The Public Utility Commission of Texas (commission) proposes new §25.381, relating to Capacity Auctions. The proposed new rule will implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.153 (Vernon 1998, Supplement 2000) (PURA), as it relates to the establishment of procedures by which affected affiliated power generation companies (PGCs) will auction entitlements to 15% of their Texas jurisdictional installed generation capacity beginning 60 days before the implementation of customer choice. Project Number 21405 has been assigned to this proceeding.

The proposed rule is intended to develop a set of standard products for electricity generation capacity to be auctioned by affiliated PGCs and the procedures by which those auctions will be performed. Under the proposed rule, each affected affiliated PGC, or the affected electric utility for purposes of the first auction, will auction entitlements to its generation capacity as a mix of baseload, gas intermediate, gas cyclic, and gas peaking capacity. The entitlements will not be tied to a specific plant, but instead will be served by the relevant portfolio of generation plants that make up the utility's system. As a result, the auction products are subject to a lesser degree of outage risk than products tied to specific utility plants.

The proposed rule also sets forth scheduling rules for the various products and details the prices that will be paid by the holder of an entitlement when that entitlement is exercised.

The products as proposed exhibit varying levels of flexibility and dispatchability based on the nature of the characteristics of the underlying generation plants.

In addition to the four different types of auction products, there will be varying terms for the entitlements. The initial auction to be conducted before September of 2002 will include the auctioning of discrete months of entitlements and strips of entitlements that will encompass the 12 months through the end of 2003 and the 24 months through the end of 2004. The varying durations of entitlements are intended to provide a mix of products to meet the different needs of companies in the restructured electric market.

It is intended that the auction products will be standardized across all affected affiliated PGCs. Standardized products will be more tradable in a secondary market, and therefore are intended to significantly increase the liquidity in the wholesale energy market. Similarly, in order to help minimize the administrative costs of participating in the auctions, the procedures to be followed and the timings of the auctions are intended to be standardized across all affected affiliated PGCs.

The proposed rule also prescribes the methodology under which the price of power obtained in the capacity auctions will be reconciled against the power cost projections employed for the same time period in the ECOM model used to estimate stranded costs in the proceeding under PURA §39.201 during the true-up procedure conducted pursuant to PURA §39.262.

As part of the drafting process, commission staff conducted workshops in Austin to receive input from potentially affected persons on March 3, 2000, May 30, 2000, June 28, 2000, and August 3, 2000. Informal comments were solicited at several of those workshops.

Brian Lloyd, Senior Economic Analyst, Policy Development Division 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.

Mr. Lloyd has also 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 increased competition and liquidity in the wholesale generation market, readily available generation supplies to purchasers, and a variety of products to assist both wholesale market participants and retail electric providers in servicing retail customers, thus ultimately resulting in lower electric energy prices for those customers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to affected PGCs and parties interested in participating in the auctions through the preparation and evaluation of bids. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs. Winners of the auctions will be required to make payments to the affected PGCs for the capacity and energy as directed by the rule.

Moreover, Mr. Lloyd has 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 seeks comments on the proposed rule from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rule. 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.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. Does the rule reflect an appropriate level of firmness for the products?

2. The heat rates specified in the "fuel price" sections of the gas product descriptions are intended to be standardized across the state in order for the products to be more tradable in a secondary market. Are the heat rates set at an appropriate level to be used as a statewide standard?

3. Are fuel service costs and start-up fees appropriate? Should these costs be standardized across the state and if so, are the appropriate values included in the proposed rule?

4. Are the credit requirements detailed in subsection (e)(5)(D) consistent with typical credit requirements in wholesale markets and with other credit requirements previously adopted by either the commission or ERCOT?

5. Given that the entitlement products are system capacity, should there be more flexibility in scheduling the baseload, gas intermediate, and gas cyclic products?

6. Will the bid procedures, evaluation methodology, and determination and application of the market clearing price provide an appropriate valuation for the products? What procedures best balance the commission's goals of determining an appropriate market price, providing market liquidity, and facilitating price discovery and transparency?

7. Is the true-up methodology in subsection (h) an appropriate methodology to incorporate the capacity auction revenues into the stranded cost true-up required by PURA §39.262? Is there an adjustment needed to those revenues in order to reflect products that are more firm than the overall system?

