

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.

§25.202. Commercial Terms for Transmission Service.

- (a) **Billing and payment.** Within a reasonable time after the first day of each month, transmission service providers (TSPs) shall issue invoices for the prior month's transmission service to distribution service providers (DSPs) and customers responsible for the export of power from the Electric Reliability Council of Texas (ERCOT) region.
- (1) An invoice for transmission service shall be paid so that the TSP will receive the funds by the 35th calendar day after the date of issuance of the invoice, unless the TSP and the transmission service customer agree on another mutually acceptable deadline. All payments shall be made in immediately available funds payable to the TSP, or by wire transfer to a bank named by the service provider or by other mutually acceptable terms.
 - (2) Interest on any unpaid amount shall be calculated by using the interest rate applicable to overbillings and underbillings, set by the commission, and compounded monthly. Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the TSP.
 - (3) In the event the transmission service customer fails, for any reason other than a billing dispute as described in subparagraph (A) of this paragraph, to make payment to the TSP on or before the due date, and such failure of payment is not corrected within 30 calendar days after the TSP notifies the customer to cure such failure, the customer shall be deemed to be in default.
 - (A) Upon the occurrence of a default, the TSP may initiate a proceeding with the commission to terminate service. If the commission finds that a default has occurred, the transmission service customer shall pay to the TSP an amount equal to two times the amount of the payment that the customer failed to pay, in addition to any other remedy ordered by the commission. In the event of a billing dispute between the TSP and the transmission service customer, the TSP will continue to provide service during the pendency of the proceeding, as long as the customer:
 - (i) continues to make all payments not in dispute; and
 - (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute.
 - (B) If the transmission service customer fails to meet the requirements in subparagraph (A) of this paragraph, then the TSP will provide notice to the customer and to the commission of its intention to terminate service.
 - (C) Any dispute arising in connection with the termination or proposed termination of service shall be referred to the alternative dispute resolution process described in §25.203 of this title (relating to Alternative Dispute Resolution (ADR)).
- (b) **Indemnification and liability.**
- (1) Neither a transmission service customer nor TSP shall be liable to the other for damages for any act that is beyond such party's control, including any event that is a result of an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or by the making of necessary repairs upon the property or equipment of either party.

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§25.202(b) continued

- (2) Notwithstanding the provisions of paragraph (1) of this subsection, a transmission service customer and TSP shall assume all liability for, and shall indemnify each other for, any losses resulting from negligence or other fault in the design, construction, or operation of their respective facilities. Such liability shall include a transmission service customer or TSP's monetary losses, costs and expenses of defending an action or claim made by a third person, payments for damages related to the death or injury of any person, damage to the property of the TSP or transmission service customer, and payments for damages to the property of a third person, and damages for the disruption of the business of a third person. This paragraph does not create a liability on the part of a TSP or transmission service customer to a retail customer or other third person, but requires indemnification where such liability exists. The indemnification required under this paragraph does not include responsibility for the TSP's or transmission service customer's costs and expenses of prosecuting or defending an action or claim against the other, or damages for the disruption of the business of the service provider or customer. The limitations on liability set forth in this subsection do not apply in cases of gross negligence or intentional wrongdoing.
- (c) **Creditworthiness for transmission service.** For the purpose of determining the ability of a transmission service customer to meet its obligations related to transmission and any other obligation in Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas), a TSP may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices.
 - (1) The TSP may require a transmission service customer to provide and maintain in effect during the term of service, an unconditional and irrevocable letter of credit in a reasonable amount as security to meet its responsibilities and obligations under Division 1 of this subchapter or an alternative form of security proposed by the customer and acceptable to the service provider and consistent with commercial practices established by the Uniform Commercial Code that reasonably protects the TSP against the risk of non-payment. Credit worthiness standards must be applied to all transmission service customers on a non-discriminatory basis.
 - (2) If a transmission service customer is creditworthy, no letter of credit or alternative form of security shall be required.