make it 45 days or shorter.

13 What this is meant to do is say "45
14 days" or "due to Open Meeting schedules" or some
15 other reason the Commission needs some
16 additional time past that. That was what this
17 was intended to do.

18 COMM. PERLMAN: That was the only
19 other tweak I'd make on this, just to make that
20 clear, is maybe "as the Commission so decides"
21 or some words do the effect that it's in the
22 Commission's discretion to do this so that we
23 don't run into that issue.

24 CHAIRMAN KLEIN: Do you think that
25 "or as soon as practicable thereafter" would

1 capture that? I just want to make sure that
2 it's not articulated that it's -- I mean, saying
3 that it's in the Commission's discretion -- I
4 certainly understand what we're going for,
5 allowing us some flexibility as necessary, but I
6 want to provide the parties some certainty, too,
7 and what our aspiration is is trying to trying
8 to get these out and not that we might want to
9 linger on these or feel like we have the
10 discretion to be able to linger on these for any
11 amount of time.

12 I'd just like to tighten it up a little
13 bit.

14 COMM. PERLMAN: Tom, what do you
15 think?

16 MR. HUNTER: I think that's fine.
17 I just want to make sure that you don't have to
18 issue a separate order to extend it. That was
19 one of the things that we were trying to avoid,
20 and I think this language avoids that.

21 COMM. PERLMAN: And you think it
22 leaves it -- I mean, the concern, of course, was
23 that, you know, last time our rules sort of
24 hemmed us in. I want to make sure we're in the
25 driver's seat and that that's pretty clear.

1 MR. HUNTER: I think the way it's
2 written we believe that it is and we'll be
3 interested to hear the comments.

4 COMM. PERLMAN: Okay. That's
5 fine. The only other thing --

6 MR. LLOYD: Before we leave that
7 topic so that I'm clear on what we're going to
8 put in here --

9 COMM. PERLMAN: You can put in the
10 change you have.

11 MR. LLOYD: The change I have and
12 that's where we're going to leave it?

13 CHAIRMAN KLEIN: "Thereafter."

14 COMM. PERLMAN: "Thereafter."

15 And, you know, if it turns out that people file
16 comments that say that that needs additional
17 clarification, then we'll clarify it, but I
18 think we teed up that issue.

19 MR. LLOYD: We had one other
20 change -- clarifying change that wasn't in the
21 memo that we came across this morning. If you
22 go to Page 16 of 19, Line 21, we would recommend
23 changing Line 21 to read "price to beat base
24 rates, and the average" blah, blah, blah. In
25 looking at this again, we may have

1 unintentionally resulted in changes, even if
2 nonbypassables don't change. And, again, that's
3 not what we intend to do.

4 CHAIRMAN KLEIN: Okay.

5 COMM. PERLMAN: Okay. The only
6 other thing I had, Becky, that I -- and you
7 actually mentioned it in the way you phrased
8 your comment, and I didn't do -- I wish I had
9 done a memo on this, but I didn't, but I'll
10 throw it out there and if you think it's a good
11 idea, that's fine. If you don't, then that's
12 fine, too.

13 It's on Page 15, 9 through -- well,
14 starting at Line 9. What we've done is we've
15 changed this from trading hub -- from index to
16 trading hub. And the only other sort of
17 suggestion I would have is to leave us a little
18 bit more flexibility there and say "index or
19 trading hub," and then say -- I would say "power
20 region" or "power or geographic region" --

21 CHAIRMAN KLEIN: Right.

22 COMM. PERLMAN: -- so that we have
23 flexibility. And I think what you did is a good
24 catch, because then we'll have some standards by
25 which to judge that.

1 I wouldn't want to find out two years
2 later that, "Well, gee, we have a great megawatt
3 daily index but it's only for the State of Texas
4 and not for North Texas." And so I think if we
5 just make this a little broader, we'll have the
6 flexibility to kind of deal with that in real
7 time.

