

PROJECT NO. 39349

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND SUBSTANTIVE RULE 25.93,	§	
QUARTERLY WHOLESALE	§	OF TEXAS
ELECTRICITY TRANSACTION	§	
REPORTS	§	

**ORDER ADOPTING AMENDMENT TO §25.93
AS APPROVED AT THE OCTOBER 27, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.93, relating to Quarterly Wholesale Electricity Transaction Information with changes to the proposed text as published in the May 27, 2011 issue of the *Texas Register* (36 TexReg 3238). The amendment will eliminate the requirement that reports are filed quarterly with the commission. Instead, wholesale sellers will retain the wholesale transaction information and submit the information to the commission upon request. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). This amendment is adopted under Project Number 39349.

The commission received comments on the proposed amendments from Brazos Electric Power Cooperative (Brazos Electric), the Steering Committee of Cities Served by Oncor (Cities), Joint Commenters, the City of Austin d/b/a Austin Energy (Austin Energy), Southwestern Public Service (SPS), Luminant Energy Company (Luminant), and Texas Industrial Energy Consumers (TIEC). The Joint Commenters consisted of Exelon Corporation; IPR-GDF SUEZ North America; J Aron & Company; Kiowa Power Partners, LLC; PSEG Energy Resources & Trade LLC; Shell Energy North America (US), L.P.; Tenaska Frontier Partners, Ltd; Tenaska Gateway Partners Ltd; Tenaska Power Services Co.; and Topaz Power Holdings, LLC.

Comment Overview

With the exception of Cities, all commenters supported the proposed amendments. Commenters generally agreed that the Quarterly Wholesale Electricity Transaction Reports are no longer useful and necessary for the accomplishment of their intended purpose of allowing commission staff to monitor transactions in the wholesale market. Cities argued that the elimination of the quarterly reporting requirement would decrease the commission's ability to perform market surveillance functions, and reflects a lessening of scrutiny of market power abuse and a reduced emphasis on detection of market manipulation. Cities raises three concerns: first, that it is unclear how the commission can identify which entities should be requested to supply transaction data if the data is not available to be reviewed in the first place; second, that eliminating the requirement for reporting will increase the chance of non-compliance with the requirement to retain the data; and third, a comprehensive assessment of market power requires an assessment of the totality of the market, and is not consistent with relying upon selective requests for data.

Joint Commenters requested that the commission clarify that the data elements in a Full Report are those posted in "Instructions and List of Data Elements for Quarterly Wholesale Electricity Transaction Reports," currently listed as Version 7 on the commission's website.

Commission Response

The amendments eliminate the requirement that Wholesale Electricity Transaction Reports are filed quarterly with the commission, but still require wholesale sellers of electricity to retain their wholesale transaction information and submit the information to the commission upon request from the Executive Director. The commission disagrees with

Cities contention that this will decrease the commission's ability to perform market surveillance functions and reflects a reduced emphasis on market oversight. The commission will still retain the necessary access to the information necessary to evaluate market transactions and to work with the Electric Reliability Council of Texas (ERCOT) and the independent market monitor (IMM) to analyze potential market power abuses. The commission is confident that market participants will submit information as required, as these entities will be subject to enforcement action if the information is not provided. Finally, the commission agrees with the Joint Commenters that the elements of the Full Report are those listed in the latest version of "Instructions and List of Data Elements for Quarterly Wholesale Electricity Transaction Reports," as posted on the commission's website.

Section 25.93(c)

Luminant recommended deleting the Proposed Rule's definitions for "Full Report" and "Public Report," as Luminant stated that these proposed amendments appeared to contemplate that wholesale sellers would submit the wholesale electricity transaction data directly to commission staff and a report would not be filed with Central Records. If the commission determines that the definitions for "Full Report" and "Public Report" should remain, then Luminant suggested moving the definition of "Transaction" to subsection (c)(3) so that the internal cross reference in §25.503(k)(2)(A) will reference the correct rule provision.

Commission Response

The commission believes that the definitions for “Full Report” and “Public Report” should remain as written to facilitate understanding of the types of reports that are required by the commission. Reports must still be filed with Central Records; therefore, the rule will retain these definitions. The commission agrees that the definition of “Transaction” should be moved to subsection (c)(3) so that the internal cross reference in §25.503 (k)(2)(A) will reference the correct rule provision.

