The Public Utility Commission of Texas (commission) adopts new §25.227 relating to Electric Utility Service for Public Retail Customers with changes to the proposed text as published in the August 20, 1999 *Texas Register* (24 TexReg 6418). The rule is necessary to allow public retail customers the option to purchase power directly from the General Land Office (GLO) under the Public Utility Regulatory Act (PURA) §35.102. The rule establishes terms under which the GLO may take utility service, including transmission, distribution, and customer services to convey power to public retail customers. This new section was adopted under Project Number 21073.

A public hearing on the proposed section was held on September 1, 1999 at 9:00 a.m. Representatives from Central and South West Corporation (CSW), Entergy Gulf States (EGS), the Office of the Attorney General (OAG), Reliant Energy HL&P (Reliant), and TXU Electric (TXU) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new section from Austin Energy; Brazos Electric Power Cooperative, Inc. (Brazos); CSW; City Public Service of San Antonio (CPS); El Paso Electric Company (EPE); EGS; the General Land Office (GLO); the Greenville Electric Utility System, the City of Garland, and the City of Denton (collectively, the Cities); OAG; Reliant; Southwestern Public Service Company (SPS); Texas Electric Cooperatives, Inc. (TEC); and TXU.

Reliant and EGS stated that the procedures established for the purpose of this rule should not create a precedent regarding pilot programs, the competition transition charge (CTC), or the functional unbundling of rates.

The commission agrees that the procedures established in this rule are designed to allow expedient implementation of the GLO Power Marketing Program described in PURA §35.102, and that this rule shall not be used as a precedent for any other policy decisions by the commission. The commission recognizes that complete information regarding the competition transition charge and the functional unbundling of rates is not currently available. However, the commission believes that the procedures established in this rule are reasonable, and are within the guidelines set forth by PURA §35.103(b).

The competition transition charge established for the purpose of this rule differs from that contemplated by PURA Chapter 39, Subchapter F, Recovery of Stranded Costs Through Competition Transition Charge. In the proposed rule the competition transition charge is calculated based upon the commission's estimate in the "Potentially Strandable Investment (ECOM) Report: 1998 Update" (ECOM Report), amortized over the average remaining life of the underlying assets. In contrast, the competition transition charge ultimately established under PURA §39.201 will be calculated on stranded costs amortized over a potentially shorter period. Additionally, some stranded costs included in the ECOM Report estimate may be mitigated prior to the establishment of the competition transition charge under PURA §39.201. Therefore, the

commission finds the procedures established in this rule for the purpose of calculating the competition transition charge will allow the affected utilities reasonable recovery of stranded costs during the period in which this rule is effect.

TXU and OAG stated that the rule should recognize that public retail customers have the option, but not an obligation, to purchase power from the GLO.

The commission agrees with the commenters and has adopted OAG's suggested language in subsection (a) of the rule.

Austin Energy, CPS, Brazos, TEC, and the Cities suggested language to address the applicability of this rule to municipally owned utilities that have adopted customer choice.

The commission agrees with the commenters and has adopted the related suggested language throughout the rule to reflect the commission's statutory authority as it relates to municipally owned utilities and electric cooperatives.

CPS, Brazos, TEC, and the Cities suggested language to prohibit the GLO from marketing within the service areas of municipally owned utilities and electric cooperatives that have not adopted customer choice. Austin Energy expressed a similar concern by recommending that in "any informational brochures…distributed with regard to the right of the General Land Office to convey power to public retail customers, that there is clarity in stating the availability of this

service for those areas where municipally owned utilities or electric cooperatives have not implemented customer choice."

The commission agrees with Austin Energy, and encourages the GLO to adopt such practices. The commission understands that the GLO intends to include a disclaimer in its mailings that clarifies that the service is not available in certain areas. However, the commission does not believe it is necessary to amend the proposed rule in response to these comments. The GLO will be bound by the statutory restrictions relating to availability of the GLO Power Marketing Program in areas in the service areas of municipally owned utilities and electric cooperatives that have not adopted customer choice.

CSW stated that the calculation of the 2.5% of retail load in subsection (b) of the rule should be based on the previous calendar year's system peak.

