

PROJECT NO. 57004

**TEXAS ENERGY FUND GRANTS FOR § PUBLIC UTILITY COMMISSION
FACILITIES OUTSIDE OF THE §
ERCOT REGION § OF TEXAS**

PROPOSAL FOR PUBLICATION OF NEW 16 TAC §25.512

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.512, relating to the Texas Energy Fund Grants for Facilities outside of the ERCOT Region. This new rule will implement Public Utility Regulatory Act (PURA) §§34.0103 and 34.0106 as enacted by Senate Bill (SB) 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish procedures for applying for a grant award and the requirements and terms for grants to finance modernization, weatherization, reliability and resiliency enhancements, and vegetation management for transmission and distribution infrastructure and electric generating facilities in this state outside the ERCOT region.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

- (3) implementation of the proposed rule will not require an increase in legislative appropriations because Texas Constitution article III, § 49-q provides that “money in the Texas energy fund may be administered and used, without further appropriation...”;
- (4) implementation of the proposed rule will not require a decrease in future legislative appropriations to the agency;
- (5) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (6) the proposed rule will create a new regulation;
- (7) the proposed rule will not expand, limit, or repeal an existing regulation;
- (8) the proposed rule will not change the number of individuals subject to the rule's applicability;
- and
- (9) the proposed rule will not affect this state’s economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, Executive Director Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code § 2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Mr. Gordon 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 more resilient transmission and distribution infrastructure and electric generating facilities in this state outside of the ERCOT region. There will be no probable economic costs to persons required to comply with the rule under Texas Government Code § 2001.024(a)(5) because the rule is designed to deliver grant money to qualifying transmission and distribution infrastructure and electric generating facilities.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code § 2001.022.

Costs to Regulated Persons

Texas Government Code § 2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection § 2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code § 2001.029. The request for a public hearing must be received by November 7, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326. Austin, Texas 78711-3326. Comments must be filed by **November 7, 2024**. 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 rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 57004.

Each set of comments must include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name

and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §34.0103, which authorizes the commission to use money in the Texas Energy Fund to provide grants for modernization, weatherization, reliability and resiliency enhancements, and vegetation management for transmission and distribution infrastructure and electric generating facilities in this state outside of the ERCOT region; and §34.0110, which authorizes the commission to establish procedures for the application and award of a grant under PURA chapter 34, subchapter A.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 34.0103, and 34.0110.

§25.512. Texas Energy Fund Grants for Facilities outside of the ERCOT Region.

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §34.0103 and §34.0106 and establish requirements and terms for grants to finance modernization, weatherization, reliability and resiliency enhancements, and vegetation management for transmission and distribution infrastructure and electric generating facilities in this state outside of the ERCOT region.

(b) **Eligibility.**

(1) **Applicant eligibility.** To be eligible for a grant under this section, an applicant must:

(A) be an electric utility, electric cooperative, municipally owned utility, or river authority that owns or manages transmission or distribution infrastructure or one or more electric generating facilities in this state outside of the ERCOT region, or own a qualifying facility as defined by the Public Utility Regulatory Policies Act of 1978 (PURPA) §201, codified at 16 U.S.C.A. §§796(17) and (18); and

(B) be compliant with the requirements in the Lone Star Infrastructure Protection Act (codified at Texas Business and Commerce Code §117.002).

(2) **Project eligibility.** A project consists of one or more measures that share a specific objective over a defined duration. A measure may be an action or series of actions, acquisition of equipment, or construction of infrastructure. Measures that are interdependent must be submitted within the same project.

(3) Objectives. To be eligible for a grant under this section, a project must meet one of the following objectives.

(A) Facility modernization. This objective relates to upgrading or replacing infrastructure or equipment and improvements to facility or system situational awareness. Advanced metering installation and analytics, substation automation, water conservation, cooling system upgrades, and installation of heat-resistant technologies meet the facility modernization objective.

(B) Facility weatherization. This objective relates to measures that protect, strengthen, or improve the energy efficiency, operational parameters, or safety of a structure against the natural elements. Elevation of critical equipment, drainage system improvements, structure reinforcement, insulation and heating of critical areas and equipment, installation of advanced irrigation systems, and installation of weather-resistant equipment and fire or flood barriers meet the facility weatherization objective.

