

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§25.54. Cease And Desist Orders.

- (a) **Application.** This section is applicable to electric utilities, transmission and distribution utilities, power generation companies, retail electric providers, municipally owned utilities, electric cooperatives, the independent system operator, and any other person regulated under the Public Utility Regulatory Act (PURA) Subtitle B, collectively referred to as “market participants,” and shall refer to the definitions provided in PURA §11.003 and §31.002.
- (b) **Authority to issue order.** The commission or the executive director, who has been authorized pursuant to subsection (c) of this section, may issue a cease and desist order if the commission or executive director determines that the alleged conduct of a market participant meets one or more of the following conditions:
- (1) The conduct poses a threat to continuous and adequate electric service;
 - (2) The conduct is hazardous;
 - (3) The conduct creates an immediate danger to the public safety; or
 - (4) The conduct is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.
- (c) **Delegation of authority.** The commission may delegate the authority to issue a cease and desist order to the executive director. The authority to issue a cease and desist order shall be delegated at an open meeting and may remain in effect for up to two years.
- (d) **Procedure.** The commission must provide notice and opportunity for a hearing before issuing a cease and desist order if such notice is practicable. If such notice is not practicable, the commission may issue a cease and desist order without providing notice and opportunity for a hearing.
- (1) **If notice and opportunity for a hearing is practicable.** If notice and opportunity for a hearing is practicable, the commission shall follow these procedures:
 - (A) **Notice and Opportunity for Hearing.** The commission shall provide notice and opportunity for hearing pursuant to Chapter 2001, Texas Government Code. The notice shall include a description of the violation(s) of PURA or this chapter that the market participant’s conduct is alleged to violate and specific facts that support each allegation as reasonably believed by commission staff and a proposed order that contains a statement of the charges. Notice of a proposed order shall be given not later than the 10th day before the date set for a hearing.
 - (B) **Hearing.** A hearing on a cease and desist order is a contested case under Chapter 2001, Texas Government Code. The commission may hold a hearing on a cease and desist order or may refer the case to be heard by the State Office of Administrative Hearings.
 - (C) **Service of Cease and Desist Order.** If, after notice and opportunity for a hearing, the commission issues a cease and desist order, then the commission shall serve the cease and desist order by registered or certified mail, return receipt requested, to the market participant’s last known address. A cease and desist order is effective upon the earlier of receipt of actual notice or three days after the order is mailed.
 - (D) **Content of Cease and Desist Order.** A cease and desist order shall be served upon the market participant affected by that order and shall:
 - (i) Contain a statement of the charges and a description of the alleged violation(s) of PURA or this chapter that the market participant’s conduct has been found to have violated and specific facts that support each violation; and
 - (ii) Require the market participant immediately to cease and desist from the acts, methods, or practices stated in the order.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

- (2) **Notice and opportunity for a hearing not practicable.** If notice and opportunity for a hearing is not practicable, the commission shall follow these procedures:
- (A) **Contents of order.** A cease and desist order shall be served upon the market participant affected by that order and shall:
- (i) Contain a statement of the charges and a description of the alleged violation(s) of PURA or this chapter that the market participant's conduct has been found to have violated and specific facts that support each violation as reasonably believed by commission staff;
 - (ii) Require the market participant immediately to cease and desist from the acts, methods, or practices stated in the order;
 - (iii) Notify the market participant that a request for a hearing to affirm, modify, or set aside the order must be submitted not later than the 30th day after the date the market participant receives the order; and
 - (iv) Contain a statement indicating that notice and an opportunity for a hearing was not practicable and state the specific reasons why notice and an opportunity for a hearing was not practicable.
- (B) **Service.** Chapter 2001, Texas Government Code, does not apply to the issuance of a cease and desist order issued by the commission when notice and an opportunity for a hearing is not practicable.
- (i) The commission shall serve the cease and desist order by registered or certified mail, return receipt requested, to the market participant's last known address.
 - (ii) A cease and desist order is effective upon the earlier of receipt of actual notice or three days after the order is mailed.
- (C) **Hearing Requested.** The market participant affected by the cease and desist order may request a hearing to affirm, modify, or set aside the order. A request must be submitted not later than the 30th day after the date the market participant receives the order.
- (i) If the market participant affected by a cease and desist order requests a hearing, the commission shall set the hearing date not later than the 10th day after the date the commission receives a request for a hearing or agreed to by the market participant and the commission.
 - (I) A hearing conducted after the issuance of a cease and desist order is a contested case under Chapter 2001, Texas Government Code. The commission may hold a hearing on a cease and desist order or may refer the case to be heard by the State Office of Administrative Hearings.
 - (II) Pending a hearing on a cease and desist order, the cease and desist order continues in effect unless stayed by the commission.
 - (III) At or following the hearing, the commission shall wholly or partly affirm, modify, or set aside the cease and desist order.
 - (ii) If the market participant affected by a cease and desist order does not request a hearing and the commission does not hold a hearing on the order, the order is affirmed without further action by the commission.