The commission has determined that the calculation of the 2.5% limit should be fixed for the duration of the period prior to the implementation of customer choice, has added language to subsection (b) of the rule to direct that the calculation be based on the calendar year 1998 system peak.

TXU stated that the priority of public retail customers listed in PURA §35.102 should be incorporated in the rule.

The commission does not agree that the requirements in PURA §35.102 relating to the priority of service to public retail customers need to be re-stated in the rule. The GLO will be bound by the statutory restrictions, whether or not such restrictions are stated in the rule.

OAG stated that the definition of state agency should be clarified by referring to commission Substantive Rule §25.78, relating to State Agency Utility Account Information. OAG further stated that the rule should clarify that the public retail customer may request that the OAG assist in the negotiation of rates and terms for electricity service.

The commission agrees and has adopted OAG's suggested language in the definition of public retail customer given in subsection (c)(5) of the rule. A reference to Texas Government Code §447.008(d) which gives state agencies and institutions of higher education the option to request assistance from the OAG in the negotiation of rates and terms for electricity service has also been added to the definition of public retail customer given in the rule.

CSW, TXU, SPS, and EGS stated that the 48-hour timeframe in which the utilities are required to supply billing data to the GLO may be too brief. TXU further commented that the phrase "billing determinants" was not defined in the rule and should be clarified.

The commission is persuaded by the parties' comments and has amended subsection (d)(3) of the proposed rule to require that billing data be supplied within three business days. Further, the

commission has adopted TXU's proposed language to clarify the reference to billing determinants in subsection (d)(3) of the rule.

TXU and OAG stated that the rule should address the confidentiality of the public retail customers' data. GLO stated that a confidentiality agreement would be required of all outside consultants.

The commission does not find it necessary to state in the rule that the public retail customers' data is confidential. To the extent that such data is confidential under the law, that law would control and a commission rule stating it is confidential would be superfluous. A commission rule declaring the information is confidential would not be controlling on the OAG should it receive a request for an Open Records ruling. However, the commission believes it would be useful to put parties on notice that public retail customers' data is subject to the requirements and protections of the Public Information Act, Government Code, Chapter 552. Therefore, a provision has been added to the rule that refers to that section.

TXU stated that the phrase "customer service" in subsection (f)(1) was unclear because the components of the customer service charge are not listed in the rule.

The commission clarified the meaning of the phrase "customer service" by listing the components of the customer service charge in subsection (f)(4) of the rule.

TXU and EGS asserted that the "bundled rates" for the purposes of calculating the power delivery charge should include the fuel factor, or in the alternative, that the data from Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas,* should be recalculated to exclude fuel costs. TXU and EGS expressed concern that the inclusion of fuel costs in the unbundling models used in Project Number 20749 may have caused an understatement of non-generation costs relative to the generation function.

The commission does not agree that any fuel-related charges should be included in the power delivery charge. To the extent that fluctuations in fuel costs may affect the functional percentages used to compute the power delivery charge, the effect is minimal. In order to facilitate implementation, the commission declines to establish new functional percentages for the purpose of the tariffs required by this rule. The commission believes that the methodology set out in the proposed rule will result in reasonable power delivery charges.

TXU and EGS stated that rates for customers taking service at the transmission level do not contain distribution costs, therefore the credit for transmission-level service is inappropriate.

The commission notes that this issue was considered in the development of the cost unbundling models used in Project Number 20749, and, as a result, distribution costs were assigned to transmission-level service rate classes accordingly. However, the commission recognizes that some utilities have tariffs in place that exclude distribution charges for such customers. To this

extent, the commission has adopted TXU's suggested language relating to public retail customers taking service at transmission level .

With respect to the "billing and customer service credit", CSW stated that the affected utilities will incur billing and customer service costs to serve the GLO. TXU stated that the costs for the billing and customer service credit are fixed and will not decrease when a customer switches to the GLO, and that the credit does not contain billing costs.

The commission recognizes that the data to separate the costs of billing to public retail customers is not available at this time. Therefore, an alternative method must be developed to allow the GLO to receive a reasonable credit for billing public retail customers directly. Although an affected utility will incur some costs for customer service to the GLO, the net costs incurred by the utility will be lower, because the utility will not be providing the same level of services when the GLO bills its public retail customers directly. The commission therefore finds the credit equal to the tariff administration, energy services, and other customer service (TECS) portion of the power delivery charge to be a reasonable proxy in the absence of information on billing costs.

