

The Public Utility Commission of Texas (commission) adopts amendments to §25.71, relating to General Procedures, Requirements and Penalties; §25.72, relating to Uniform System of Accounts; §25.73, relating to Financial and Operating Reports; §25.74, relating to Reports on Sale of Property and Mergers; §25.76, relating to Gross Receipts Assessment Report; §25.81, relating to Service Quality Reports; §25.83, relating to Construction Reports; and §25.89, relating to Report of Loads and Resources with changes to the proposed text as published in the March 24, 2000 *Texas Register* (25 TexReg 2507). The proposed amendments are necessary to modify reporting requirements to conform to the Public Utility Regulatory Act (PURA) as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service, 2543 (Vernon) (SB7). These amendments were adopted under Project Number 21232.

The commission received comments on the proposed amendments from Austin Energy; Brazos Electric Power Cooperative, Inc. (Brazos); Greenville Electric Utility System, the City of Denton, and the City of Garland (collectively, Cities); San Antonio City Public Service (CPS); and Texas Electric Cooperatives, Inc. (TEC).

All parties commented on the jurisdiction of the commission over municipally owned utilities and electric cooperatives, citing PURA §40.004 and §41.004, which enumerate specific purposes for which the commission has jurisdiction. By explicitly excluding municipally owned utilities and electric cooperatives

from the definition of the term electric utility, PURA has made a further distinction between the statute's treatment of these entities and its treatment of investor owned utilities.

The commission agrees with the commenters that its jurisdiction over municipally owned utilities and electric cooperatives is limited and has undertaken these amendments in order to remove reporting requirements that are no longer within the commission's authority. The commission intends to require reports from municipally owned utilities and electric cooperatives only to the extent necessary to carry out its statutory responsibilities. In doing so, the goal of the commission is to collect such information in the least burdensome manner possible, while retaining the administrative efficiency gained by uniformity. These amendments strike a fair and equitable balance among those concerns and are consistent with the commission's authority over municipally owned utilities and electric cooperatives.

§25.71, relating to General Procedures, Requirements, and Penalties

Brazos and TEC stated that electric cooperatives should be excluded from the general applicability of the reporting rules. They proposed language to indicate that the rules shall apply to electric cooperatives only where explicitly stated.

The commission agrees and has amended the rule so that electric cooperatives and municipally owned utilities are excluded from the general applicability of the reporting rules, unless otherwise specified in a specific section.

Brazos and TEC stated that special reports required in §25.71(g) should only be required in accordance with the commission's jurisdiction under PURA §41.004. TEC provided suggested language to accomplish this.

The commission agrees and has incorporated the concept proposed by TEC in the rule as amended.

§25.72, relating to Uniform System of Accounts

Brazos and TEC stated that the commission does not have the authority to require electric cooperatives to keep a uniform system of accounts; Brazos is required to keep accounts in accordance with Rural Utilities Service requirements. A cooperative's accounting method lies within the jurisdiction of the cooperative's board of directors. Therefore, Brazos recommended deletion of forms of the phrase "electric cooperative" from the rule as proposed.

The commission disagrees with the commenters. For purposes of reporting transmission costs, electric cooperatives are required to utilize a uniform system of accounts "as will be adequately informative for all regulatory purposes." In response to Brazos' assertion regarding the board of directors' jurisdiction over this issue, subsection (d) provides that an electric cooperative may adopt an alternative system of accounts upon notification to, not the approval of, the commission. The rule specifically mentions the Rural Utilities Service requirements as an example of such an alternative.

§25.74, relating to Reports on Sale of Property and Mergers

Brazos and TEC stated that the commission cannot require a report on the sale of property or on a merger, given that such decisions are within the sole discretion of the cooperative's board of directors.

Brazos recommended that the proposed amendment be deleted.

Cities, Austin Energy, and CPS suggested that the proposed language be modified to remove any implication that a sale, acquisition, lease or rental by a municipal utility is conditioned upon report under §25.74(e). Cities indicated such a modification could be accomplished by requiring the reporting of these activities in annual generating capacity reports. CPS provided suggested language for §25.74(e) to require reporting of a sale, acquisition, lease or rental of generating facilities, without conditioning such activities on the filing of the report with the commission.

