

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter O. UNBUNDLING AND MARKET POWER.

DIVISION 5. COMPETITION IN NON-ERCOT AREAS.

§25.422. Transition to Competition for Certain Areas within the Southwest Power Pool.

- (a) **Purpose.** The purpose of this section is to address the process and the sequence of events for the introduction of retail competition in the Southwestern Electric Power Company service area in Texas (SWEPCO) and in the Southwest Power Pool portion of the AEP Texas North Company service area in Texas (Texas North-SPP).
- (b) **Application.** This section shall apply to SWEPCO and Texas North-SPP (collectively referred to as “the utilities”). In the event that the customers, facilities, and the service area of Texas North-SPP are transferred to SWEPCO, the requirements of this section shall apply to the combined company.
- (c) **Readiness for retail competition.** The commission determines that the power region in which SWEPCO and Texas North-SPP are located will be unable to offer fair competition and reliable service to all retail customer classes in Texas until January 1, 2011, at the earliest. Therefore, pursuant to Public Utility Regulatory Act (PURA) §39.103, the introduction of full retail competition for these portions of the power region in Texas shall be further delayed until this region can offer fair competition and reliable service to all retail customer classes, subject to the terms and conditions established in this section.
- (d) **Cost-of-service regulation.** Until the date authorized by the commission for the implementation of full retail competition in SWEPCO and Texas North-SPP pursuant to this section, the rates of the utilities are subject to regulation under PURA Chapter 36. Until full retail competition begins, the utilities shall file Annual Earnings Reports as required by §25.73 of this title (relating to Financial and Operations Reports) in lieu of the Annual Report required by PURA §39.257.
- (e) **Transition to competition.** Full retail competition shall not be introduced in the utilities’ service areas before January 1, 2011. In addition, the introduction of retail competition in the utilities’ service areas shall be conditioned on successful fulfillment of the sequence of events and activities set forth in paragraphs (1) through (5) of this subsection. All the listed items in each stage must be completed before the next stage is initiated. Unless stated otherwise in this section, each of the activities will be conducted by the commission in conjunction with SWEPCO and Texas North-SPP and other interested parties. Full retail competition will not begin in SWEPCO and Texas North-SPP until completion of the fourth stage.
 - (1) **Completed Activities.** The stages outlined below assume that the following activities have been completed, by SWEPCO and Texas North-SPP:
 - (A) The initiation of a pilot program, including the establishment of rates for the pilot program.
 - (B) The filing of a business separation plan and unbundled cost of service.
 - (C) The separation of competitive energy services.
 - (D) Approval by the Federal Energy Regulatory Commission (FERC) of a regional transmission organization for the power region containing the utilities’ service areas and the commencement of independent operation of the transmission network that ensures non-discriminatory access, by the approved regional transmission organization.
 - (2) **Stage one.** The first stage consists of the following activities:
 - (A) The utilities will continue the operation of the pilot projects to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the pilot program offered in the utilities’ service areas;

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- (B) The utilities will file a plan for the development of retail market protocols to facilitate retail competition;
 - (C) The utilities will file a plan for the development of a balancing energy market, market for ancillary services, and market-based congestion management system for the wholesale market in the region in which the regional transmission organization operates; and
 - (D) A seams agreement will be implemented with adjacent power regions to reduce barriers to entry and facilitate competition.
- (3) **Stage two.** The second stage consists of the following activities:
- (A) The utilities shall file a transition to competition plan identifying how they intend to achieve full customer choice, including:
 - (i) certification of a qualified power region under PURA §39.152;
 - (ii) auctioning rights to generating capacity;
 - (iii) the establishment of a price to beat for eligible residential and commercial customers, including all necessary information for the derivation of the price to beat;
 - (iv) the retail market protocols that will be applicable in the utilities' service areas;
 - (v) a plan, developed with the regional transmission organization, the statewide registration agent, and market participants, for testing retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions;
 - (vi) any necessary amendments to the previously filed business separation plan; and
 - (vii) an unbundled cost of service rate filing package.
 - (B) The activities to be completed by the commission in the second stage are to:
 - (i) Approve, modify, or reject the transition to competition plan within 180 days after the date of filing unless a hearing is requested. If a hearing is requested, the 180-day deadline shall be extended one day for each day of hearing;
 - (ii) Approve a business separation plan or amendments to the business separation plan;
 - (iii) Set unbundled transmission and distribution rates;
 - (iv) Certify a qualified power region for an area that includes the utilities, pursuant to PURA §39.152; and
 - (v) Set price-to-beat rates for the utilities' service areas.
- (4) **Stage three.** The third stage consists of the following activities:
- (A) The commission shall evaluate the results of the pilot projects pursuant to §25.431 of this title (relating to Retail Competition Pilot Projects), including whether the pilot project has progressed to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the pilot programs offered in the utilities' service areas and whether the retail and wholesale systems have been tested and are performing adequately.
 - (B) The utilities shall initiate capacity auctions pursuant to PURA §39.153 and §25.381 of this title (relating to Capacity Auctions) at a time to be determined by the commission, and consistent with the transition to competition plan.

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- (5) **Stage four.** The fourth stage consists of the following activities:
- (A) The utilities shall file a request for approval to commence competition, consistent with the procedures and standards developed in the previous stages. This filing should be made at least 180 days before the anticipated date of the commencement of competition.
 - (B) The commission shall evaluate whether the power region can offer fair competition and reliable service to all retail customer classes, and whether there are any outstanding items in the competition plan that must be completed prior to the commencement of full competition. If the commission concludes that the power region can offer fair competition and reliable service to all retail customer classes, it shall issue an order initiating retail competition consistent with the approved transition to competition plan.
- (f) **Annual Report.** If full retail competition has not been implemented by January 1, 2011, the utilities shall file a report with the commission by January 31, 2011, identifying the items required by this section that have not yet been completed and an estimate of when completion of each item is anticipated. The utilities shall make a similar filing each year on January 31 until full retail competition in their service areas is authorized by the commission or the commission rules that no further reports are necessary.
- (g) **Pilot Project Continuation.** Notwithstanding the provisions of subsection (e) of this section, the pilot projects in the utilities' service areas shall continue. However, so long as the utilities can effectively administer customer registrations and convey information relating to a customer's choice of retail electric provider and meter information to persons who need such information, they may continue to perform these functions, subject to the codes of conduct.
- (h) **Protection of Contractual Rights.** The transition to competition plan in the utilities' service areas shall not adversely affect the rights or obligations of an electric cooperative under a wholesale generation or transmission agreement.
- (i) **Energy efficiency and renewable energy requirements.** Effective January 1, 2007, SWEPCO and Texas North-SPP shall:
- (1) Be subject to requirements of PURA §39.905 and §25.181 of this title (relating to Energy Efficiency Goal) and shall continue to participate in the required energy efficiency programs.
 - (2) Be subject to the requirements of PURA §39.904 and §25.173 of this title (relating to Goal for Renewable Energy) and shall continue to participate in the renewable energy credits program.
- (j) **Applicability of other sections.** This section governs the implementation of PURA Chapter 39 requirements as applied to SWEPCO and Texas North-SPP. If there is an inconsistency or conflict between this section and other sections in this Chapter (relating to Substantive Rules Applicable to Electric Service Providers), the provisions of this section shall control.
- (k) **Good cause.** Upon a finding of good cause, as determined by the commission, the sequence for retail competition set forth in subsection (e) of this section may be modified by commission order.