8. The definition of "affiliated power generation company" in PURA §31.002(1) refers to a power generation company that is the successor in interest of an electric utility. If an affiliated PGC places its generation assets in a non-affiliated company, is that company a "successor in interest" and therefore considered an "affiliated power generation company" for the purpose of remaining subject to the capacity auction requirement? Similarly, if generation assets are sold to a third party, does that third party become a "successor in interest" and therefore an "affiliated power generation company" and also become subject to the capacity auctions for those assets?

9. Should the gas price paid by the holder of an entitlement when that entitlement is struck be a known, fixed price at the time the entitlement is up for bid? Will having a known price make the products more usable and desirable to retail electric providers?

10. Should the commission retain an independent third party to conduct the auctions?

Comments on the proposed new rule (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 28 days after publication. Reply comments may be submitted within 42 days after publication. All comments should refer to Project Number 21405.

The commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on Friday, October 20, 2000, at 9:30 a.m. in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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. The commission also proposes this rule pursuant to PURA §39.153, which grants the commission authority to establish rules that define the scope of the capacity entitlements to be auctioned, and the procedures for the auctions.

Cross Reference to Statutes: PURA §§14.002, 31.002, 39.153, 39.201, and 39.262.

§25.381. Capacity Auctions.

(a) **Applicability**. This section applies to all affiliated power generation companies (PGCs) as defined in this section in Texas. This section does not apply to electric utilities subject to Public Utility Regulatory Act (PURA) §39.102(c) until the end of the utility's rate freeze.

(b) **Purpose**. The purpose of this section is to promote competitiveness in the wholesale market through increased availability of generation and increased liquidity by requiring electric utilities and their affiliated PGCs to sell at auction entitlements to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity, describing the form of products required to be auctioned, prescribing the auction process, and prescribing a true-up procedure, in accordance with PURA §39.262(d)(2).

(c) **Definitions**. The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:

(1) **Affiliated power generation company (PGC)** – For purposes of this section, an "affiliated PGC" refers to a power generation company that is unbundled from the electric utility in accordance with PURA §39.051. The term also includes an electric utility as defined in §25.5 of this title (relating to Definitions) that owns or operates for compensation in this

state equipment or facilities to generate more than 400 megawatts (MW) of electricity in this state until the electric utility has unbundled, but does not include river authorities.

(2) **Auction conclusion date** – The date on which the bids are due to be received and the winning bids in an auction are announced.

(3) **Business day** – Any day on which the affiliated PGC's corporate offices are open for business and that is not a banking holiday

(4) **Close of business** – 5:00 p.m., central standard or daylight savings time.

(5) **Congestion zone** – An area of the transmission network that is bounded by commercially significant transmission constraints, as defined by an independent organization.

(6) **Daily gas price** – The index posting for the date of flow in the Financial Times Energy publication "Gas Daily" under the heading "Daily Price Survey" for East-Houston-Katy, Houston Ship Channel.

(7) **Day-ahead** – The day preceding the operating day.

(8) **Installed generation capacity** – All potentially marketable electric generation capacity owned by an affiliated power generation company, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(9) **Power generation company (PGC) –** As defined in §25.5 of this title.

(10) **Starts –** Direction by the owner of an entitlement to dispatch a previously idle entitlement.

(11) **Texas jurisdictional installed generation capacity –** The amount of an affiliated PGC's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(d) **General requirements**. Subject to the qualifications for auction entitlements and the auction process described in subsections (e) and (f) of this section, each affiliated PGC subject to this section shall sell at auction capacity entitlements equal to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. Divestiture of a portion of an affiliated PGC's Texas jurisdictional installed generation capacity will be counted toward satisfaction of the affiliated PGC's capacity auction requirement if and only if the divestiture is made pursuant to a commission order in a business combination proceeding pursuant to PURA §14.101, and after the transfer of the assets and operations to a third party.

(e) **Product types and characteristics.**

(1) **Available entitlements and amounts**. The following four products shall be auctioned as capacity entitlements under subsection (d) of this section. Each affiliated PGC shall auction an amount of each product in proportion to the amount of Texas jurisdictional installed generating capacity on the affiliated PGC's system that are the respective type of generating units. An affiliated PGC that owns generation in multiple congestion zones shall auction entitlements for delivery in each congestion zone. The amount of each product auctioned in each zone shall be in proportion to the amount of the respective type of generating units located in that zone, but the total shall not be less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. Entitlements shall be for system capacity.