(C) Reliability and resiliency. This objective relates to helping facilities prevent, withstand, mitigate, or more promptly recover from power outages and events involving extreme weather conditions, uncontrolled events, cyber and physical attacks, cascading failures, or unanticipated loss of system components that pose a material threat to the safe and reliable operation of an electric utility's transmission, distribution, and generation systems. Fortification against flooding, pole upgrading, powerline

hardening, battery storage, onsite fuel storage capacity increases, generation uprates, cybersecurity enhancements, and fortification against physical threats meet the reliability and resiliency objective.

(D) **Vegetation management.** This objective relates to actions taken above and beyond those supported by an applicant's current rates to prevent or curtail vegetation from interfering with electric infrastructure. Data-driven trimming and removal scheduling, GIS-based vegetation mapping, drought-resistant vegetation installation, and measures taken to prevent the growth of trees, shrubs, and other vegetation meet the vegetation management objective.

(4) **Funding exclusions.** Proceeds of a grant received under this section must not be used for the following:

(A) compliance with weatherization standards adopted before December 1, 2023;

(B) debt payments;

(C) operation of a facility that will be used primarily to serve an industrial load or private use network (PUN), except as provided in paragraph (5) of this subsection;

(D) construction or operation of a natural gas transmission pipeline, or any project related to natural gas transmission or distribution infrastructure;

(E) construction of new electric generation resources; or

(F) operations expenses associated with any project funded by a grant under this section.

- (5) Electric generating facilities that serve an industrial load or PUN are eligible for a grant under this section, subject to the following conditions:
- (A) transmission and distribution infrastructure that serves an industrial load or PUN must be on the public use side of the meter and geographically located entirely within this state; and
- (B) an electric generating facility that serves an industrial load or PUN must operate in such a manner that the portion of nameplate capacity that will serve the maximum non-coincident peak demand of the industrial load or PUN is less than 50 percent of the facility's total nameplate capacity.
- (c) **Application.** An eligible applicant may submit one or more applications for a grant under this section. Each application may contain multiple projects. An applicant must not submit an application containing a project with an objective, as described in subsection (b)(3) of this section, within 24 months of the date the applicant previously submitted an application requesting a grant for a project with that objective. Each application must be submitted electronically in a form and manner prescribed by the commission and contain the information required by this subsection.
- (1) **Applicant.** An application must be submitted at the highest entity level (e.g., most senior parent or owner). Applications for projects with multiple owners must be submitted by the highest level of the entity with managing authority (e.g., owner with controlling interest, managing partner, or cooperative).
- (A) **Applicant information.** Each application must include applicant information, including:

- (i) the applicant's legal name;
- (ii) the applicant's form of organization; and
- (iii) the applicant's primary contact name and title, mailing address, business telephone number, business e-mail address, and web address.

(B) **Applicant experience.** Each application must include information on the applicant's history and experience, including:

- (i) the applicant's history of transmission, distribution, and electric generation operations in this state and this country;
- (ii) information describing the applicant's quality of services and management;
- (iii) information describing the applicant's efficiency of operations;
- (iv) evidence that the applicant is in good standing with financial institutions and is meeting all compliance requirements; and
- (v) evidence of past grant management and administration.

(2) **Project.** An application must be organized by project and objective. Each application must include the following information for each project:

- (A) **Project information, including:**
 - (i) proposed project name;
 - (ii) project objective, as specified in subsection (b)(3) of this section;
 - (iii) grant amount requested for the project;
 - (iv) description of the proposed project;

(v) demonstration of the project's eligibility under subsection (c) of this section;

(vi) a description of the operational attributes of the transmission or distribution infrastructure or electric generating facility for which the applicant is requesting a grant;

(vii) the name, location, owner, and applicable share of ownership of the transmission or distribution infrastructure or electric generating facilities included in the project; and

(viii) the priority of the project relative to any other projects also proposed under this section by the same applicant.

(B) Expected benefits of the proposed project receiving a grant under this section, including:

(i) a description of the expected benefits, including the location and magnitude of the expected benefits;

(ii) a description of the project's ability to address regional and reliability needs;

(iii) evidence of past performance of similarly sized and scoped projects, as applicable; and

(iv) an explanation for why this project should be funded by a grant under this section, as opposed to other available funding sources.

(C) Project implementation details, including:

(i) a proposed project schedule with anticipated dates for major project milestones;

- (ii) evidence of the technical feasibility of the project, including staffing plans, material contracts, and required permits, as applicable;
 - (iii) evidence of how any assets purchased with a grant under this section will be maintained through the depreciable life of the asset; and
 - (iv) performance metrics and targets for the project.
- (D) Budget information and a description of estimated project costs, including, as applicable:
 - (i) capital expenses, such as equipment, hardware, software, development, construction, and capital commitments required for the project to reach completion;
 - (ii) operating expenses in conjunction with the project and that result from the project, such as maintenance;
 - (iii) estimated timing requirements of the funds; and
 - (iv) the portions of the proposed budget funded by:
 - (I) this grant program, limited to capital expenses;
 - (II) applicant cost-share; and
 - (III) other sources, including federal grants.
- (3) An applicant must provide a notarized affidavit, signed by an executive officer of the applicant, affirming that the information provided in the application is true, accurate, and complete.

- (4) Information submitted to the commission in an application for a grant under this section is confidential and not subject to disclosure under Government Code chapter 522.
- (5) An applicant must separately file a statement indicating that an application for a grant award has been presented to the commission for review with the date of the application submission, the eligible objective and project, and the total grant amount requested per objective.
- (d) **Application review.** The commission will approve in full, approve in part, or deny each project in an application based on the screening and evaluation criteria outlined in this subsection. Evaluations and other recommendations provided by the TEF administrator are advisory only. All final decisions on whether to approve or deny each project will be made by the commission.
- (1) Applications will be reviewed in the order in which the commission receives them.
- (2) Applications and proposed projects will be screened for eligibility under subsection (b) of this section.
- (3) Each eligible project will be evaluated to determine whether it is reasonable. The following factors may also be considered in the evaluation:
- (A) the applicant's past performance, personnel, and resources to implement the project;
- (B) the project's expected benefits;
- (C) the project's ability to address regional and reliability needs;
- (D) the applicant's stated priority level for the project under subsection

(c)(2)(A)(viii) of this section;

(E) the project's attributes;

(F) the project's cost; and

(G) any other factors the commission deems appropriate.

(4) The TEF administrator may request that an applicant provide any additional information necessary to screen and evaluate any project in an application.

(e) Grant award amount.

(1) The amount of a grant award is based on program funding availability and application evaluation by the TEF administrator. Applications may be funded entirely, or the commission may fund a portion of the proposed application.

(2) Grants will be awarded only to fund eligible capital expenditures or vegetation management expenses incurred to implement projects in approved applications. Any expenses funded by a grant under this section must not be included in any rate base.

(3) A single applicant will not be awarded more than \$200 million in grants under this section.

(4) In order to receive a grant payment under this section, applicants must enter into a grant agreement in the form and manner specified by the commission. The TEF administrator may separate or combine projects across applications into any number of grant agreements. Failure to enter into a grant agreement or an uncured breach of the executed grant agreement will be grounds for the TEF administrator

to determine that an applicant is ineligible to obtain any future grant payments under this section. The TEF administrator may tailor any applicable reporting requirements, period of performance, milestones, performance metrics and targets, deliverables, and payment schedules for individual projects, all of which will be included in the grant agreement.

(f) Grant payment process.

- (1) Payment terms for each project will be determined by the TEF administrator and specified in the corresponding grant agreement. A grantee must comply with reporting requirements outlined in the grant agreement to be eligible for grant fund disbursement.
- (2) A grantee may receive grant funds in advance of incurring expenses, as specified in the grant agreement.
- (3) The commission will withhold payments for expenses that are found ineligible.

(g) Period of performance.

- (1) Each project's period of performance will be stated in the respective grant agreement based on the project schedule provided in the grantee's application. The grant agreement will specify project milestones.

- (2) Activities related to eligible expenses of the project must commence within 12 months of execution of the grant agreement. All projects must complete work by December 31, 2030, or an earlier date if specified in the grant agreement.
- (h) **No contested case or appeal.** Review of an application for a grant under this section is not a contested case. A commission decision on a grant award is not subject to a motion for rehearing or appeal under the commission's procedural rules.
- (i) **Project monitoring.** Reporting and monitoring requirements for each grantee will be specified in the grant agreement. Asset performance and maintenance will be monitored for a period specified in the grant agreement for any asset funded by a grant under this section. The TEF administrator must track each grantee's project progress and provide the commission with regular updates.
- (j) **Expiration.** This section expires May 1, 2045.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 26TH DAY OF SEPTEMBER 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**