The commission agrees with Cities, Austin Energy, and CPS and has adopted CPS's suggested language for application to both electric cooperatives and municipally owned utilities.

§25.76, relating to Gross Receipts Assessment Report

Brazos suggested adding the phrase "subject to the jurisdiction of the commission," which is used in this section, throughout the reporting requirements to indicate that cooperatives are required to file reports with the commission only under limited circumstances.

The commission disagrees that such language is necessary. Proposed §25.71(a) states, "[t]his chapter does not apply to municipally owned utilities or electric cooperatives unless otherwise specified." The inclusion of the phrase in proposed §25.76 is a clarification that is also found in the statutory language addressing this provision.

§25.81, relating to Service Quality Reports

Brazos and TEC stated that the commission does not have the authority to require service quality reports from electric cooperatives; a cooperative's board of directors has exclusive authority to monitor and enforce service quality standards.

The commission agrees and has amended the proposed rule accordingly.

§25.83, relating to Construction Reports

Brazos noted that §25.101, referenced in §25.83, does not make a distinction between generation and transmission requirements for certificates of convenience and necessity. Brazos further stated that

electric cooperatives have been specifically exempted from any generation-related certificate requirements by PURA §37.051(c). TEC stated that the commission does not have the authority to require preliminary construction report forms from electric cooperatives.

The commission concludes that the issues raised by Brazos and TEC should be addressed in conjunction with an amendment to §25.101, which will be considered in this project at some later date. In the interest of clarity, the commission has changed the section number that is referred to in this section from §23.31(c) to §25.101.

All comments, including any not specifically discussed herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and specifically PURA §14.003 which grants the commission the authority to require reports of utilities and to establish the form and frequency of such reports; §16.001, which imposes an assessment on each public utility, retail electric provider, and electric cooperative; PURA §39.155, which authorizes the commission to require reports to assess market power; PURA §40.004, which authorizes the commission to require of municipally owned utilities information relating

to the aggregate load and energy requirements of the state and information relating to market power; and PURA §41.004, which authorizes the commission to require of electric cooperatives information necessary to satisfy its responsibilities relating to electric cooperatives, information relating to the aggregate load and energy requirements of the state, and information relating to market power.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 14.052, 16.001, 39.155, 40.004, and 41.004.

§25.71. General Procedures, Requirements and Penalties.

- (a) **Who shall file.** The record-keeping, reporting, and filing requirements listed in this subchapter shall apply to all electric utilities operating in the State of Texas. This subchapter does not apply to municipally owned utilities or electric cooperatives unless otherwise specified. Moreover, the provisions of this subchapter are applicable to all services provided by the reporting entity.
- (b) **Initial reporting.** Unless otherwise specified in a section of this subchapter, periodic reporting shall commence as follows:
- (1) **Quarterly reporting.** For records, reports and other required information under this chapter, reporting shall begin with an initial filing for the first fiscal quarter for which information is available.
- (2) **Annual Reporting.** For all reports and other required information under this chapter, reporting shall begin with an initial filing for the most recent fiscal year ending on or prior to April 30 of the first year the record, report or other required information must be filed with the commission.
- (c) **Maintenance and location of records.** Records, books, accounts, or memoranda required of an electric utility, as defined in the Public Utility Regulatory Act, §31.002(6), may be kept outside the State of Texas so long as those records, books, accounts, or memoranda are

returned to the state for any inspection by the commission that is authorized by the Public Utility Regulatory Act.

- (d) **Report attestation.** All reports submitted to the commission shall be attested to by an officer or manager of the electric utility or electric cooperative under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the electric utility's or the electric cooperative's operation.

- (e) **Information omitted from reports.** The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome for any electric utility or electric cooperative to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be included in the report.