(A) Baseload.

(i) Description. For each baseload capacity entitlement, the scheduled power shall be provided to the purchaser during the month of the entitlement seven days per week and 24 hours per day, in accordance with the scheduling requirements and limitations provided in paragraph (5)(C)(i) of this subsection.

(ii) Block size. Each baseload capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel cost owed to the affiliated PGC by the entitlement purchaser for the dispatched baseload power will be the average cost of coal, lignite, and nuclear fuel (in dollars per MWh) based on the company's final excess cost over market (ECOM) model as determined in the proceeding pursuant to PURA §39.201 as projected for the relevant time period. There is no fuel service cost associated with baseload capacity. Electric utilities without an ECOM determination in their proceeding conducted pursuant to PURA §39.201 shall propose, for commission review, an average cost of fuel in a similar manner.

(iv) Starts per month. The purchaser of a baseload capacity entitlement must take power from the entitlement seven days per week and 24 hours per day and is therefore not permitted to direct the affiliated PGC to make any starts per month of baseload capacity entitlements.

(B) Gas – intermediate.

(i) Description. For each gas-intermediate capacity entitlement, 50% of the entitlement shall be provided to the purchaser during the month of the entitlement seven days per week and 24 hours per day with the remainder of the block scheduled day-ahead, or hour ahead for ancillary services, in accordance with the scheduling requirements and limitations provided in paragraph (5)(C)(ii) of this subsection.

(ii) Block size. Each gas-intermediate capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel cost owed to the affiliated PGC by the capacity purchaser for the gas-intermediate capacity dispatched will be 9,900 british thermal units per kilowatt-hour (Btu/kWh) heat rate times the minimum kilowatt-hours (kWh) that must be taken for gas-intermediate capacity as required in paragraph (5)(C)(ii) of this subsection times the first-of-the-month index posted in the publication "Inside FERC" for the Houston Ship Channel for the month of the entitlement. For power dispatched above the minimum kWh required, the additional fuel price owed to the affiliated PGC will be 9,900 Btu/kWh times the kWh of gas-intermediate power dispatched under the entitlement above the minimum requirement times the sum of the daily gas price and a fuel service cost equal to $0.14 per million Btu (MMBtu).

(iv) Starts per month. The purchaser of gas-intermediate capacity must take a minimum of 50% of the power from the entitlement and is therefore not permitted to direct the affiliated PGC to make any starts per month of gas-intermediate capacity entitlements.

(C) Gas – cyclic.

(i) Description. The gas-cyclic entitlement shall be flexible day-ahead shaped power and ancillary services.

(ii) Block size. Each gas-cyclic capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel price owed to the affiliated PGC by the capacity purchaser for gas-cyclic capacity dispatched will be 12,100 Btu/kWh times the kWh of the gas-cyclic power dispatched under the entitlement times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(iv) Starts per month and associated costs. The purchaser of gas-cyclic capacity shall be entitled to direct the selling affiliated PGC to make up to 15 starts per month of each entitlement of gas-cyclic capacity. For each start ordered by the purchaser, the purchaser shall pay the selling affiliated PGC a fee to reflect an appropriate pro-ration of start-up costs equal to 150 MMBtu times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(D) Gas – peaking.

(i) Description. The gas-peaking entitlement shall be intra-day power and ancillary services.

(ii) Block size. Each gas-peaking capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel price owed to the affiliated PGC by the purchaser for gas-peaking capacity dispatched will be 14,100 Btu/kWh times the kWh of the gas-peaking power dispatched under the entitlement times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(iv) Starts per month and associated costs. The purchaser of gas-peaking capacity shall be entitled to direct the selling affiliated PGC to make unlimited starts per month of each entitlement of gas-peaking capacity. For each start ordered by the purchaser, the purchaser shall pay the selling affiliated PGC a fee to reflect an appropriate pro-ration of start-up costs equal to 20 MMBtu times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(E) Ancillary services. The owner of a capacity entitlement may use it to meet ancillary services needs, if the needs may be met in a manner that is consistent with the scheduling and dispatch provisions of this section. The amount of ancillary services available will be in proportion to the ancillary services capabilities of the units that are used to define the capacity offered in the different entitlement products.

(F) Other products. Upon showing of good cause by the affiliated PGC and approval by the commission, an affiliated PGC may propose to auction entitlements different from those described in this subsection, including unit specific capacity.

