

The Public Utility Commission of Texas (commission) proposes amendments to §25.79 relating to Equal Opportunity Reports and §25.80 relating to the Annual Report on Historically Underutilized Businesses; and proposes new §25.85 relating to Workforce Diversity Reports. The proposed 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 the Public Utility Regulatory Act (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. Project Number 22167 has been assigned to this proceeding.

Patricia Zacharie, Attorney, Legal Division, Office of Regulatory Affairs, 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 section.

Ms. Zacharie 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 greater opportunities for minorities and small and historically underutilized businesses and

a more diverse workforce in the State of Texas. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is an anticipated economic cost to persons who are required to comply with the sections as proposed, which cannot be quantified at this time.

Ms. Zacharie has also determined that for each year of the first five years the proposed sections are in effect there should be no affect 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 Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, May 4, 2000, at 9:30 a.m.

Comments on the proposed amendments and new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. 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. The commission also invites specific comments regarding the following question: Is an exemption appropriate for electric utilities whose workforce is more than a certain percentage minority? All comments should refer to Project Number 22167.

When commenting on specific subsections of the proposed rule(s), 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 polices. 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 amendments and new rule are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2000) (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 §12.252, which grants the commission authority to adopt and enforce rules to require each utility subject to regulation to overcome the underuse of historically underutilized businesses; and §39.909, which grants the commission authority to adopt rules relating to workforce diversity reporting requirements for electric utilities.

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

§25.79. Equal Opportunity Reports.

- (a) (No change.)
- (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, ~~indicating Texas-specific numbers~~. 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 thereto, if any.
- (c) (No change.)
- (d) Any electric utility filing with the commission any documents described in subsections (b) and (c) of this section shall file three~~two~~ 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~~February 15~~ of the year it is filed with the local, state or federal agencies. ~~If the report is filed with local, state or federal agencies after February 15, the electric utility shall file the report with the commission by February 15 of the next year.~~

- ~~(f) — On May 1 of each year, the commission shall submit a report concerning the filed reports to the Texas legislature.~~

§25.80. Annual Report on Historically Underutilized Businesses.

- (a) (No change.)
- (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 (*.wk*)~~ or Microsoft Excel (~~*utility name.xls~~)(~~*.xl*~~) format).
- ~~(1) Each electric cooperative 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, on the Small Utilities HUB Report form.~~
- ~~(1)(2) Each~~Every electric utility ~~other than those specified in paragraph (1) of this subsection~~ 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 on~~ the Large Utilities HUB Report form.
- ~~(2)(3)~~ 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)(4)~~ Each electric utility shall submit a text description of how it ~~the method by which it~~ determined which of its vendors is a HUB.

~~(4)~~(5) Each electric utility ~~that~~~~which~~ has more than 1,000 customers in a state other than Texas, or ~~that~~~~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 geographically in Texas.

~~(5)~~(6) Each electric utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

(c) – (d) (No change.)

§25.85. Workforce Diversity Report.

- (a) **Purpose.** This section establishes annual reporting requirements for electric utilities to report its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.
- (b) **Application.** This section applies to all electric utilities, as defined in the Public Utility Regulatory Act (PURA) §31.002(6), 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 report of workforce diversity.** A "Report on Improving 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.** Three copies of the Workforce Diversity Report 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.

- (f) **Contents of the report.** The annual report filed with the commission pursuant to this section shall be filed using the Workforce Diversity form 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF MARCH 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**