8 CHAIRMAN KLEIN: Yeah, that's
9 good.

10 COMM. PERLMAN: I would
11 acknowledge that there's probably a basic risk
12 that people weren't going to want to bear and
13 that's why you were going to want a hub, but I
14 think we just ought to leave that for another
15 day to look at.

16 MR. LLOYD: Just so I'm clear,
17 we're going to -- basically, everywhere it says
18 "trading hub," we're going to add "or index?"

19 COMM. PERLMAN: Yeah. And then --

20 CHAIRMAN KLEIN: And then "power
21 region."

22 MR. LLOYD: And where it says
23 "geographic region," we would add "geographic
24 or" --

25 COMM. PERLMAN: Yeah.

1 CHAIRMAN KLEIN: Okay. If there's
2 nothing else, then I'll entertain a motion to
3 approve the proposal as discussed.

4 COMM. PERLMAN: So moved.

5 CHAIRMAN KLEIN: And approved.

6 MR. LLOYD: On a separate related
7 issue -- in looking at kind of both the way the
8 statute and the rule is written, there is some,
9 I guess, concern amongst stakeholders as to
10 whether or not the twice-a-year limitation
11 applies to requests being made or approvals
12 being made by the Commission.

13 So, in other words, if an affiliated
14 REP wished to --

15 CHAIRMAN KLEIN: If it carries
16 over?

17 MR. LLOYD: Right. I think the
18 way we've always read both the statute and the
19 rules, it's two requests a year.

20 CHAIRMAN KLEIN: Yeah, that's what
21 I inferred.

22 MR. LLOYD: I think you-all's
23 opining on that may help folks make decisions,
24 because if it's two approvals a year --

25 CHAIRMAN KLEIN: Can you lead us

1 specifically to that language?

2 MR. LLOYD: I don't know that I
3 actually have the statute, but the language
4 shows up -- if the look at the proposed rule,
5 actually, it's going to show up on Page 12 of
6 19, Lines, basically, 1 through 4 -- "an
7 affiliated retail electric provider may request
8 that the Commission adjust the fuel factors not
9 more than twice a calendar year."

10 COMM. PERLMAN: Okay. I'm still
11 looking for the statute where it talks about
12 that.

13 MR. JOURNEYAY: It's in 39.202(1)
14 and the language is --

15 MR. LLOYD: I think the concern is
16 that if it's approved and companies wish to make
17 a second filing issue, they basically would have
18 to do it within the next couple of days to get
19 that approval.

20 CHAIRMAN KLEIN: I think it's
21 clear-cut as far as a request.

22 COMM. PERLMAN: I'm confused. It
23 says, "An affiliated retail electric provider
24 may request that the Commission adjust the fuel
25 factor not more than twice a year."

1 MR. LLOYD: I think the two
2 readings are, one, that they may request it not
3 more than twice a year, and the other reading is
4 that the Commission has to adjust it not more
5 than twice a year, which would be more toward
6 approval.

7 That's not the way we've ever read it,
8 but there appears to be some concern that it
9 could be read that way.

10 CHAIRMAN KLEIN: You know, that
11 also goes, I guess, to our time periods as well
12 that we're having here -- not that that's going
13 to dictate whether we, you know -- I think,
14 actually, that would have some impetus that we
15 try to get these out quicker than later. But,
16 certainly, if they are requested on, you know,
17 December 31st, then there is -- I think that
18 speaks for itself, how to interpret the rule and
19 the statute.

20 COMM. PERLMAN: I think you're
21 going to have to -- people may have different --
22 I mean, it's not -- you're right. I mean, the
23 statute is not totally clear on it. I think
24 people -- if someone files something, then it
25 will be an issue in the case.

1 MR. LLOYD: Just to be clear, my
2 concern is that if affiliated REPs think it is
3 unclear, it will come up in the case. I think
4 in looking at gas prices under the current rule,
5 most if not all of them could come in again, and
6 they may feel a need to make that filing sooner
7 rather than later if they are afraid that at the
8 end of the day that's going to count as one of
9 their adjustments next year -- not this year.

10 So if you don't know how it reads,
11 that's fine, but I understand that that may be
12 the implication for that uncertainty.