(2) **Firmness.**

(A) Planned outages. For entitlements auctioned as discrete months, the seller will commit to a planned outage schedule at the time of the auction. For entitlements auctioned in strips of one-year or two-years, the selling utility will commit to a six-month planned outage schedule, to be provided to the relevant entitlement holders every six-months. When a generating unit is undergoing a planned outage, the entitlement shall be reduced in proportion to the percentage reduction to the grouping of units assigned to that entitlement described in paragraph (3) of this subsection. For example, where units V, W, X, Y, and Z (each generating 200

MW) are assigned to a 25 MW block of auctioned capacity, and unit V is undergoing a planned outage during the month of the capacity, the 25 MW block will be reduced to 20 MW for the duration of the planned outage. In the event that all units providing capacity to an entitlement product are undergoing planned outages at the same time, the entitlements of that product will be unavailable through the duration of the outage; however, if the duration of the outage exceeds 10% of the length of the entitlement, the capacity payment shall be pro-rated to reflect the reduced availability of the entitlement.

(B) Forced outages. If all units providing capacity to an entitlement product experience a forced outage or an emergency condition prevents or restricts the ability of an affiliated PGC to dispatch a particular entitlement product, the entitlements of that product shall be unavailable through the duration of the forced outage or emergency condition. Notification of such unavailability will take place prior to the next settlement interval. If the duration of such outage exceeds 10% of the length of the entitlement, the capacity payment shall be pro-rated to reflect the reduced availability of the entitlement.

(3) **Generation units offered**. Within 60 days after the effective date of this section, the affiliated PGC shall file with the commission its proposed

assignment of each of the affiliated PGC's power generation units to one of the four available product entitlements identified in paragraph (1) of this subsection, and the resulting amount of each type of entitlement to be auctioned. Interested parties shall have 30 days in which to provide comments on the utility's proposed assignments. If no comments are received, the utility's assignment shall be deemed appropriate. If any party objects to the utility's proposed assignments, the commission shall determine the appropriate assignment

(4) **Obligations of affiliated PGC**. The affiliated PGC shall dispatch entitlements only as directed by the holder of the entitlement in accordance with paragraph (5)(C) of this subsection. The affiliated PGC may not refuse to dispatch the entitlement or curtail the dispatch of an entitlement unless expressly authorized by this section. The affiliated PGC shall specify in its notice provided pursuant to subsection (f)(2)(A) of this section the point on the affiliated PGC's system from which each entitlement is dispatchable.

(5) **Purchaser's rights and duties.**

(A) No possessory interest. The entitlements sold at auction shall include no possessory interest in the unit or units from which the power is produced.

(B) No possessory obligations. The entitlements sold at auction shall include no obligation of a possessory owner of an interest in the unit or units from which the power is produced.

(C) Scheduling. The purchaser shall have the right to designate the dispatch of the entitlement, subject to planned outages, outages beyond the control of the utility operating the unit, and other exigencies declared by an independent organization. In addition, the following scheduling limitations apply based upon the type of capacity entitlement being scheduled.

(i) Baseload. Baseload capacity entitlements must be scheduled and taken at a constant rate for the entire month of the purchased capacity entitlement. Baseload capacity entitlements cannot be scheduled on a day-ahead or hour-ahead basis. Nothing in this paragraph affects the right or obligation of the owner of a baseload entitlement to schedule the delivery of power from the entitlement through the independent organization.

(ii) Gas – intermediate. Gas-intermediate entitlements can be scheduled on a day-ahead basis. Gas-intermediate ancillary services can be scheduled on a day-ahead basis. Daily scheduling requires a minimum of 50% of the block size, with a maximum allowable hourly swing of +/-25% of the block size. Other than for ancillary services, there shall be no hour-ahead scheduling for intermediate capacity entitlements.

(iii) Gas – cyclic. Day-ahead notice is required to schedule cyclic capacity entitlements, and shall be consistent with the day-ahead scheduling requirements of the relevant independent organization. The purchaser must take a minimum of 20% of the capacity entitlement purchased for a given day if scheduled and there shall be a maximum hourly swing of +/-25% per hour of the block size.