Section 25.93(d)

Luminant pointed out that in the current nodal market, ERCOT collects a substantial amount of information, as the vast majority of real-time transactions now occur through ERCOT, yet the transaction data reported by wholesale sellers of electricity remains the same under the proposed rule as was required under the zonal market. Luminant suggested that the rule be revised so that the commission obtains this market data from ERCOT, and wholesale participants only provide information what ERCOT does not possess, such as wholesale transaction data related to bilateral transactions. Luminant also suggested that data relating to ancillary service transactions, which are directed by ERCOT, also be obtained from ERCOT. Luminant stated that the collection of this data is the most onerous; under the zonal market, wholesale sellers were able to obtain enough detail from the ERCOT extracts to facilitate the reporting of this data, but in the nodal market, the ERCOT extracts do not provide the same details, and wholesale sellers must independently perform the aggregation calculations to comply with the reporting requirements. Luminant also stated that the request for information from wholesale sellers, when

the information is readily available from ERCOT, runs counter to the public benefits specified in this rulemaking.

Joint Commenters stated that the rule referred to “information related to all wholesale electricity transactions” but that a potentially narrower term – “transaction information” – is also used to describe the scope of information provided to the commission. In addition, Joint Commenters requested that the commission clarify that the three year retention period required by §25.503(k)(2)(A) and (3) apply to all information included in the Full Report. Furthermore, Joint Commenters requested clarification that wholesale sellers provide all information in a Full Report that is requested by the Executive Director, or a portion of a Full Report, if a portion is all that is requested.

Brazos Electric, Joint Commenters, and Luminant stated that the rule should allow for a longer period of time to respond to requests for the wholesale information. Brazos Electric stated that the requirement should be changed to 14 days. Joint Commenters and Luminant requested that the response period be lengthened to 45 days to provide the information if requested.

Commission Response

The commission disagrees with Luminant’s request that commission staff obtain transaction data directly from ERCOT. In order to maintain a clear line of accountability for key transactional data, the commission believes that the wholesale sellers should provide information related to all its wholesale electricity transactions, including both the bilateral transactional data that are not scheduled through ERCOT and the transactions

that are arranged through ERCOT, upon request from the PUC Executive Director or the Executive Director's designee.

The commission agrees with the Joint Commenters that the description of the information should be consistent throughout the rule, and removes the term "transaction information" and replaces it with "information related to all wholesale electricity transactions." The commission also agrees with the suggestion to clarify that information related to all wholesale electricity transactions should be retained for three years. The commission clarifies that the wholesale seller should submit information related to all wholesale transactions, or a subset of wholesale transactions, for the period requested by the Executive Director or the Executive Director's designee, in the format currently specified in the "Instructions and List of Data Elements for Quarterly Wholesale Electricity Transaction Reports" on the commission's website, in order to provide a full record for analysis by the commission.

The commission agrees to extend the response deadline to 45 days to allow wholesale sellers more time to respond to requests for wholesale transaction data for purposes of requests for information made under this section. The commission clarifies that the response deadline for information requested under this section does not affect the commission's authority to request information, or the deadline for an entity to provide information, pursuant an investigation, contested case proceeding, or any other rule.

Section 25.93(e)

Luminant disagreed with the proposal to eliminate the requirement that reports be submitted on standard format compact disks (CDs) in favor of purely an electronic filing, stating that the rule should include a more detailed explanation of how wholesale sellers should submit reports to the commission that would maintain the report's confidentiality. Until the commission can maintain the confidentiality of electronically submitted information, Luminant stated that the elimination of the CD filing requirement would be problematic, and suggested that the rule allow for the CD filing until such time as electronic filings can be accomplished through a secure website.

Joint Commenters and TIEC recommended that all references to "file" be revised to "submit" or "report," since the rule contemplates that reports would only be submitted electronically and not filed with Central Records. The Joint Commenters recommended deletion of subsection (e)(3) to conform this rule to other commission rules describing the procedure for submitting information. Joint Commenters requested that the commission specify that it will provide notice to affected market participants if the commission makes any change to the current format set out in the "Instructions and List of Data Elements for Quarterly Wholesale Electricity Transaction Reports," and that any change would have an effective date no less than 60 days after such notice. Joint Commenters also requested clarification of whether the rule will still require the submission of a public version of the report, whether commission software will allow for the submission of two reports, one confidential and one public, and whether all submissions could be done electronically only, without the submission of a CD.

