

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter J. COSTS, RATES AND TARIFFS.**

**DIVISION 1: RETAIL RATES.**

**§25.237. Fuel Factors.**

- (a) **Use and calculation of fuel factors.** An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.
- (1) An electric utility may determine its fuel factor in dollars per kilowatt-hour pursuant to either subparagraph (A) or (B) of this paragraph. Fuel factors must account for system losses and for the difference in line losses corresponding to the voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.
- (A) Fuel factors may be determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect.
- (B) Fuel factors may be determined using a commission-approved, utility-specific fuel factor formula. Fuel factor formulas may be approved or revised only in a general rate change proceeding or a proceeding to consider an application to establish a fuel factor formula with notice and an opportunity for a hearing.
- (2) An electric utility may initiate a change to its fuel factor as follows:
- (A) Pursuant to subsection (a)(1)(A) of this section, an electric utility may petition to adjust its fuel factor as often as once every four months according to the schedule set out in subsection (d) of this section.
- (B) Pursuant to subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than four months after the filing of its most recent fuel factor adjustment petition.
- (C) Notwithstanding subsection (a)(2)(A) of this section, an electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.
- (D) An electric utility's fuel factor may be changed in any general rate proceeding.
- (3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:
- (A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any disallowed costs resulting from a reconciliation proceeding will be reflected in the calculation of the utility's recoverable fuel and over/(under) collections.
- (B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor. Notwithstanding §25.236(e)(6) of this title, an electric utility may petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. Notwithstanding §25.236(e)(6) of this title, an electric utility shall petition to make a refund any time it has materially overcollected its

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fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

**(b) Petitions to revise fuel factors.**

- (1) An electric utility using the fuel factor methodology set forth under subsection (a)(1)(A) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(A) of this section during the first five business days of the months specified in subsection (d) of this section. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include the commission-prescribed fuel factor application, a tariff sheet reflecting the proposed fuel factors and supporting testimony that includes the following information:
  - (A) For each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available,
    - (i) the revenues collected pursuant to fuel factors by customer class;
    - (ii) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and
    - (iii) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.
  - (B) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided.
- (2) An electric utility using the fuel factor formula methodology set forth under subsection (a)(1)(B) of this section may file a petition requesting revised fuel factors pursuant to subsection (a)(2)(B) of this section at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. A copy of the complete petition package shall be served on each party in the utility's most recent fuel reconciliation and on the Office of Public Utility Counsel. Service shall be accomplished by email if possible. Each complete filing package shall include:
  - (A) a tariff sheet reflecting the proposed fuel factors;
  - (B) workpapers supporting the calculation of the revised fuel factors;
  - (C) calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided; and
  - (D) any computer generated documents must be provided in their native electronic format with all cells and internal formulas disclosed.

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- (c) **Fuel factor revision proceeding.** Burden of proof and scope of proceeding are as follows:
- (1) In a proceeding to revise fuel factors pursuant to subsection (a)(1)(A) of this section, an electric utility has the burden of proving that:
    - (A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;
    - (B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and
    - (C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the voltage at which the electric service is provided.
  - (2) The scope of a fuel factor revision proceeding under subsection (a)(1)(B) of this section is limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors. In a proceeding to revise fuel factors pursuant to subsection (a)(1)(B) of this section, an electric utility has the burden of proving that:
    - (A) the electric utility has calculated its proposed fuel factors in compliance with the commission-approved fuel factor formula; and
    - (B) the proposed fuel factors utilize a commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided.
- (d) **Schedule for filing petitions to revise fuel factors.** A petition to revise fuel factors or to initiate or revise a fuel factor formula may be filed with any general rate proceeding.
- (1) Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(A) of this section may only be filed in accordance with the following schedule:
    - (A) February, June and October : El Paso Electric Company;
    - (B) March, July and November : Entergy Texas, Inc.;
    - (C) April, August and December : Southwestern Public Service Company;
    - (D) May, September and January : Southwestern Electric Power Company; and
    - (E) March, July and November : any other electric utility not named in this subsection that uses one or more fuel factors.
  - (2) Petitions by an electric utility to revise fuel factors pursuant to subsection (a)(1)(B) of this section may be filed in any month except December.
- (e) **Procedural schedules.**
- (1) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(A) of this section, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:
    - (A) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and
    - (B) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

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- (2) Upon the filing of a petition to revise fuel factors pursuant to subsection (a)(1)(B) of this section, the presiding officer shall set a procedural schedule as follows:
- (A) the presiding officer shall issue an order approving the proposed fuel factors on an interim basis no later than 12 days after the date the petition was filed, if no objection to interim approval is filed within 10 days after the date the petition was filed;
  - (B) if no hearing is requested within 30 days after the petition was filed, the presiding officer shall, after submission of proof of notice by the electric utility, issue an order approving the fuel factors without hearing or action by the commission; and
  - (C) if a hearing is requested within 30 days after the petition was filed, the hearing will be held no earlier than the first business day after the 45th day after the petition was filed and a final order will be issued within 90 days after the petition was filed, subject to submission of proof of notice by the electric utility.
- (f) **Emergency revisions to the fuel factor.** If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.