

The Public Utility Commission of Texas (commission) adopts amendments to §25.79, relating to Equal Opportunity Reports, §25.80, relating to the Annual Report on Historically Underutilized Businesses and new §25.85, relating to the Report of Workforce Diversity and Other Business Practices with changes to the proposed text as published in the April 7, 2000, *Texas Register* (25 TexReg 2880). The adopted new rule and amendments will implement the provisions of Senate Bill 7 (SB7), Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2601 (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §39.909(c)), which require electric utilities to file an annual report to the commission and the legislature relating to the electric utility efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses and will eliminate duplicative filing requirements. This new rule and amendments are adopted under Project Number 22167.

A public hearing on the proposed rule was held at the commission offices on May 4, 2000, at 9:30 a.m. Representatives from TXU Electric Company (TXU) and Reliant Energy Incorporated (Reliant) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The following parties filed written comments in general support of the proposed new rule and amendments: Central Power and Light Company (CPL), El Paso Electric Company (EPE), Lower

Colorado River Authority (LCRA), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU).

**Comments on Preamble Question:**

*The commission asked the following question: Is an exemption appropriate for (1) utilities that have fewer than a certain number of employees, (2) utilities that do not do any contracting in Texas, (3) resellers only, (4) utilities whose workforce is more than a certain percentage minority or, (5) utilities that were not formed before January 1, 2000?*

TXU Electric, Central Power and Light Company, West Texas Utilities, and Reliant Energy Incorporated stated that any exemption granted to the proposed rule and amendments are inappropriate.

The commission agrees with the parties' rationale.

**Comments on Proposed Sections:**

*§25.79. Equal Opportunity Reports*

Subsection (f) establishes a reporting requirement for the commission to send a report to the Texas legislature. This section was deleted.

No comments were received.

*§25.80. Annual Report on Historically Underutilized Businesses*

Central and South West Corporation (CSW) suggested that the definition of "historically underutilized business" in subsection (a) should be amended to the one used in Texas Government Code Annotated §481.191(4) (Vernon 1994 & Supp. 2000).

The commission agrees and makes the appropriate changes to subsection (a).

*§25.85. Workforce Diversity Report*

Subsection (b) identifies the utilities that must comply with this section. Lower Colorado River Authority (LCRA) suggested that the rule be amended to exclude river authorities from this section. LCRA stated that PURA does not apply to a river authority operating a steam generating plant on or before January 1, 1999. LCRA suggested adding the following language: "This section applies to electric utilities as defined in the Public Utility Regulatory Act (PURA) §31.002(6) and subject to the requirements of PURA §39.909(c), doing business in Texas."

The commission agrees with LCRA's rationale and makes the appropriate changes to subsection (b).

Subsection (d) of this section establishes the title of the report to be filed annually with the commission. Reliant and TXU commented that the title of this report should be changed to reflect that the information reported on the form relates both to enhancing workforce diversity and contracting opportunities for small and historically underutilized businesses.

The commission agrees with Reliant's and TXU's rationale and makes the appropriate changes to subsections (d) and (e).

Subsection (e) of this section establishes how many copies and with whom to file the reports. CPL, SWEPCO, and WTU suggested that the number of copies should be changed to four to be consistent with Procedural Rule §22.71(c)(11).

The commission agrees with the parties and makes the suggested change to subsection (e)

The amendments and new section are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supp. 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.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 12.252, 31.002 and 39.909.

**§25.79. Equal Opportunity Reports.**

- (a) The term "minority group members," when used within this section, shall include only members of the following groups:
- (1) African-Americans;
  - (2) American Indians;
  - (3) Asian-Americans;
  - (4) Hispanic-Americans and other Americans of Hispanic origin; and
  - (5) women.
- (b) Each electric utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional electric utility does not indicate Texas-specific numbers, the electric utility shall also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each electric utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies, which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the electric utility, and employment goals relating to them , if any.

- (c) Any additional information relating to the matters described in this section may be submitted at the electric utility's option.
  
- (d) Any electric utility filing with the commission any documents described in subsections (b) and (c) of this section shall file four copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.
  
- (e) An electric utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission, must file the report by December 30 of the year it is filed with the local, state or federal agencies.

**§25.80. Annual Report on Historically Underutilized Businesses.**

- (a) In this section, "historically underutilized business" has the same meaning as in Texas Government Code, §481.191, as it may be amended.
  
- (b) Every electric utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. An electric utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (\*utility name.wk\*) or Microsoft Excel (\*utility name.xl\*) format).
  - (1) Each electric utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using the Large Utilities HUB Report form.
  - (2) Each electric utility wishing to report indirect HUB procurements or HUB procurements made by the contractor of the utility may use the Supplemental HUB report form.
  - (3) Each electric utility shall submit a text description of how it determined which of its vendors is a HUB.
  - (4) Each electric utility that has more than 1,000 customers in a state other than Texas, or which purchases more than 10% of its goods and services (other than fuel, purchased power, and wheeling) from vendors not located in Texas, shall

separately report by total and category all electric utility purchases, all electric utility purchases from Texas vendors, and all electric utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is situated within the boundaries of Texas.

- (5) Each electric utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.
  
- (c) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or martial status.
  
- (d) This section does not create a new cause of action, either public or private.

**§25.85. Report of Workforce Diversity and Other Business Practices.**

- (a) **Purpose.** This section establishes annual reporting requirements for electric utilities to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed pursuant to the Public Utility Regulatory Act (PURA) §39.909(b).
- (b) **Application.** This section applies to electric utilities, as defined in PURA §31.002(6) and subject to the requirements of PURA §39.909(c), doing business in the State of Texas.
- (c) **Terminology.** In this section, "small business" and "historically underutilized business" have the meanings assigned by Texas Government Code §481.191.
- (d) **Annual progress report of workforce and supplier contracting diversity.** An "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed.
- (e) **Filing requirements.** Four copies of the Annual Progress Report on Five Year Plan to Enhance Supplier and Workforce Diversity shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Electric utilities shall obtain the project number by contacting

Central Records. A copy of the annual report shall also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.

(f) **Contents of the report.** The annual report filed with the commission pursuant to this section may be filed using the Workforce and Supplier Contracting Diversity form or an alternative format and shall contain at a minimum the following information:

- (1) An illustration of the diversity of the electric utility's workforce at the time of the report. If the electric utility is required to file an Equal Opportunity Report pursuant to §25.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.
- (2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §39.909(b), including:
  - (A) the specific initiatives, programs, and activities undertaken during the preceding year; and
  - (B) an assessment of the success of each of those initiatives, programs, and activities.
- (3) An explanation of the electric utility's level of contracting with small and historically underutilized businesses.

- (4) The extent to which the electric utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.
- (5) A description of the initiatives, programs, and activities the electric utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.
  
- (g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.
  
- (h) This section does not create a new cause of action, either public or private.

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 §25.79, relating to Equal Opportunity Reports, §25.80, relating to the Annual Report on Historically Underutilized Businesses, and new §25.85, relating to Report of Workforce Diversity and Other Business Practices, are hereby adopted with changes to the text as proposed.

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

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**