Commission Response

The commission agrees that the current electronic data retention framework used by the commission's Central Records does not allow secure electronic filing of data. Therefore, until the commission develops procedures and systems for electronic filing of confidential data, the commission will eliminate the electronic filing of reports. Instead, the commission will require filing of the report by CD with Central Records, so that a wholesale seller may designate the report as confidential under § 22.71. Therefore, because a wholesale seller will still be required to file a CD copy of the report with Central Records, the commission declines to change references of "filing" to "submit" or "report." The commission also declines to include any language in this rule relating to changes in the "Instructions and List of Data Elements for Quarterly Wholesale Electricity Transaction Reports." Any significant changes to this form will be handled through the form revision process pursuant to §22.80, which provides for notice and opportunity to comment on proposed changes. Because the method to file the report will remain the same as is currently required, except for filing the report electronically, the commission declines to make any other changes to this subsection.

Section 25.93(g)

Luminant suggested revisions to affirmatively protect confidential information. TIEC stated that there should be adequate measures in place to ensure that companies that submit reports electronically will be able to request confidential information in the treatment of sensitive information.

Commission Response

The commission disagrees that specific language is needed in this rule to address the confidentiality of filed information. Repealed § 25.93(g) repeats requirements that the commission already follows under the Texas Public Information Act when dealing with information filed confidentially. The repeal of subsection (g) will not lessen the protections for confidential information under the Texas Public Information Act, and it is intended that information filed under this section and designated as confidential will be treated as such. Subsection (e) provides that reports shall be filed according to §22.71, which provides for submitting materials designated as confidential. Wholesale sellers may utilize those provisions if they wish to designate a report as confidential. In addition, because of the removal of the requirement that reports be submitted electronically, no measures need to be put into place to protect an electronic filing.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.001, which requires competitive rather than regulatory methods for achieving the goals of Chapter 39, finds that electric services and their prices should be determined by customer choices and the normal forces of competition, and finds that the competitive process should be protected in a manner that ensures the confidentiality of competitively sensitive information; PURA §39.101, which establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and grants the commission the authority to adopt and enforce rules to carry out this provision and to ensure that retail

customer protections are established that afford customers safe, reliable, and reasonably priced electricity; PURA §39.155, which grants the commission the authority to require reporting, in a manner that ensures the confidentiality of competitively sensitive information, by each person, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in this state, any information necessary for the commission to assess market power or the development of a competitive retail market in the state; PURA §39.157, which requires the commission to monitor market power; PURA §40.004, which authorizes the commission to require reports of municipally owned utility operations to the extent necessary to determine information relating to market power; and PURA §41.004, which authorizes the commission to require reports of electric cooperative operations to the extent necessary to determine information relating to market power.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.001, 39.101, 39.155, 39.157, 40.004, and 41.004.

§25.93. Wholesale Electricity Transaction Information.

- (a) **Purpose.** The purposes of this section are to:
- (1) Deter market power abuses and anticompetitive behavior by increasing wholesale market transparency with respect to bilateral contracts for delivery of electricity; and
 - (2) Improve the commission's ability to investigate allegations of market power abuse and anticompetitive behavior that may arise with respect to the wholesale electricity market.
- (b) **Application.**
- (1) This section applies to any person, municipally owned utility, electric cooperative and river authority that owns electric generation facilities and offers electricity for sale in this state. This section also applies to power marketers as defined in §25.5 of this title (relating to Definitions).
 - (2) This section applies to all wholesale transactions for the sale of electricity that begin or terminate in Texas, or occur entirely within Texas, including areas of the state not served by the Electric Reliability Council of Texas (ERCOT).
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:
- (1) **Contract**--An agreement for the wholesale provision of energy or capacity under specified prices, terms, and conditions. A contract governs the financial aspects of an electricity transaction.
 - (2) **Full Report**--A Wholesale Transaction Report that contains all information required by this rule including information that the Wholesale Seller of Electricity

claims is confidential or Protected Information. If the Wholesale Seller of Electricity does not claim confidentiality or Protected Information status for any of the information in its Full Report then the Full Report will be treated as a Public Report.