(iv) Gas – peaking. When scheduling gas-peaking power, the entitlement owner must provide the affiliated PGC with a minimum of one-hour notice of the intent to dispatch the gas-peaking power. When scheduling gas-peaking power, the purchaser of gas-peaking capacity must schedule a minimum run of two sequential hours, and any downtime must last at least four sequential hours. The power must be scheduled at either 0.0% of the block size or 100% of the block size. Where the purchaser schedules the capacity as a reserve or replacement, the purchaser must provide the affiliated PGC with a notice of the intention to do so on a day-ahead basis.

(D) Credit requirements.

(i) Standards. Entities submitting bids must satisfy one of the following credit standards:

(I) The entity holds an investment grade credit rating (BBB- or Baa3 from Standard and Poor's or Moody's respectively or an equivalent);

(II) The entity provides an escrowed deposit equal to the bid amount plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or three months at the minimum required dispatch;

(III) The entity provides a letter of credit or surety bond equal to the bid amount plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or a rolling three-month period at the minimum dispatch required, irrevocable for the duration of the entitlement;

(IV) The entity provides a guaranty from another entity with an investment grade credit rating;

(V) The entity receives a loan issued by a subsidiary or affiliate of the applicant or a corporation holding a controlling interest in the applicant irrevocable for the duration of the entitlement; or

(VI) The entity makes other suitable arrangements with the affiliated PGC, provided that the affiliated PGC makes such arrangements available on a non-discriminatory basis.

(ii) All cash and other instruments used as credit security shall be unencumbered by pledges for collateral.

(iii) In the event the holder of the entitlement initially relied on its investment grade credit rating but subsequently loses it during the entitlement period, the holder of the entitlement must provide alternative financial evidence within ten days.

(iv) The holder of the entitlement must notify the affiliated PGC of any material changes that impact the financial requirement contained in the credit standards.

(v) In the event the holder of the entitlement fails to meet or continue to meet its security requirement, the entitlement shall revert to the affiliated PGC and shall be auctioned in the next auction for which notice can be provided of the sale of the entitlement pursuant to subsection (f)(2)(A) of this section.

(f) **Auction process.**

(1) **Timing issues.**

(A) Frequency of auctions.

(i) Initial auction. The initial capacity auction shall be concluded on or before September 1, 2001.

(ii) Subsequent auctions. Capacity auctions subsequent to the initial auction shall be concluded on March 15, 2002, July 15, 2002, October 15, 2002, and November 15, 2002. Auctions conducted in years following 2002 will be concluded in the same months as the auctions conducted in 2002, and will occur on the 15th day of the month (or in the event that date falls on a weekend or banking holiday, on the first business day before the weekend or banking holiday).

(iii) Termination of the capacity auction process. The obligation of an affiliated PGC to auction entitlements shall continue until the earlier of 60 months after the date customer choice is introduced or the date the commission determines that 40% or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is provided by nonaffiliated retail electric providers.

(B) Auction conclusion.

(i) Receipt of bids. In order for an affiliated PGC that is auctioning capacity to consider a bid, the bid must be received by that affiliated PGC for auction by 12:00 p.m. on the auction conclusion date as defined in paragraph (1)(A) of this subsection. Bids shall be time-stamped by the affiliated PGC and notice of receipt of the bid shall be provided to the bidder.

(ii) Concluding each individual auction. The affiliated PGC shall provide notice of the winning bid(s) to auction participants and the commission by the close of business on the auction conclusion date.

(iii) Confidentiality and posting of bids. The affiliated PGC shall keep all bids confidential until the announcement of the winning bids. The affiliated PGC shall designate non-marketing personnel to evaluate the bids and persons reviewing the bids shall not disclose the bids to any person(s) engaged in marketing activities for the affiliated PGC. Upon announcement of the winning bids, the affiliated PGC shall provide the commission and all auction participants with all of the bids, but shall not divulge the identity of any particular bidders. Upon specific request by the commission, and under standard protective order procedures, the utility shall provide the identity of the bidders to the commission.

(2) **Auction administration.**

(A) Each auction shall be administered by the affiliated PGC selling the entitlement.

(B) Notice of capacity available for auction.

(i) Method of notice. At least 60 days before each auction conclusion date, each affiliated PGC offering capacity entitlements at auction shall file with the commission notice of the pending auction. The commission shall provide on its Internet site a continually updated list of pending auctions for each affiliated PGC subject to this section.