TXU, EGS, Austin Energy, CPS, and the Cities maintained that PURA does not authorize direct billing of public retail customers by the GLO prior to January 1, 2002.

The commission disagrees with the commenters, and finds that the authorization for the GLO to directly bill public retail customers is implicitly granted in PURA §35.102, State Authority to

Sell or Convey Power. The authority to sell power necessarily includes the authority to bill for it, unless expressly prohibited. The references by the commenters to provisions in Chapters 39, 40, and 41 of PURA, which address the authority of the incumbent utility to perform billing, relate to the implementation of customer choice. These provisions do not apply to the GLO Power Marketing Program established in PURA Chapter 35. The authority of the GLO to sell power is a separate chapter of PURA, largely independent of the implementation of customer choice.

TXU stated that the rule should specify in subsection (g)(1)(B) that weather-adjusted billing determinants should be used for the calculation of the competition transition charge in order to provide consistency with the language of PURA §39.253(g). EGS stated its assumption that the use of year-end April 30, 1999 billing determinants for the calculation of the competition transition charge is a result of on-going negotiations in other proceedings, and is inefficient because it requires an affected utility to develop data that may not be used for any other purpose. The commission does not intend to incorporate any specific position being advocated in any proceeding outside this rulemaking, and as implied by TXU, merely seeks to provide consistency with the language of PURA §39.253(g). Therefore, the commission agrees with the modification suggested by TXU.

TXU suggested language to clarify the definition of stranded costs in subsection (c)(6).

The commission has adopted TXU's suggested language, which clearly identifies the relevant scenario within the "Potentially Strandable Investment (ECOM) Report: 1998 Update".

TXU stated that the rule should contain a provision for a "carrying charge" on the unrecovered stranded cost balance to allow an affected utility the opportunity to earn a reasonable return during the amortization period. TXU further commented that the rule should clarify that transition charges, as defined in PURA §39.302(7) may also be imposed.

The commission agrees that the competition transition charge should include a reasonable return for the years 2000 and 2001 on the unrecovered balance of stranded costs. Therefore the commission has added language to subsection (g)(2) of the rule which instructs utilities to first discount the ECOM Report estimate back to 2000, then calculate a return, as identified in PURA §39.258(7), for the years 2000 and 2001. The commission also believes that the competition transition charge established in this rule will provide reasonable recovery of an affected utility's stranded costs during the period prior to the establishment of a competition transition charge under PURA §39.201.

TXU stated that the competition transition charge established in this rule should be subject to a true-up.

The commission disagrees that a special true-up proceeding is necessary for the competition transition charge established under this rule. PURA §39.262 provides for a true-up proceeding of all competition transition charges, including those established under this section. The commission has added language to clarify this point in new subsection (g)(3) of the rule.

CSW, TXU, and EGS stated that the GLO's responsibility to provide ancillary services should be addressed in the rule.

The commission believes that the responsibility to provide ancillary services and related issues are more appropriately addressed in individual agreements between the GLO and any party or parties with which it contracts to implement the GLO Power Marketing Program. Therefore the commission declines to include a provision relating to ancillary services in the rule.

CSW stated that the timing of the switchover from the utility to the GLO should be restricted to the end of a billing cycle.

The commission recognizes that some administrative efficiency may be gained by timing the switchover at the end of the billing cycle, but does not agree that this efficiency would outweigh the costs of such a delay in all cases. Therefore, the commission declines to include a provision for switchover timing in the rule.

EPE stated that a provision for utilities exempt from PURA Chapter 39 should be added to address the period until such an exemption expires. The suggested provision would allow EPE to collect stranded costs as an amount equal to the margin between the GLO and EPE prices for electricity, and would allow EPE to adjust its functional percentages annually.

The commission recognizes the need for a provision for utilities exempt from PURA Chapter 39 to address the period until such an exemption expires. The commission has adopted such a provision under subsection (h), rate design for electric utilities. New subsection (h)(3) allows EPE a one-time adjustment of its functional percentages, based on costs for the year ending December 31, 2001. However, the commission declines to afford EPE special treatment by setting the competition transition charge at a level different from that set for all other utilities, to capture the entire margin between GLO and EPE prices.