- (f) **Due dates of reports.** All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter.
 - (1) **Monthly reports:** 45 days after the end of the reported period.
 - (2) **Quarterly reports other than shareholder reports:** 45 days after the end of the reported period.
 - (3) **Semi-annual reports:** 45 days after the end of the reported period.

- (4) **Annual earnings report:** May 15 of each year.
 - (5) **Shareholder annual reports:** seven days from the date of mailing the same to shareholders.
 - (6) **Securities and Exchange Commission Filings:** 15 days from the initial filing date with the Securities and Exchange Commission.
 - (7) **Special or additional reports:** as may be prescribed by the commission.
 - (8) Annual reports required by §25.76 of this title (relating to Gross Receipts Assessment Report) shall be due August 15 of each year and shall reflect transactions for the previous July 1 through June 30 reporting period.
 - (9) Annual reports required by §25.77 of this title (relating to Payments, Compensation, and Other Expenditures) shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.
- (g) **Special and additional reports.** Each electric utility shall report, on forms prescribed by the commission, special and additional information, as requested, that relates to the operation of the business of the electric utility. Electric cooperatives and municipally owned utilities may be required to file special or additional reports to the extent such information is necessary and is within the jurisdiction of the commission.
- (h) **Penalty for refusal to file on time.** In addition to penalties prescribed by law, and §22.246 of the title (relating to Administrative Penalties) the commission may disallow for rate making

purposes the costs related to the activities for which information was requested and not timely filed.

§25.72. Uniform System of Accounts.

- (a) Each electric utility and electric cooperative shall keep uniform accounts, in accordance with this section, of all business transacted. The classification of electric utilities and electric cooperatives, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

- (b) **Classification.** For the purposes of accounting and reporting to the commission under this subchapter, each electric utility or electric cooperative shall be classified as follows:
 - (1) **Major:** electric utilities or electric cooperatives that had in each of the last three consecutive years sales or transmission service that exceeded any one or more of the following:
 - (A) one million megawatt-hours of total sales;
 - (B) 100 megawatt-hours of sales for resale;
 - (C) 500 megawatt-hours of gross interchange out; or
 - (D) 500 megawatt-hours of wheeling for others (deliveries plus losses).

- (2) **Nonmajor:** electric utilities or electric cooperatives that are not classified as "major" as defined in paragraph (1) of this subsection.

- (c) **System of accounts.** For the purpose of accounting and reporting to the commission, each electric utility and electric cooperative shall maintain its books and records in accordance with the following prescribed uniform system of accounts:
 - (1) **Major:** uniform system of accounts as adopted and amended by the Federal Energy Regulatory Commission (FERC) for major electric utilities and electric cooperatives or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.
 - (2) **Nonmajor:** uniform system of accounts as adopted and amended by the FERC for nonmajor electric utilities and electric cooperatives or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

- (d) **Other system of accounts.** When an electric utility or electric cooperative has adopted a uniform system of accounts required or approved by a state or federal agency other than the FERC (e.g., United States Department of Agriculture - Rural Utilities Service), that system of accounts may be adopted by the electric utility or electric cooperative after notification to the commission.

- (e) **Merchandise accounting.** Each electric utility and electric cooperative shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

- (f) **Accounting period.** Each electric utility and electric cooperative shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the electric utility or electric cooperative.

- (g) **Rules related to capitalization of construction costs.** Each electric utility and electric cooperative shall accrue allowance for funds used during construction on construction work in progress to the extent not included in rate base. In the event construction work in progress is included in rate base pursuant to the rules in §25.231(c)(2)(D) of this title (relating to Cost of Service), capitalization of allowance for funds used during construction for electric utilities and electric cooperatives is allowed.

§25.73. Financial and Operating Reports.

- (a) **Annual reports.**
 - (1) Each electric utility shall file with the commission the same annual report required by the Federal Energy Regulatory Commission (FERC). Such annual reports shall be filed with the commission on the same dates as required to be filed with the FERC. Major

electric utilities that are not required to file such reports shall file with the commission an annual report on the form prescribed by the FERC.