(ii) Contents of notice. Such notice shall include the auction conclusion date, the date by which bids must be received, and the types, quantity (number of blocks), congestion zone, and term of each entitlement available in that auction. The affiliated PGC shall also specify which power generation units will be used to meet the entitlement for each type of entitlement to be auctioned. If baseload entitlements are being auctioned, the utility shall also specify the fuel cost described in subsection (e)(1)(A)(iii) of this section at the time of the auction. If gas intermediate, gas cyclic, or gas peaking entitlements are being auctioned, the utility shall specify the fuel service cost.

(3) **Term of auctioned capacity.**

(A) Initial auction. For the initial auction on October 31, 2001, each entitlement will be one month in duration, with:

(i) Approximately 30% of the entitlements auctioned as two-year strips (the 24 months of 2002 through 2003),

(ii) Approximately 30% of the entitlements as one-year strips (the 12 months of 2002), and

(iii) Approximately 20% of the entitlements as discrete months for each of the 12 months of 2002 (January through December of 2002)

(iv) Approximately 20% of the entitlements as discrete months for the first four months of 2002 (January through April of 2002).

(B) Subsequent auctions.

(i) The auction on March 15 of a year will auction approximately 20% of the entitlements as the discrete months of May through August of that year.

(ii) The auction on July 15 of a year will auction approximately 20% of the entitlements as the discrete months of September through December of that year.

(iii) The auction on October 15 of a year will auction:

(I) Approximately 30% of the entitlements as the one-year strips for the next year, and

(II) Approximately 20% of the entitlements as discrete months for each of the 12 calendar months of the next year.

(iv) The auction on November 15 of a year will auction approximately 20% of the entitlements as the discrete months of January through April of the next year.

(v) In June of 2003, an evaluation will be made by the commission as to the need for another set of two-year strips (the 24 months of 2004 through 2005). If such term is deemed to be necessary, the next set of two-year strips will be auctioned on October 15 of 2003. If such term is not deemed to be necessary, then subsequent auctions will auction 60% of entitlements over one-year strips and 40 % of the entitlements as discrete months.

(C) Modification of term. If the auction is for a one-year or two-year strip term and the affiliated retail electric provider (REP) expects to reach the 40% load loss threshold in paragraph (1)(A)(iii) of this subsection, the affiliated PGC may request a shorter term strip by providing evidence of the loss of customer load. Similarly, prior to an auction for the next four available months, an affiliated PGC may request to not auction months in which it projects reaching the 40% threshold. Such filings shall be made 90 days before the auction conclusion date. An affiliated PGC that will satisfy its auction requirements through divestiture, as described in subsection (d) of this section may petition the commission to set an appropriate term for entitlements. The affiliated PGC may not adjust the amount or length of an entitlement to be auctioned except as authorized by the commission.

(4) **Quantity to be auctioned.**

(A) Block size and number of blocks. The block size of the auctioned capacity entitlement is 25 MW. The affiliated PGC shall divide the amount determined for each product described in subsection (e)(1) of this section by 25 to determine the number of blocks of each type to be auctioned.

(B) Divisibility. If the amount to be auctioned for an affiliated PGC for a particular product is not evenly divisible by 25, the remainder shall be added to the next highest heat-rate product available (in the order of baseload, gas-intermediate, gas cyclic, and gas peaking). The remainder for the highest heat-rate product available shall then be rounded up to 25.

(C) Total amount. The sum of the blocks of capacity auctioned shall total no less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity.

(5) **Bidders**. For each auction, potential bidders may pre-qualify by demonstrating compliance with the credit requirements in subsection (e)(5)(D)(i) of this section in advance of submission of a bid or providing evidence of the satisfaction of the credit requirements concurrent with the submission of a bid.

(6) **Form of bid.** A bid must contain the following terms:

(A) Price. The bid shall include an offer to purchase capacity that is stated in dollars per megawatt ($/MW).

(B) Quantity. The quantity must specifically indicate each block of capacity made available by the seller that the bidder is seeking to acquire.

(C) Term. For each block of capacity the bidder is seeking to acquire, the bid must include the month or strip of months for which the bidder is seeking to acquire such capacity.

(D) Product type. Each bid must include the type of product the bidder is bidding upon.