SPS stated that the rule potentially conflicts with non-ERCOT utilities' FERC Open Access Transmission Tariff. SPS recommended that the rule allow non-ERCOT utilities the flexibility to avoid conflicts with other jurisdictions. In commenting on this issue, EGS maintained that if the transmission rate established in this rule "simply represented the disaggregated price for the transmission component of bundled retail service but is not authorization to obtain unbundled transmission service for retail access, no FERC action would be required."

The commission agrees with EGS. This rule does not require the provision of unbundled transmission service but instead establishes a disaggregated price for services that will be provided on a bundled basis in order to expediently effectuate the intent of PURA §35.102. Consequently, the commission does not believe it will be necessary for FERC-jurisdictional utilities to amend their FERC tariffs if the GLO requests the utility to file a tariff pursuant to this rule.

The GLO filed comments supporting the rule, and noted the need to implement the GLO Power Marketing Program in a timely, expeditious manner.

The commission concurs with GLO's comment that the program should be implemented expeditiously. Toward that end, language has been added in subsection (e)(2) of the rule to clarify that the tariffs filed pursuant to this rule may be approved on an interim basis.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §35.102 which grants the Commissioner of the General Land Office the authority to sell or otherwise convey power generated from royalties taken in kind as provided by Natural Resources Code §§52.133(f), 53.026, and 53.077, directly to a public retail customer.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.101, 35.102, 35.103, 35.104, 35.105, and 35.106.

§25.227. Electric Utility Service for Public Retail Customers.

(a) **Purpose.** The purpose of this section is to establish the terms under which the General Land Office may take utility service, including transmission, distribution, and customer services, in order to convey power to public retail customers purchased under the Public Utility Regulatory Act (PURA) §35.102. This section also allows public retail customers the option to purchase power from the General Land Office. This section requires electric utilities, and municipally owned utilities and electric cooperatives that have adopted customer choice, to file tariffs to specify the terms and conditions under which the General Land Office may take utility service from an affected utility pursuant to PURA §35.103(b). These tariffs must include any stranded costs associated with providing the service.

(b) **Application.** This section shall apply to electric utilities that provide retail electric service in Texas, and municipally owned electric utilities and electric cooperatives that have adopted customer choice. This section shall not apply to either municipally owned electric utilities or to electric cooperatives that have not adopted customer choice. In a certificated area of an electric utility in which customer choice has not been introduced, the General Land Office may not engage in retail transactions that exceed 2.5% of a retail electric utility's total retail load, calculated based on the system peak for the calendar year 1998.

(c) **Definitions.** As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) **Affected utilities** – shall refer to all utilities as defined in subsection (b) of this section.

(2) **Customer service** – As defined in §25.221 of this title (relating to Electric Cost Separation).

(3) **Distribution service** – As defined in §25.221 of this title (relating to Electric Cost Separation)

(4) **Transmission service** – As defined in §25.221 of this title (relating to Electric Cost Separation).

(5) **Public retail customer** – A retail customer that is an agency of this state as defined in §25.78 of this title (relating to State Agency Utility Account Information), a state institution of higher education, a public school district, or a political subdivision of this state. Under Texas Government Code §447.008(d), a state agency or institution of higher education may request assistance from the Office of the Attorney General in the negotiating rates and terms of electric service .

(6) **Stranded cost** – The amount estimated by the commission in the scenario which assumes retail access beginning in the year 2002, "base" market prices, and including the effects of cost benchmarking and transition plans where applicable, in the "Potentially Strandable Investment (ECOM) Report: 1998 Update," as described in PURA §39.262(i).

(7) **Functional percentage** – The ratio of each of the transmission, distribution, and customer service costs to total costs for each rate class of each utility, as identified

in Appendix F of the Staff Report filed in Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas*.

(d) **Obligations of affected utilities.**

(1) Each affected utility is obligated to provide the services prescribed by this section on a comparable and non-discriminatory basis, and under the same terms and conditions for service to similarly situated customers.

(2) Each affected utility's obligations shall include, but are not limited to, the obligation to extend electric service to new locations.

(3) The affected utility shall provide to the General Land Office within three business days of collection all demand and/or energy consumption readings applicable to each public retail customer to which the General Land Office conveys power. This information is subject to any protections of the Public Information Act, Texas Government Code, Chapter 552.

(e) **Filing requirements.**

(1) Upon a request for service pursuant to this section by the General Land Office, an affected utility shall file a tariff to implement the provisions of this section not later than 15 days from the date of the request. The proposed tariffs of electric utilities shall comply with subsection (f) of this section, and with the commission's standard tariff format for this section. As part of this filing, electric

utilities shall provide all supporting workpapers and documents used in the calculation of the power delivery charge and the competition transition charge.

(2) The commission shall approve or deny a proposed tariff filed by an electric utility under this section within 30 days of filing. A proposed tariff may be approved on an interim basis, subject to refund or surcharge, prior to final approval.

(f) **Tariff requirements.** Each tariff of an electric utility shall contain the following provisions listed in paragraphs (1) through (8) of this subsection. Paragraph (8) of this subsection shall apply to all affected utilities as defined in subsection (b) of this section.

(1) **Power delivery charge**. The sum of the transmission, distribution, and customer services charges established under this section. No credits shall be made to the power delivery charge, except for credits related to transmission-level service and billing and customer service, as provided in paragraphs (5) and (6) of this subsection.

(2) **Transmission charge.** A charge for transmission service as established in subsection (h) of this section. A separate charge shall be listed for each rate class.

(3) **Distribution charge.** A charge for distribution service as established in subsection (h) of this section. A separate charge shall be listed for each rate class.

(4) **Customer service charge.** A charge for retail customer service equal to the sum of the metering and billing and the tariff administration, energy services, and other customer service charges as established in subsection (h) of this section. A separate charge shall be listed for each rate class.

(5) **Transmission-level service credit.** A credit equal to the distribution charge, to be applied to the power delivery charge for public retail customers that take electric service at transmission voltage. This credit shall apply only in the event an affected utility does not have a commission-approved tariff for electric service at transmission voltage.

(6) **Billing and customer service credit.** A credit equal to the tariff administration, energy services, and other customer services portion of the customer service rate, which shall be applied to the power delivery charge if the affected utility does not bill the public retail customer directly on behalf of the General Land Office.

(7) **Competition transition charge**. A charge as established in subsection (g) of this section for the recovery of stranded costs associated with providing the service.

(8) **Terms and conditions**. Terms and conditions shall be consistent with the existing bundled rate tariffs.

(g) **Competition transition charge (CTC)**

(1) The competition transition charge for an electric utility shall be calculated as follows:

(A) The stranded costs for each utility shall be amortized over the average remaining life of the generation asset(s) underlying the stranded costs, and shall be allocated to each class pursuant to the method prescribed by PURA §39.253;

(B) The rate design of the CTC for each class shall be consistent with the rate design used to recover the costs of the generation assets underlying the stranded costs in the utility's last rate proceeding, calculated to reflect billing determinants for the year ending April 30, 1999, adjusted for normal weather.

(2) The CTC calculated pursuant to this section shall remain in effect until replaced by the CTC established pursuant to PURA §39.201. The CTC shall include a reasonable return for the years 2000 and 2001 on the unrecovered balance of stranded costs. The year 2000 balance shall be its January 1, 2002 balance discounted at 8.5% per year for each of the years 2000 and 2001. Such return shall be as identified in PURA §39.258(7).

(3) The CTC calculated pursuant to this section shall be subject to PURA §39.262, True-Up Proceeding.

(h) **Rate design for electric utilities.**

(1) The functional percentages determined for each rate class for each electric utility in Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas*, shall be applied to each component of the existing bundled rate. The existing rate structure shall be maintained.

(2) The rate design required by this section for electric utilities shall remain in effect until replaced by the rate design established pursuant to PURA §39.201.

(3) An affected utility that is not subject to PURA Chapter 39, pursuant to §39.102(c), may request and the commission may grant, a one-time revision of the functional percentages determined for each rate class of that utility in Project Number 20749. The revision shall be based on actual cost data for the year ending December 31, 2001.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that rule §25.227, relating to Electric Utility Service for Public Retail Customers, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF SEPTEMBER 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

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Chairman Pat Wood, III

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Commissioner Judy Walsh

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Commissioner Brett A. Perlman