- (2) Each electric utility holding company subject to annual reporting to the Securities and Exchange Commission and each electric utility shall file with the commission three copies of its annual report to shareholders and customers. Unless included in the annual report to shareholders and customers, each electric utility shall file concurrently with the filing of such report three copies of any audited financial statements that may have been prepared on its behalf.
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- (b) **Annual earnings report.** Each electric utility not required to file an Annual Report pursuant to the Public Utility Regulatory Act (PURA) §39.257 shall file with the commission, on commission-prescribed forms, an earnings report providing the information required to enable the commission to properly monitor electric utilities within the state. Each transmission service provider shall file with the commission a report that will permit the commission to monitor its transmission costs and revenues pursuant to §25.193(a)(5) of this title (relating to Procedures for Modifying Transmission Rates).
 - (1) Each electric utility shall report information related to the most recent calendar year as specified in the instructions to the report.
 - (2) Each electric utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than the date prescribed

in §25.71(f)(4) of this title (relating to General Procedures, Requirements and Penalties).

- (c) **Securities and Exchange Commission reports.** Each electric utility and electric utility holding company subject to reporting requirements of the Securities and Exchange Commission shall file three copies of each required report with the commission. Three copies of each such report including 10-Ks, 10-Qs, 8-Ks, Annual Reports, and Registration Statements filed with the Securities and Exchange Commission shall be submitted to the commission no later than 15 days from the initial filing date with the Securities and Exchange Commission.
- (d) **Duplicate information.** An electric utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

§25.74. Reports on Sale of Property and Mergers.

- (a) An electric utility shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of \$100,000 unless the electric utility reports such transaction to the commission while pending or within 30 days after closing.

- (b) An electric utility shall not merge or consolidate with another electric utility or public utility operating in the State of Texas unless the electric utility reports such transaction to the commission while pending or within 30 days after closing.
- (c) Electric utilities shall not purchase voting stock in another electric utility or public utility doing business in the State of Texas, unless the electric utility reports such purchase to the commission while pending or within 30 days after closing.
- (d) Electric utilities shall not loan money, stocks, bonds, notes or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the electric utility unless the electric utility reports such transaction to the commission while pending or within 30 days after closing. A properly filed tariff change with respect to energy conservation loans available to customers, who may or may not be shareholders as described in this subsection, will be considered adequate reporting to the commission.
- (e) An electric cooperative or municipal utility shall report to the commission any sale, acquisition, lease, or rental of any generating facilities in the State of Texas for a total consideration in excess of \$100,000, during the pendency of the transaction or within 30 days after closing.

§25.76. Gross Receipts Assessment Report.

Each electric utility , electric cooperative, and retail electric provider subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment as required by the Public Utility Regulatory Act on a form prescribed by the state comptroller. This report shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Chapter 16, Subchapter A.

§25.81. Service Quality Reports.

Each electric utility shall submit annual service quality reports no later than February 14 of each year on a form prescribed by the commission.

§25.83. Construction Reports.

Each electric utility constructing a facility requiring reporting to the commission under §25.101 of this title (relating to Certification Criteria) shall report to the commission on the commission-prescribed preliminary construction report form prior to the commencement of construction.

§25.89. Report of Loads and Resources.

Each transmission service customer that submits an annual report of loads and resources to the Electric Reliability Council of Texas independent system operator pursuant to §25.198(l) of this title (relating to Initiating Transmission Service) or other reliability council shall file a copy with the commission and maintain a copy of supporting documentation for five years. If no such annual report is prepared, the transmission service customer shall maintain a record of the load and resource documents prepared in the normal course of its activities for five years.

This agency hereby certifies that the rules, as adopted, have 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 rules §25.71, relating to General Procedures, Requirements and Penalties; §25.72, relating to Uniform System of Accounts; §25.73, relating to Financial and Operating Reports; §25.74 relating to Reports on Sale of Property and Mergers; §25.76 relating to Gross Receipts Assessment Report; §25.81 relating to Service Quality Reports; §25.83 relating to Construction Reports; and §25.89 relating to Report of Loads and Resources are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 7th DAY OF JUNE 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman