

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§25.59. Long Lead-Time Facilities.

- (a) **Applicability.** This section provides that a transmission and distribution utility (TDU) may procure, own, operate, and recover costs of long lead-time facilities. This section applies to a TDU that operates distribution facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise.
- (1) **Long lead-time facilities** -- transmission and distribution facilities that would aid in restoring power to the TDU's distribution customers following a significant power outage and that the TDU reasonably anticipates will require at least six months to obtain. These facilities may not include energy storage equipment or facilities as described under Public Utility Regulatory Act (PURA), Chapter 35, Subchapter E.
- (2) **Significant power outage** -- an event that:
- (a) causes ERCOT to order a TDU to shed load;
- (b) the Texas Division of Emergency Management, ERCOT, or the executive director of the commission determines should be classified as a significant power outage; or
- (c) results in a loss of electric power that:
- (i) affects a significant number of a TDU's distribution customers and has lasted, or is expected to last, for at least six hours;
- (ii) affects a TDU's distribution customers in an area for which the governor has issued a disaster or emergency declaration;
- (iii) affects a TDU's distribution customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted, or is expected to last, for at least 12 hours; or
- (iv) creates a risk to public health or safety because it affects a critical infrastructure facility that serves the public such as a hospital, health care facility, law enforcement facility, fire station, or water or wastewater facility.
- (c) **Contracts for long lead-time facilities.** A TDU may enter into contracts to procure, own, and operate long lead-time facilities. Such contractual arrangements may include cooperative agreements with another TDU or procurement subscriptions with a transmission and distribution equipment supply service company or other third party as described under this section.
- (1) **Cooperative agreements.** A TDU may enter into a cooperative agreement with another TDU to:
- (A) jointly procure, own, and operate long lead-time facilities;
- (B) maintain inventories of long lead-time transmission and distribution equipment; or
- (C) engage in transfers of such facilities or equipment following a significant power outage.
- (2) **Procurement subscriptions.** A TDU may subscribe with a transmission and distribution equipment supply service to access and utilize an inventory of transmission and distribution equipment for the construction, modification, or operation of long lead-time facilities.
- (d) **Emergency operations annex.** A TDU that procures, owns, and operates long lead-time facilities under this section must include these facilities in the TDU's emergency operations plan filed with the commission, as required by §25.53 of this title (relating to Electric Service Emergency Operations Plans), on an ongoing basis.

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- (e) **Eligible costs.**
- (1) **Costs to procure, own, and operate long lead-time facilities.** Reasonable and necessary costs of procuring, owning, and operating long lead-time facilities, including costs incurred under a cooperative agreement or procurement subscription, are eligible for recovery under this section, to the extent these costs are not otherwise included in the TDU's rates.
 - (2) **Return.** Reasonable and necessary costs under this section include a return on investment using the rate of return on investment established in the commission's final order in the TDU's most recent comprehensive base-rate proceeding. The return may be applied beginning on the date that a long lead-time facility is procured.
- (f) **Deferred recovery of certain eligible costs.** A TDU may create a regulatory asset to defer to a future ratemaking proceeding the recovery of incremental operations and maintenance expenses and the return, not otherwise recovered in a rate proceeding, associated with the procurement, ownership, maintenance, and operation of long lead-time facilities. These costs may be recorded, in order to be requested for recovery in a future proceeding, beginning on the date the long lead-time facility is procured.
- (g) **Cost recovery.** Eligible costs under this section may be recovered as follows.
- (1) **Ratemaking proceedings.**
 - (A) A TDU may:
 - (i) request recovery of eligible costs, including any deferred expenses, pertaining to distribution invested capital and its associated costs through a proceeding under §25.243 of this title (relating to Distribution Cost Recovery Factor (DCRF)), or in another ratemaking proceeding appropriate to recover distribution-invested capital and its associated costs; and
 - (ii) A TDU may request recovery of eligible costs under this section, including any deferred expenses, pertaining to transmission-invested capital and its associated costs through a proceeding under §25.192(h) of this title (relating to Interim Update of Transmission Rates) or in another ratemaking proceeding appropriate to recover transmission-invested capital and its associated costs.
 - (B) A TDU seeking cost recovery under this section must include sufficient documentation in its filing to support a determination that the facilities procured meet the definition of long lead-time facilities under subsection (b)(1) of this section.
 - (2) **Notice.** The notice for any ratemaking proceeding in which eligible costs addressed in this section are sought must specifically identify those eligible costs. Notice under this paragraph is required for all costs that have not been reconciled on or before the effective date of this rule.
 - (3) **Affiliate contracts.** For any contract between the TDU and an affiliate, the TDU bears the burden of proof that the terms to the TDU were reasonable, necessary, prudent, and did not exceed the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons within the same market area or having the same market condition. In addition, all affiliate payments must comply with the requirements of PURA §36.058.
 - (4) **Temporary rates and reconciliation.** If any rates include eligible costs that have not been reviewed for prudence, reasonableness, and necessity, the rates to recover those costs are temporary rates that must be reconciled in the TDU's next base-rate proceeding.
 - (A) A TDU must provide comprehensive testimony and workpapers supporting the reconciliation of all eligible costs and associated rate revenues as part of any base-rate proceeding application. Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return, taxes, and carrying charges, must either be refunded or applied as an offset to any outstanding regulatory asset associated with eligible costs.

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- (B) In any proceeding in which the commission determines that a TDU has included in rates any amounts deemed unreasonable, unnecessary, or imprudent, or that the TDU has otherwise over-recovered costs, the commission may order a compliance proceeding to determine the amounts and manner of any necessary refunds to ratepayers or the proper accounting of over-recovered amounts as an offset to any outstanding regulatory assets associated with eligible costs. Carrying costs will be determined as follows:
- (i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TDU's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the TDU's rate base included in base rates in effect when the over-recovery began.
 - (ii) For the time period beginning with the effective date of the TDU's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the TDU's rate of return authorized in that base-rate proceeding.