

Public Utility Commission of Texas

Memorandum

To: Chairman Paul Hudson
Commissioner Julie Parsley
Commissioner Barry Smitherman

From: Patrick J. Sullivan
Electric Section – Legal and Enforcement Division

Date: November 16, 2004

Re: Agenda Item No. 8; November 23, 2004 Open Meeting
Project 29855 – *PUC Rulemaking Proceeding Concerning Oversight of the Electric Reliability Council of Texas (ERCOT), Substantive Rule 25.362 and Procedural Rule 22.252*

Attached hereto are Staff's recommendations for adoption of two amendments to the Commission's rules to address issues related to the Commission's oversight of the Electric Reliability Council of Texas (ERCOT).

The amendment to Substantive Rule 25.362 adds an explicit reporting requirement in certain situations. In response to comments, a materiality standard has been added to the rule, which now requires that ERCOT management immediately notify the Executive Director, or his designee, by telephone of "any event or situation that could reasonably be anticipated to materially adversely affect the reliability of the regional electric network; the accounting procedures applicable to ERCOT or the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties." Additionally, the time for a written report was changed from "within 24 hours" to "by the end of the following business day" as suggested in comments. The rule was also clarified to state that the requirement for a full explanation refers to an "additional report", and not to the initial report, filed the next business day when all the facts may not yet be available.

The amendment to Procedural Rule 22.252 eliminates the automatic approval of an ERCOT fee change after 120 days. In response to comments, Staff deleted the language of the proposed rule providing that the application is "deemed denied" if the Commission fails to act in the 120-day time period. Staff is concerned that this automatic denial might prevent the orderly processing of fee change applications. Staff would attempt to meet the 120-day time limit, but settlement discussions or the schedule for Open Meetings might prevent the Commission from acting upon a fee increase within that time period. Under the rule as originally proposed, if the parties were unable to conclude the hearing and were unable to obtain an extension from the Commission, the application would be denied. As a result, the work expended on the proceeding would have been wasted. To avoid this possible result,

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Staff believes that it is more appropriate to adopt language indicating that the 120-day time limit is directory and not mandatory. The rule also re-affirms that any fee change is not effective until approved by the Commission.

Because the Procedural Rules are in a different Chapter than the Substantive Rules, the *Texas Register* requires that these two rule changes be submitted separately.

cc: Adriana Gonzales
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Tom Hunter