13 COMM. PERLMAN: Okay. That's
14 fine. I think, you know -- I'm not willing to
15 just sort of, without looking at it in the
16 context of something, just kind of make that
17 call.

18 MR. JOURNEAY: Let me pile on
19 here. At a previous Open Meeting, the
20 Commission had delegated authority to Policy
21 Development to issue standard preliminary orders
22 and price-to-beat cases to the extent they were
23 based upon the price differential and natural
24 gas, and we've read that and think that it is a
25 continuing delegation that we're able to operate

1 under.

2 COMM. PERLMAN: I'm not quite sure
3 what you're saying.

4 MR. JOURNEAY: I'm saying that if
5 one were to count back from December 19th, which
6 is our last Open Meeting, and giving timelines
7 in the current price-to-beat rule, one might
8 suspect filings are going to come in tomorrow
9 afternoon.

10 I'm saying that we would want those to
11 move quickly, and that we think we can issue a
12 preliminary order upon the filing of those.

13 COMM. PERLMAN: Yes, you can.
14 That delegation is an ongoing thing. To add
15 this issue, you need to add this issue to your
16 preliminary order. Right?

17 MR. JOURNEAY: Which issue?

18 COMM. PERLMAN: The issue about
19 whether it's -- what this section means.

20 CHAIRMAN KLEIN: I think we would
21 be probably be operating under the prior --

22 MR. JOURNEAY: The cow is already
23 out the gate, I think, if we don't --

24 COMM. PERLMAN: If we don't
25 have -- okay. That's fine.

1 MR. LLOYD: I'm not sure it's an
2 issue. In the next cases, it would be an issue
3 for potentially subsequent cases -- that if the
4 company requests it and it wasn't approved till
5 January and then they tried to make two
6 adjustments next year, whether or not -- the
7 second one would be thrown out, because,
8 oops, you've already got two.

9 COMM. PERLMAN: You're hitting me
10 totally cold on this.

11 MR. LLOYD: And I apologize for
12 not have discussed this in briefing, but it,
13 again, was something that came up this morning.

14 COMM. PERLMAN: We're above the 4
15 percent that's in the rule today?

16 MR. LLOYD: Yes.

17 COMM. PERLMAN: We'll just have to
18 look at it. I don't feel comfortable just kind
19 of giving you the --

20 CHAIRMAN KLEIN: Well, the bottom
21 line is that -- my druthers is if the companies
22 would wait until after the rulemaking is done,
23 knowing that we are in the throes of change and
24 not do something now just to squeak in the door.

25 But the way I feel -- and, you know,

1 it's a hard answer for me, but I think it's --
2 the correct answer, just per the statute and per
3 our rule, is that it's two requests. And if
4 we're ever in a situation where there is a
5 request and that carries over across a calendar
6 year that that doesn't go towards the two other
7 requests that would come in the following year.

8 That wouldn't negatively affect it. I
9 mean, I see that's how the statute -- it talks
10 about requests. It doesn't talk anything about
11 approvals. I would hope that the companies are
12 going to wait until we get this done, because I
13 think some of the changes here are -- that we're
14 going towards are fair. They are reasonable.
15 And we'll know for sure what we end up with
16 along these lines, you know, pretty soon anyway.
17 So...

18 COMM. PERLMAN: When would this be
19 scheduled for adoption at the earliest?

20 MR. LLOYD: This will be up -- I
21 believe we've looked at the second Open Meeting
22 in January for adoption.

23 COMM. PERLMAN: What would be the
24 effect of -- if the rule in place today, could
25 they come in on the 5 percent and the 20

1 percent?

2 MR. LLOYD: Well, we've proposed
3 an amendment to the rule to request filing it
4 after November 15th. But I think it's still
5 above 5 percent. Whether or not it's above 10
6 percent, I don't know offhand. We would have to
7 look at that.

8 COMM. PERLMAN: Okay. Okay. We
9 will wait and see.

10 CHAIRMAN KLEIN: Okay. Good
11 question.