

The Public Utility Commission of Texas (commission) proposes new §25.90 relating to Market Power Mitigation Plans, new §25.91 relating to Generating Capacity Reports, and new §25.401 relating to Share of Installed Generation Capacity. The proposed new rules will implement provisions of the Public Utility Regulatory Act (PURA) §§39.154, 39.155, 39.156, and 39.157. Section 25.90 establishes requirements and procedures for utilities and power generation companies that own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region to file market power mitigation plans. Section 25.91 establishes reporting requirements and procedures for each person, power generation company, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in the state to file annual generating capacity reports. Section 25.401 establishes initial filing requirements and components of the calculation method to be used in determining if a power generation company owns and controls more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region. Project Number 21081 has been assigned to this proceeding.

Project Number 21081, *Market Power Mitigation Plans and Generating Capacity Reports*, was established in July 1999 as part of the plan for implementing Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2591 (Vernon) (codified as an amendment to the Public Utility Regulatory Act,

Texas Utilities Code Annotated §§39.154, 39.155, 39.156, and 39.157). Senate Bill 7, the Electric Restructuring Act, amended several sections of the Public Utility Regulatory Act (Vernon 1998 & Supplement 2000) (PURA) and became effective September 1, 1999. The commission staff posted questions for comment on its Internet site on December 7, 1999, and published an invitation to comment in the *Texas Register* on December 3, 1999 (24 TexReg 11035). The staff prepared drafts of §25.90 and §25.91 in January 1999, which were discussed at a workshop held on January 31, 2000.

After the workshop, new §25.401 relating to Share of Installed Generation Capacity was added to Project Number 21081 to provide a means to address the calculation that will be made to determine the share of installed generation capacity that a power generation owns and controls in a power region. Proposed §25.90 and §25.91 are primarily reporting requirements and do not have adequate scope to address the calculation issues. Proposed §25.91 requires the reporting of data that will be used in determining the share of installed generation capacity and assessing market power, and proposed §25.90 requires the filing of market power mitigation plans after it has been determined that a utility or power generation company has more than 20% of the installed generation capacity.

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules.

When commenting on specific subsections of the proposed rules, 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 policies. 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.

In addition, the commission requests that interested parties specifically address the following issue pertaining to §25.401, Share of Installed Generation Capacity: PURA §39.154(d) defines the term "installed generation capacity" in terms of generation capacity that is "potentially marketable." Subsection (e)(2) of the proposed rule identifies several categories of generation capacity that are not considered to be potentially marketable. The commission invites comments on whether these categories of generation capacity should be excluded from the denominator.

Mr. Richard Greffe, Senior Economist, 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 sections.

Mr. Greffe 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 section will be the protection of public interest and the implementation of a process to mitigate market power that may result from the ownership and control of more than 20% of the installed generation capacity in a power region. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Greffe has also determined that for each year of the first five years the proposed sections are in effect there should be no effect 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, June 1, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new sections (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 25 days after publication. Reply comments may be submitted within

35 days after publication. Parties are also requested to e-mail an electronic copy of comments to richard.greffe@puc.state.tx.us, if possible.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21081.

The new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & 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 §39.154, which requires the commission to determine the percentage shares of installed generation capacity that are owned and controlled by a utility or a power generation company; §39.155, which grants the commission the authority to assess market power and to require the filing of generation capacity reports; §39.156, which grants the commission the authority to require the filing of market power mitigation plans; and §39.157, which grants the commission the authority to address market power and to monitor the market shares of installed generation capacity to ensure that the limitations in PURA §39.154 (relating to Limitation of Ownership of Installed Capacity) are not exceeded.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 31.002, 39.154, 39.155, 39.156, 39.157, and 39.264.

§25.90. Market Power Mitigation Plans.

- (a) **Application.** An electric utility or power generation company owning and controlling more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region prior to December 1, 2000, shall file a market power mitigation plan with the commission not later than December 1, 2000. An electric utility or power generation company owning and controlling more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region after December 1, 2000, shall file a market power mitigation plan as directed by the commission.
- (b) **Initial information filing.** Each utility or power generation company that owns and controls, either separately or in combination with its affiliates, more than 10,000 megawatts (MW) of electric generation capacity located in a power region that is partly or entirely within the state shall file a calculation by September 1, 2000, showing its percentage share of the installed generation capacity in the power region. The calculation shall be made pursuant to the requirements of §25.401 of this title (relating to Share of Installed Generation Capacity). The filing must include detailed information that will allow the commission to replicate the calculation. At a minimum, the filing must include an itemized list of all generating units owned in whole or in part by the utility or power generation company and its affiliates. Generating units should be identified by

name, capacity rating, ownership, location, and reliability council. The filing must also include the transmission import capacity amounts that are to be included in the numerator and the denominator of the calculation and an explanation of how the transmission capacity amounts were determined.

(c) **Market power mitigation plan.** A market power mitigation plan is a written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act (PURA) §39.154. A market power mitigation plan may provide for:

- (1) the sale of generation assets to a nonaffiliated person;
 - (2) the exchange of generation assets with a nonaffiliated person located in a different power region;
 - (3) the auctioning of generation capacity entitlements as part of a capacity auction required by PURA §39.153;
 - (4) the sale of the right to capacity to a nonaffiliated person for at least four years;
- or
- (5) any reasonable method of mitigation.

(d) **Filing requirements.** The plan shall be in a form prescribed by the commission, and it shall include all supporting information necessary for the commission to fully understand and evaluate the plan. On a case-by-case basis, the commission will require the electric

- utility or power generation company to provide any additional information the commission finds necessary to evaluate the plan.
- (e) **Procedure.** The commission shall approve, modify, or reject a plan within 180 days after the date of filing. The commission may not modify the plan to require divestiture by the electric utility or power generation company.
- (f) **Commission determinations.** In reaching its determination under subsection (e) of this section, the commission shall consider:
- (1) the degree to which the electric utility's or power generation company's stranded costs, if any, are minimized;
 - (2) whether on disposition of the generation assets the reasonable value is likely to be received;
 - (3) the effect of the plan on the electric utility's or power generation company's federal income taxes;
 - (4) the effect of the plan on current and potential competitors in the generation market;
 - (5) whether the plan provides adequate mitigation of market power; and
 - (6) whether the plan is consistent with the public interest.

- (g) **Request to amend or repeal mitigation plan.** An electric utility or power generation company with an approved mitigation plan may request to amend or repeal its plan. On a showing of good cause, the commission shall modify or repeal the mitigation plan.
- (h) **Approval date.** If an electric utility's or power generation company's market power mitigation plan is not approved before January 1 of the year it is to take effect, the commission may order the electric utility or power generation company to auction generation capacity entitlements according to PURA §39.153, subject to commission approval, of any capacity exceeding the maximum allowable capacity prescribed by PURA §39.154 until the time the mitigation plan is approved. An auction held under this subsection shall be held not later than 60 days after the date the order is entered.

§25.91. Generating Capacity Reports.

- (a) **Application.** This section applies to each person, power generation company, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in this state.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.
- (1) **Nameplate rating** – The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.
- (2) **Summer net dependable capability** – The capacity rating in megawatts (MW) or kilowatts (KW) for a generating unit that reflects the maximum capacity that the unit can sustain over a specified period of time as modified for summer season limitations and reduced by the capacity required for station services and auxiliaries.
- (c) **Filing requirements.** Reporting parties shall file reports with the commission by the last working day of February each year, for the immediately preceding calendar year. Filings shall be made using a form prescribed by the commission.

- (d) **Report attestation.** A report submitted pursuant to this section shall be attested to by an owner, partner, or officer of the reporting party under whose direction the report was prepared.

- (e) **Confidentiality.** The reporting party may designate information that it considers to be confidential. Information designated as confidential will be treated in accordance with the standard protective order issued by the commission applicable to generating capacity reports.

- (f) **Capacity ratings.** Generating unit capacity will be reported at the summer net dependable capability rating as determined by the requirements of the applicable reliability council or independent organization, except as follows:
 - (1) Renewable resource generating units that are not dispatchable, will be reported at the actual capacity value during the most recent peak season, and the report will include data supporting the determination of the actual capacity value;
 - (2) Generating units that will be connected to a transmission and distribution system and operating within 12 months will be rated at the nameplate rating.

- (g) **Reporting requirements.**

- (1) Each reporting party shall provide its information concerning generation capacity (in MW) and sales (in megawatt-hours (MWh)) on a power region-wide basis and for that portion of a power region in the state:
 - (A) total capacity of installed generating facilities that are connected with a transmission and distribution system;
 - (B) total capacity of generating facilities that will be connected with a transmission and distribution system and operating within 12 months;
 - (C) total affiliate installed generation capacity;
 - (D) total amount of capacity available for sale to others;
 - (E) total amount of capacity under contract to others;
 - (F) total amount of capacity dedicated to its own use;
 - (G) total amount of capacity that has been subject to auction as approved by the commission;
 - (H) total amount of capacity that will be retired within 12 months;
 - (I) annual capacity sales to affiliated retail electric providers (REPs);
 - (J) annual wholesale energy sales;
 - (K) annual retail energy sales; and
 - (L) annual energy sales to affiliate REPS;
- (2) Each reporting party shall provide the following information for each generating unit it owns in whole or in part:
 - (A) Name;

- (B) Location by county, utility service area, power region, reliability council, and, if applicable, transmission zone;
 - (C) Capacity rating (MW) as specified in subsection (f) of this section;
 - (D) Annual generation (MWh);
 - (E) Type of fuel or nonfuel resource;
 - (F) Technology of natural gas generator;
 - (G) Date of commercial operation;
 - (H) Annual heat rate;
 - (I) Annual availability factor;
 - (J) Annual capacity factor;
 - (K) Annual outage rate;
 - (L) Annual hours connected to load; and
 - (M) Planned retirement date if within 12 months.
- (3) Each reporting party shall identify the name and capacity rating of each generating unit that does not generate electricity sold at wholesale.
- (4) Each reporting party shall identify the name and capacity rating of each generating unit that is partly owned by other parties. For each such unit, it shall identify the other owners and their respective ownership percentages.
- (5) Each reporting party shall identify the name and capacity rating of each generating unit that it owns but does not control. For each such unit, it shall

identify the controlling party and explain the nature of the other party's control of the unit.

- (6) Each reporting party shall identify the name and capacity rating of each generating unit that is located on the boundary between two power regions and able to deliver electricity directly into either power region; and the party shall report the total sales from each such unit for the preceding year by power region.
- (7) Each reporting party that is subject to the Public Utility Regulatory Act (PURA) §39.154(e) shall identify the name and capacity rating of each "grandfathered" generating unit that it owns, and it shall also provide copies of any applications to the Texas Natural Resources Conservation Commission (TNRCC) for a permit for the emission of air contaminants related to the grandfathered units.
- (8) Each reporting party shall identify the name of the generating unit and the amount of capacity that has been designated "must-run" by the independent organization in the power region.
- (9) Each reporting party shall identify the amount of transmission import capacity that it has reserved during the summer peak period for the purpose of importing electricity into the power region.

§25.401. Share of Installed Generation Capacity.

- (a) **Application.** The provisions of this section apply to power generation companies.

- (b) **Share of installed generation capacity.** The percentage share of installed generation capacity for a power generation company will be determined by dividing the capacity owned and controlled by the power generation company in a power region by the total installed generation located in, or capable of delivering electricity to, the power region.

- (c) **Capacity ratings.** For purposes of this section, generating unit capacity ratings will be consistent with the requirements of §25.91(f) of this title (relating to Generating Capacity Reports). The commission may revise reported capacity ratings if they are found to be incorrect.

- (d) **Installed generation capacity of a power generation company.**
 - (1) In determining the percentage shares of installed generation capacity under the Public Utility Regulatory Act (PURA) §39.154, the commission shall combine capacity owned and controlled by a power generation company and any entity that is affiliated with that power generation company within the power region, reduced by the installed generation capacity of those facilities that are made subject to capacity auctions under PURA §39.153(a) and (d).

- (2) In determining the percentage shares of installed generation capacity, the commission shall increase the installed generation capacity owned and controlled by a power generation company by the transmission import capacity that the power generation company reserves during the summer peak period for the purpose of importing electricity into the power region.
- (3) In determining the percentage shares of installed generation capacity owned and controlled by a power generation company under PURA §39.154 and §39.156, the commission shall, for purposes of calculating the numerator, reduce the installed generation capacity owned and controlled by that power generation company by the installed generation capacity of any "grandfathered facility" within an ozone nonattainment area as of September 1, 1999, for which that power generation company has commenced complying or made a binding commitment to comply with PURA §39.264. This subsection applies only to a power generation company that is affiliated with an electric utility that owned and controlled more than 27% of the installed generation capacity in the power region on January 1, 1999. The commission will consider a permit application to the Texas Natural Resource Conservation Commission (TNRCC) to be adequate evidence that the power generation company has commenced complying or made a binding commitment to comply with PURA §39.264.

(e) **Total installed generation.** The total installed generation will consist of the installed generation capacity that is located in, or capable of delivering electricity to, a power region.

(1) Installed generation capacity will include all potentially marketable electric generation capacity. Except as provided in paragraph (2) of this subsection, installed generation capacity will include:

(A) generating facilities that are connected with a transmission and distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility;

(C) generating facilities that will be connected with a transmission and distribution system and operating within 12 months; and

(D) generating facilities that are located on the boundary between two power regions and are able to deliver electricity directly into either power region, except that the capacity of such facility shall be allocated between the power regions based on the share of its total electric energy that the facility sold in each power region during the preceding year.

(2) Installed generation capacity will not include:

(A) generating facilities that have a nameplate rating equal to or less than 1 megawatt (MW);

- (B) generating facilities that are used for backup purposes and do not generate electricity that is sold at wholesale;
 - (C) generating facilities that are used to generate electricity for consumption by the person owning or controlling the facility and do not generate electricity that is sold at wholesale;
 - (D) cogeneration facilities that do not generate electricity that is sold at wholesale;
 - (E) generating facilities that will be retired within 12 months;
 - (F) generating facilities that have been designated as "grandfathered" facilities pursuant to subsection (d)(3) of this section; and
 - (G) generating capacity that has been designated "must-run" by the independent organization in the power region.
- (3) The amount of installed generation capacity that is capable of delivering electricity to a power region will be determined by:
- (A) the import transmission capacity during the summer peak period of the alternating current (AC) transmission interconnections between the power region at issue and other power regions; and
 - (B) the import capacity during the summer peak period of the reliable direct current (DC) interconnections between the power region at issue and other power regions.

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 14th DAY OF APRIL 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**