

**PROJECT NO. 27736**

<b>RULEMAKING ON ALLOWABLE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>FEES AND RATES OF</b>	<b>§</b>	
<b>INDEPENDENT ORGANIZATIONS</b>	<b>§</b>	<b>OF TEXAS</b>
	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §22.252  
AS APPROVED AT THE JULY 25, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new procedural rule §22.252, relating to Procedures for Approval of ERCOT Fees and Rates. The proposed new section will determine the appropriate procedures parties shall follow in a proceeding related to the fees and rates charged by the Electric Reliability Council of Texas (ERCOT). Project Number 27736 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) and new substantive rule §25.363 of this title (relating to ERCOT Fees and Other Rates) concerning the expense components included in ERCOT's fees and rates and ERCOT reporting requirements. The proposed substantive rule and amendment are being published separately in this issue of the *Texas Register* but will be considered as part of Project Number 27736.

Richard Lain, Financial Analyst, Financial Review Division of the Public Utility Commission, has determined that for each year of the first five-year period the proposed

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

Richard Lain 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 section will be additional certainty in the procedures used to determine the appropriate fees and rates of ERCOT. The new rule will enable the commission to conduct such proceedings more efficiently and will provide advance notice to interested persons of the requirements for such proceedings. 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 the section as proposed.

Richard Lain has also determined that for each year of the first five years the proposed section is 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 Wednesday, September 10, 2003, at 10:00 a.m.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 27736.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2003) (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, including rules of

practice and procedure; and specifically, PURA §39.151 which grants the commission the authority to establish the reasonable and competitively neutral rates for an independent organization, like ERCOT.

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) **Procedures.** Except to the extent modified in this section, the commission's procedural rules concerning contested cases will govern the conduct of hearings, discovery, burden of proof, and resolution of disputes relating to Electric Reliability Council of Texas (ERCOT) fees and rates.
- (b) **Interim approval.** ERCOT may request interim approval of a fee or rate, or a change in a fee or rate, based on a showing of good cause. A request for interim relief shall be filed no later than 60 days before the interim relief is proposed to take effect. A fee or rate charged on an interim basis shall be subject to refund if it exceeds the final fee or rate set by the commission, unless a refund would harm ERCOT's ability to efficiently perform its required functions.
- (c) **Filing package.** The fee and rate application shall be in substantial compliance with a fee-filing package approved by the commission.
- (d) **ERCOT notice.** Once a docket number has been assigned to the fee and rate application, ERCOT shall provide notice of the application to all entities subject to the fees and rates (as identified through the current information available to ERCOT) and to all parties that intervened in its most recent fee and rate application docket. This notice may be made by electronic mail. ERCOT will

also post the notice and a copy of its fee and rate application on its web site. The notice shall contain the following information:

- (1) the docket number of the fee and rate application;
- (2) in dollars per megawatt hour, the amount of the current fee and rate, the amount of the proposed fee and rate increase or decrease, and the total fee and rate amount after the increase or decrease goes into effect;
- (3) the effect the proposed fee and rate is expected to have on ERCOT's revenues;
- (4) the effective date of the proposed fee and rate;
- (5) a description of the entities affected by the proposed fee and rate;
- (6) a brief explanation of the need for the proposed fee and rate;
- (7) the deadline for intervention in the proceeding; and
- (8) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas within 30 days of the date of this notice. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. A request to intervene shall include a statement of position containing a concise statement of the requestor's position on the application, a concise statement of each question of fact, law, or policy that the requestor considers at issue and a concise statement of the requestor's position on each issue identified."

(e) **Commission notice.** The commission shall publish notice of the fee and rate application in the *Texas Register*. This notice shall contain the same information required in subsection (d) of this section.

(f) **Schedule.** If ERCOT seeks to change its fees and rates, it shall file an application not less than 120 days before the new rate and fee is to become effective. The deadline for parties to intervene in a fee and rate application proceeding shall be 30 days after the date notice is issued by ERCOT pursuant to subsection (d) of this section.

(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 requested.

(2) If factual issues must be resolved, the matter may 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 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 commission will be considered to have approved the change on an interim basis as of the proposed effective date, subject to the authority of the commission thereafter to require a refund upon conclusion of the hearing.

- (h) **Review of fees based on a complaint.** On its own initiative, or upon complaint by an affected person, the commission may enter an order changing the fees and rates charged by ERCOT, after reasonable notice and hearing, if it finds that the existing fees and rates are unreasonable, are not competitively neutral, are insufficient to cover ERCOT's costs, or are in violation of law. The presiding officer shall establish the procedures for processing such complaints in accordance with the commission's procedural rules.



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 28th DAY OF JULY 2003 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**