

PROJECT NO. 29855

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

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §25.362
AS APPROVED AT THE SEPTEMBER 2, 2004 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. The proposed amendment will require ERCOT to immediately report to the commission any event or situation that could reasonably be anticipated to 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. The proposed amendment will enhance the commission's ability to execute its statutory duties in overseeing the operations of ERCOT. Project Number 29855 is assigned to this proceeding.

The commission is also proposing an amendment to procedural rule §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) concerning the deletion of a provision that allows ERCOT rate changes to become effective on an interim basis if the commission has not acted on the proposed rate change within 120 days after it was submitted. The proposed procedural 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 obtain information concerning the operations of ERCOT and to better perform its statutory duty of overseeing ERCOT's operations. ERCOT has recently received unfavorable publicity concerning the alleged activities of certain individuals while they were employees of ERCOT. Although ERCOT's management became aware of these allegations in March 2004, they were not reported to all members of the commission until late May 2004. The events were of such importance that the commission believes they should have been reported sooner. Without accurate and timely reporting of information concerning events that could potentially adversely affect ERCOT, the commission is unable to take timely steps to protect market participants and customers within ERCOT. Therefore, to ensure that it has the information necessary to effectively oversee the ERCOT market, the commission has determined that it is necessary to explicitly impose the requirement that ERCOT management immediately inform the commission of such potentially adverse events or situations. Additionally, by requiring a follow-up written report of the event, the rule assures that there will be a public disclosure of the event and the efforts to address the situation. The amendment also allows any confidential information in the report to be treated in the same manner as other confidential information under the existing rule provisions. The reporting requirements will enhance the

commission's ability to oversee ERCOT. 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 Thursday, 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; and specifically, PURA §39.151, which grants the commission oversight and review authority over independent organizations, like ERCOT.

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

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

(a) – (g) (No change.)

(h) **Required reports.**

(1) – (2) (No change.)

(3) **Emergency reports.** If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to 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, ERCOT management shall immediately notify the Executive Director of the commission, or the Executive Director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved within 24 hours of becoming aware of such event or situation, unless the Executive Director specifies, in writing, that the report may be delayed. The Executive Director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a reoccurrence of the events that led to the need for filing an emergency report. If ERCOT contends that any of the information contained in an emergency report is "Protected Information" under the ERCOT Protocols, or is otherwise subject to

protection from disclosure under the TPIA, the report will be subject to the requirements of subsection (e) of this section.

(i) – (k) (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**