

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

**Subchapter I. TRANSMISSION AND DISTRIBUTION.**

**DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS.**

**§25.199. Transmission Planning, Licensing and Cost-Recovery for Utilities within the Electric Reliability Council of Texas.**

- (a) **Purpose.** The purpose of this section is to prescribe the procedures and criteria under which the commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe, reliable service and to reduce transmission constraints within the Electric Reliability Council of Texas (ERCOT) in a cost-effective manner.
- (b) **Applicability.** This section applies to all electric utilities, transmission and distribution utilities and ERCOT. This section does not apply to an electric utility or transmission and distribution utility located outside of the ERCOT region. For the purpose of this section, an electric utility includes a municipally-owned utility and an electric cooperative.
- (c) **Eligibility for filing a request under this section.** Any interested party in the ERCOT electric market may file a request for an order under this section.
- (d) **Filing requirements.** Sections 22.251(d) – (f) of this title (relating to Review of ERCOT Conduct) shall apply to proceedings under this section, except as otherwise provided. In accordance with §22.251(f) of this title, ERCOT shall file a response to the application within 14 days after it receives the notice required under subsection (g) of this section. ERCOT shall include as part of the response all existing, non-privileged documents that support ERCOT’s position on the issues identified by the applicant.
- (e) **Standard for review.** The commission may require an electric utility or a transmission and distribution utility to construct or enlarge transmission facilities to ensure safe and reliable service for the state’s electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. An applicant bears the burden of persuading the commission that the facilities are necessary to ensure safe and reliable service for the state’s electric markets or to reduce transmission constraints within ERCOT in a cost-effective manner.
- (f) **Threshold requirements.** In its request, the applicant must plead facts that are sufficient, if proven, to show that the request is likely to be granted under the standards of this section.
  - (1) The applicant must provide sufficient information for the presiding officer to determine that the transmission constraints are not being resolved through Chapter 37 or the ERCOT transmission planning process. In particular, the applicant shall demonstrate that:
    - (A) the facilities are not the subject of a pending application for a certificate of convenience and necessity; and
    - (B) the facilities have been presented to and considered in the ERCOT transmission planning process and have been rejected, or have been approved with one or more conditions that are tantamount to rejection, either in the regional planning process or by the board of directors, or ERCOT has not acted upon the application within a reasonable amount of time.
  - (2) Within 20 days after ERCOT has filed its response to the complaint pursuant to subsection (d) of this section, the presiding officer shall make a recommendation as to whether the applicant has shown that the facts alleged, if proved, would warrant granting the application. The recommendation shall be submitted to the commission for its consideration and action at an open meeting.

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**§25.199 continued**

- (g) **Notice.** An applicant shall serve copies of its complaint and other documents, in accordance with §22.74 of this title (relating to Service of Pleadings and Documents), and in particular shall serve a copy of the complaint on ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel, and any other party as may be appropriate. The notice required by ERCOT under §22.251(e) of this title shall also be provided to all transmission service providers in ERCOT.
- (h) **Cost effectiveness.** Prior to granting a request filed pursuant to this section, the commission, together with the applicant or other parties as appropriate, may undertake a comprehensive cost-benefit analysis to consider both quantitative and qualitative costs and benefits of the proposed facilities. The analysis should consider at a minimum:
- (1) capital costs;
  - (2) projected operation and maintenance costs;
  - (3) carrying costs of the proposed upgrade;
  - (4) a comparison of the cost of the proposed transmission project to other congestion-management techniques, such as system re-dispatch;
  - (5) system reliability; and
  - (6) impact on wholesale power costs in the ERCOT region.
- (i) **Commission order.** If the commission concludes that the applicant has demonstrated that the facilities are needed to ensure safe and reliable service for the state's electric markets or to reduce transmission constraints within ERCOT in a cost-effective manner and that the constraints are not being resolved through Chapter 37 or the ERCOT transmission planning process, it shall order an electric or transmission and distribution utility or utilities to construct or enlarge the requested facilities.
- (1) The commission shall issue the final order in a proceeding initiated under this section not later than the 180th day after the filing of a complete, non-deficient request. Notwithstanding the foregoing, however, the 180-day deadline may be extended by the commission for good cause.
  - (2) An order adopted under this section:
    - (A) except in the case of a municipally-owned utility, shall be contingent on the successful outcome of the subsequent certificate of convenience and necessity proceeding for the proposed facilities;
    - (B) except in the case of a municipally-owned utility, shall include a date, appropriate for the required construction, by which the electric utility or transmission and distribution utility ordered to construct the facilities will be required to file an application for a certificate of convenience and necessity, which may be extended by the commission for good cause;
    - (C) shall provide that the electric utility or transmission and distribution utility need not prove in any proceeding filed under PURA Chapter 37 that the construction or upgrade ordered is necessary for the convenience, accommodation, convenience or safety of the public, and need not address the factors listed in PURA §§37.056(c)(1)-(3) and (4)(E);

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**§25.199(i)(2) continued**

- (D) except in the case of a municipally-owned utility, shall provide that in any proceeding filed under PURA Chapter 37 the electric utility or transmission and distribution utility shall present evidence regarding reasonable times for planning, licensing and constructing the line, so that an appropriate timeline may be included in any commission final order granting a certificate for a line; and,
- (E) shall provide that the electric utility or transmission and distribution utility ordered to construct or enlarge the requested facilities may request the inclusion of construction work in progress (CWIP) in the electric utility or transmission and distribution utility's transmission cost of service rate proceeding. The commission will grant CWIP in accordance with §25.231 of this title (relating to Cost of Service).