(7) **Establishment of reserve bid price.** Within 60 days of the effective date of this section, the affiliated PGC may file with the commission a methodology for determining a reserve bid price, if needed, based on the utility's expected variable cost of operation, but excluding any return on equity. The reserve price may not include any cost included in the fuel price to be paid by entitlement winners, nor any cost being recovered by its affiliated transmission and distribution utility through non-bypassable delivery charges, but may recover variable costs not included in the fuel prices. Parties shall have 30 days after filing to challenge the methodology. In the notice provided pursuant to paragraph (2)(A)(i) of this subsection, the affiliated PGC may make available an opening bid price calculated pursuant to the commission-approved methodology for each type of entitlement to be offered for sale at auction.

(8) **Determining the winning bidders**. Bids for each product by term will be ranked from the highest to the lowest price. The available number of blocks will be assigned to the highest ranked bids. The market-clearing price will be the lowest bid that is assigned to a block. If there are

multiple bids at the clearing price, available blocks will be assigned ratably to the bids, with the time of bid submission serving as an additional tie-breaker, if needed. Each winning bidder will pay the market-clearing price. The market-clearing price will be posted at the close of the auction through notice to all bidders and the commission.

(g) **Resale of entitlement.** The winners of an entitlement may resell the entitlement (or portions thereof) to any eligible purchaser except the affiliated REP of the affiliated PGC that originally auctioned the entitlement. The third party must meet the same credit requirements that had been required of the initial bid winner. Alternatively, a winner may assign the entitlement to a third party that does not meet the associated credit requirements provided that the original winner retains all payment and other related obligations. Owners of entitlements may direct dispatch of those entitlements to any lawful purchaser of electricity, including the affiliated REP.

(h) **True-up process.**

(1) **Capacity portion of true-up.** Each month beginning on February 1, 2002 to the month following the date a final order is issued in the PURA §39.262 proceeding, the affiliated PGC shall notify the commission of the amount of dollar receipts from capacity payments and start-up fees received in the previous month from entitlement holders. That amount

shall be divided by the percentage of product offered relative to the megawatts of the units and purchased power contracts underlying that product and the resulting amount shall be subtracted from the projection of fixed cost contribution (FCC) from the ECOM model for that affiliated PGC. The FCC shall be calculated by subtracting the total fuel expense found in the cost partition sheet of the ECOM model, adjusted to exclude the total wholesale fuel expense found in the cost allocation sheet of the ECOM model, from the revenues by fuel type found in the plant economics sheet of the ECOM model (i.e., FCC = (Texas Retail Revenues at Market Price) – (Fuel Expense – Texas Jurisdictional Wholesale Fuel Expense)). The resulting difference is the ECOM true-up amount required by PURA §39.262(d)(2) (i.e., ECOM True-up amount = FCC – Capacity Auction Premium). A positive number shall indicate an amount due the affiliated PGC, while a negative number shall indicate an amount due the ratepayers.

(A) The "Texas Retail Revenues at Market Price" comes from the "Plant Economics" tab of the ECOM model, and is the sum of rows 12 through 14 (by fuel type) by year.

(B) The "Fuel Expense" comes from the "Cost Partition" tab of the ECOM model at row 37 (which is the sum of rows 33 through 36 by fuel type).

(C) The "Texas Jurisdictional Wholesale Fuel Expense" comes from the "Cost Allocation" tab of the ECOM model at row 224 (which is the sum of rows 220 through 223 by fuel type) by year.

(2) **Fuel portion of true-up.** The affiliated PGC shall also reconcile any difference between non-market based gas costs included in the affiliated PGC's ECOM model with the fuel revenues received for the gas-intermediate, gas-cyclic, and gas-peaking products for the period from January 1, 2002 to the date a final, appealable order is issued by the commission.

(i) **True-up process for electric utilities with divestiture.** If an affiliated PGC meets its capacity auction requirements through a divestiture as allowed by subsection (d) of this section, the proceeds of the divestiture shall be used for purposes of the true-up calculation.

(j) **Modification of auction procedures or products**. Upon a finding by the commission that the auction procedures or products require modification to better value the products or to better suit the needs of the competitive market, the commission may, by order, modify the procedures detailed in this rule.

(k) **Contract terms.** Parties shall utilize a standard agreement adopted by the commission in detailing the terms, conditions, and obligations of the selling and buying parties.

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 29th DAY OF AUGUST 2000 BY THE PUBLIC UTILITY COMMISSION OF TEXAS RHONDA G. DEMPSEY