- (3) **Transaction**--The provision of a specific quantity of energy or the commitment of a specific amount of generating capacity for a specific period of time from a wholesale seller of electricity to a customer, whether pursuant to a contract, a market operated by an independent organization as defined in the Public Utility Regulatory Act §39.151(b), or any other provision of electricity or commitment of reserve capacity.
 - (4) **Protected information**--Information contained in a Wholesale Electricity Transaction Report that comports with the requirements for exception from disclosure under the Texas Public Information Act (TPIA).
 - (5) **Public Report**--A Wholesale Transaction Report that contains all information required by this rule except information that the Wholesale Seller of Electricity claims is confidential or Protected Information.
 - (6) **Wholesale seller of electricity**--Any power generation company, power marketer, municipally owned utility, electric cooperative, river authority, or other entity that sells power at wholesale.
- (d) **Wholesale Electricity Transaction Reports.**
- (1) Wholesale sellers of electricity shall retain information related to all wholesale electricity transactions with a point of delivery or point of receipt in Texas, including intermediate transactions involving electricity generated in Texas or

electricity ultimately delivered to customers in Texas, and file with the commission, within 45 days of a request by the Executive Director or the Executive Director's designee, information related to all wholesale electricity transactions, or a requested subset of this information, for a specified period of time. Wholesale sellers of electricity shall retain information related to all wholesale electricity transactions for three years, as specified in §25.503 of this title (relating to Oversight of Wholesale Market Participants). Nothing in this section limits the ability of the commission to obtain information, or the deadline for an entity to provide information, pursuant to an investigation, contested case proceeding, or any other rule.

- (2) Reports shall provide contact information for the reporting entity, information on each wholesale electricity contract, and information on each transaction of electricity from the reporting entity to another party.
 - (A) Contact information shall include company name, address, telephone number, and facsimile machine number, if available; name, position, and telephone number of person attesting to the report; and the time period covered by the report.
 - (B) Each wholesale seller of electricity must file information on each contract for electricity that is in effect during the reporting period, including those that will continue to be in effect past the end of the reporting period. Information shall include the name of purchaser, contract execution and termination dates, time period over which the contract is in effect, product

type, price, and applicable information about where the power was generated, delivered, and received.

- (C) Each wholesale seller of electricity must file information on each transaction. Information shall include the time period over which the transaction was conducted; applicable information about where the power was generated, delivered, and received; product name; transaction quantity; price; total transaction charges; and cross-reference to a contract reported under subparagraph (B) of this paragraph. If the period of a transaction extends outside of the reporting period, the report shall include only the portion of the transaction that occurred during the reporting period.
- (D) Reporting parties may aggregate the following types of transactions:
- (i) A municipally owned utility may aggregate data on the portion of its generation that it used to serve its native load. The aggregated number should be in total MWh for the reporting period, and need not include price.
 - (ii) A generation cooperative may aggregate data on cost-based sales to a distribution cooperative. The aggregated number should be in total MWh sold to each distribution cooperative for the reporting period, and need not include price.
 - (iii) A river authority may aggregate data on cost-based sales to a wholesale customer. The aggregated number should be in total

MWh sold to each wholesale customer for the reporting period, and need not include price.

(iv) A qualifying facility may aggregate data on sales of electricity to a wholesale customer. The aggregated number should be in total MWh sold to each wholesale customer for the reporting period, and need not include price.

(v) Any reporting entity may aggregate data on sales of electricity or capacity to an independent system operator for balancing energy service, ancillary capacity services, or other services required by the independent system operator. This subparagraph includes sales by an entity that is qualified to sell the reporting entity's capacity and electricity to the independent system operator. The aggregated number should be in total MWh provided under each type of service for the reporting period, and need not include price.

(e) **Filing procedures.** Wholesale sellers of electricity shall file the Wholesale Electricity Transaction Reports using forms, templates, and procedures approved by the commission. The commission may also approve the use of forms and templates issued by federal agencies for reporting information similar to that required under this section. Reports shall be filed according to §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) except as specified in this subsection.

- (1) A Full Report shall be submitted on standard-format compact disks (two copies) without a paper hard copy.
- (2) If a Full Report is filed containing information that the Wholesale Seller of Electricity claims is confidential or is Protected Information, a Public Report shall also be submitted on standard-format compact disks (two copies).
- (3) Information required under subsection (d)(2)(A) of this section along with attestations and other necessary documents shall be filed in hard copy form (two copies).

This agency hereby certifies that the adoption has 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 §25.93, relating to Quarterly Wholesale Electricity Transaction Information is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER