

The Public Utility Commission of Texas (commission) adopts an amendment to §25.237, relating to Fuel Factors with no changes to the proposed text as published in the October 1, 1999 *Texas Register* (24 TexReg 8404). The amendment is necessary to conform the section to the requirement of Chapter 41 of the Public Utility Regulatory Act (PURA). The commission interprets this chapter as exempting electric cooperatives from filing fuel reconciliations after September 1, 1999. The proposed amendment will eliminate any reference to electric cooperatives in §25.237(d). This amendment was adopted under Project Number 21232.

The commission received one comment on the proposed amendment from Brazos Electric Power Cooperative (Brazos).

Brazos commended the commission for the proposed amendment and notes that §25.237(d) relates to schedules for filing petitions to revise fuel factors and does not address fuel reconciliations after September 1, 1999 for periods prior to September 1, 1999. However Brazos believes that it is clear that the commission's limited jurisdiction over cooperatives after September 1, 1999 does not include the authority to reconcile fuels for an electric cooperative for periods before or after September 1, 1999.

The commission agrees with Brazos.

This amendment 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002

§25.237. Fuel Factors.

- (a) **Use and calculation of fuel factors.** An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.
- (1) Fuel factors are determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect. Fuel factors must account for system losses and for the difference in line losses corresponding to the type of voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.
- (2) An electric utility may initiate a change to its fuel factor as follows:
- (A) An electric utility may petition to adjust its fuel factor as often as once every six months according to the schedule set out in subsection (d) of this section.
- (B) An electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.
- (C) An electric utility's fuel factor may be changed in any general rate proceeding.

- (3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:
- (A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any unreasonable costs incurred will be refunded to the electric utility's customers.
- (B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor, but requests by the electric utility to make refunds or surcharges may only be made at the times allowed by this paragraph. An electric utility may petition to make refunds or surcharges at the specified times that these rules allow an electric utility to change its fuel factor irrespective of whether the electric utility actually petitions to change its fuel factor at that time. An electric utility shall petition for a surcharge at the next date allowed for setting a fuel factor by the schedule set out in subsection (d) of this section when it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. An electric utility shall petition to make a refund at any time that it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that

the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual estimated fuel cost figure most recently adopted by the commission, as shown by the electric utility's fuel filings with the commission.

- (b) **Petitions to revise fuel factors.** During the first five business days of the months specified in subsection (d) of this section, each electric utility using one or more fuel factors may file a petition requesting revised fuel factors. A copy of the filing shall also be delivered to the Office of Regulatory Affairs and the Office of Public Utility Counsel. Each petition must be accompanied by the commission prescribed fuel factor application and supporting testimony that includes the following information:
- (1) For each month of the period in which the fuel-factor has been in effect up to the most recent month for which information is available,
 - (A) the revenues collected pursuant to fuel factors by customer class;
 - (B) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and
 - (C) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred.
 - (2) For each month of the period for which the revised fuel factors are expected to be in effect, provide system energy input and sales, accompanied by the calculations

underlying any differentiation of fuel factors to account for differences in line losses corresponding to the type of voltage at which the electric service is provided.

- (c) **Fuel factor revision proceeding.** Burden of proof and scope of proceeding are as follows:
- (1) In a proceeding to revise fuel factors, an electric utility has the burden of proving that:
 - (A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;
 - (B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and
 - (C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the type of voltage at which the electric service is provided.
 - (2) The scope of a fuel factor revision proceeding is limited to the issue of whether the petitioning electric utility has appropriately calculated its estimated eligible fuel expenses and load.
- (d) **Schedule for filing petitions to revise fuel factors .** A petition to revise fuel factors may be filed with any general rate proceeding. Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors may

only be filed during the first five business days of the month in accordance with the following schedule:

- (1) January and July: El Paso Electric Company and Central Power and Light Company;
- (2) February and August: Texas Utilities Electric Company;
- (3) March and September: West Texas Utilities Company and Entergy Gulf States, Inc.;
- (4) April and October: Houston Lighting & Power Company;
- (5) May and November: Southwestern Electric Power Company, Southwestern Public Service Company, and Lower Colorado River Authority; and
- (6) June and December: Texas-New Mexico Power Company, and any other electric utility not named in this subsection that uses one or more fuel factors.

(e) **Procedural schedule.** Upon the filing of a petition to revise fuel factors in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

- (1) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and
- (2) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

- (f) **Emergency revisions to the fuel factor.** If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

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 §25.237 relating to Fuel Factors is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 6th DAY OF DECEMBER, 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman