

PROJECT NO. 29855

PUC RULEMAKING PROCEEDING § PUBLIC UTILITY COMMISSION
CONCERNING OVERSIGHT OF §
THE ELECTRIC RELIABILITY § OF TEXAS
COUNCIL OF TEXAS (ERCOT) §

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §22.252
AS APPROVED AT THE SEPTEMBER 2, 2004 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §22.252, relating to Procedures for Approval of ERCOT Fees and Rates. The proposed amendment would delete a provision that allows a rate change to become effective on an interim basis if the commission has not ruled on the requested change within 120 days. The proposed amendment would eliminate the existing presumption that a rate change may become effective without prior commission review and approval. The proposed amendment would also create a new presumption that, unless the commissions acts within 120 days, the application for a fee increase will be deemed denied. Project Number 29855 is assigned to this proceeding.

The commission is also proposing an amendment to substantive rule §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) concerning the implementation of an explicit reporting requirement. The proposed substantive rule amendment is being published separately in this issue of the *Texas Register* but will be considered as part of Project Number 29855.

Patrick J. Sullivan, Staff Attorney, Legal and Enforcement Division of the Public Utility Commission, has determined that for each year of the first five-year period the proposed sections

are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Sullivan has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the sections will be an enhancement of the commission's ability to oversee the level of rates and the timing of changes to the rates charged by ERCOT. The current rule potentially allows ERCOT to implement a proposed rate change after 120 days even if the commission has not completed its review of those rates. The current rule amounts to a presumption that it is appropriate for such a rate change to take effect prior to the commission's review of the rate change. The rule is being amended to eliminate this presumption. The proposed amendment also creates a new presumption that the application for a fee increase is deemed denied unless the commission acts within the 120 day time period. The commission retains the ability to authorize interim rates prior to the completion of a rate change proceeding, upon a showing of good cause. The public will benefit from this procedural change since changes in ERCOT fees are generally reflected in changes to the rates that customers pay to their retail electric service provider. The amendment will assist the commission in fulfilling its statutory duty to ensure that ERCOT's fees and rates are reasonable and nondiscriminatory. The amendment will also encourage a full disclosure in ERCOT's fee filing package since any delays in providing information could result in the automatic denial of a fee increase. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Mr. Sullivan has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on October 21, 2004, at 10:00 a.m.

Comments on the proposed amendment and new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt these sections. All comments should refer to Project Number 29855.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of

its powers and jurisdiction; PURA §14.052 which authorizes the commission to adopt rules of practice and procedure; and specifically, PURA §39.151, which grants the commission oversight and review authority over independent organizations, like ERCOT, including the authority to establish reasonable and nondiscriminatory rates and charges for ERCOT's services.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052, and §39.151.

§22.252. Procedures for Approval of ERCOT Fees and Rates.

(a) – (f) (No change.)

(g) **Processing of the application.** If no motion to intervene is filed by the intervention deadline, and no statement of position objecting to the fee and rate application is filed by the commission staff, the fee and rate application shall be presented to the commission for consideration of approval.

(1) If a motion to intervene objecting to the fee and rate application is filed, the commission shall review the motion to determine whether it raises any disputed issues of fact, law or policy. If the motion does not raise factual issues, the commission may resolve any disputed issues of law or policy on the basis of briefing, if briefing is requested by the commission.

(2) If factual issues must be resolved, the matter shall be referred to the State Office of Administrative Hearings for the making of all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commission or a commissioner serves as the finder of facts.

(3) The commission shall endeavor to render a final decision approving or denying a fee application under this section within 120 days of the date of filing of the application, unless the commission extends the time for a final decision. If the commission does not make a final determination concerning a fee and rate change before the proposed effective date, the application for a fee increase will be deemed denied.[]

(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 3RD DAY OF SEPTEMBER 2004 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**