

PROJECT NO. 55955

REVIEW OF ADMINISTRATIVE	§	PUBLIC UTILITY COMMISSION
PENALTY AUTHORITY RELATED	§	
TO VOLUNTARY MITIGATION	§	OF TEXAS
PLANS	§	

ORDER ADOPTING AMENDMENTS TO 16 TAC §25.8

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.8, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers with no changes to the proposed text as published in the February 2, 2024 issue of the *Texas Register* (49 TexReg 461). The rule is adopted under Project Number 55955. The amended rule partially implements Public Utility Regulatory Act (PURA) §15.023 as revised by House Bill (HB) 1500 during the Texas 88th Regular Legislative Session. Specifically, the amended rule increases the authorized penalty for violations of market power abuse regulations in conjunction with not adhering to an applicable voluntary mitigation plan to be up to \$1,000,000 per violation per day. The amended rule also aligns violation definitions across classifications, consolidates violation descriptions, and adds a new description for “special violations.”

The commission received comments on the proposed rule from the Steering Committee of Cities served by Oncor and the Texas Coalition for Affordable Power (OCSC and TCAP).

Each of the filed comments was in support of the proposed rule. Specifically, OCSC and TCAP supported applying the \$1,000,000 penalty authority to VMP violations, noting the intent of the Legislature to disincentivize market abuse behavior by enacting HB 1500 §7.

The filed comments did not include any suggested modifications to the proposed rule.

The amended rule is adopted under the following provisions of the Public Utility Regulatory Act (PURA): §14.001, which provides 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 PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also adopted under §15.023(b-1) which establishes that the penalty for a violation of a provision of a voluntary mitigation plan entered into under PURA §15.023(f) may be in an amount not to exceed \$1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty; PURA §15.023(f) which authorizes the commission and a person to develop and enter into a voluntary mitigation plan relating to a violation of Section 39.157 or rules adopted by the commission under that section only if the plan is in the public interest; and PURA §15.024, which authorizes the commission to impose an administrative penalty when the commission finds that a violation has occurred.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, §15.023(b-1); §15.023(f); §15.024.

§25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

- (a) **Purpose.** The purpose of this rule is to establish a classification system for violations of the Public Utility Regulatory Act (PURA) and related commission rules and orders, and to establish a range of penalties that may be assessed for each class of violations.

- (b) **Classification system.**
 - (1) **Class C violations.**
 - (A) Penalties for Class C violations must not exceed \$1,000 per violation per day.
 - (B) The following violations are Class C violations:
 - (i) failure to file a report or provide information required to be submitted to the commission under this chapter within the timeline required;
 - (ii) failure by an electric utility, retail electric provider, or aggregator to investigate a customer complaint and appropriately report the results within the timeline required;
 - (iii) failure to update information relating to a registration or certificate by the commission within the timeline required; and
 - (iv) a violation of the Electric no-call list.
 - (2) **Class B violations.**
 - (A) Penalties for Class B violations must not exceed \$5,000 per violation per

day.

- (B) All violations not specifically enumerated as a Class C, Class A, or special violations are Class B violations.

(3) **Class A violations.**

- (A) Penalties for Class A violations must not exceed \$25,000 per violation per day.
- (B) The following types of violations are Class A violations if they create economic harm in excess of \$5,000 to a person or persons, property, or the environment, or create an economic benefit to the violator in excess of \$5,000; create a hazard or potential hazard to the health or safety of the public; or cause a risk to the reliability of a transmission or distribution system or a portion thereof.
 - (i) A violation related to the wholesale electric market, including protocols and other requirements established by an independent organization;
 - (ii) A violation related to electric service quality standards or reliability standards established by the commission or an independent organization;
 - (iii) A violation related to the code of conduct between electric utilities and their competitive affiliates;
 - (iv) A violation related to prohibited discrimination in the provision of electric service;
 - (v) A violation related to improper disconnection of electric service;

- (vi) A violation related to fraudulent, unfair, misleading, deceptive, or anticompetitive business practices;
- (vii) Conducting business subject to the jurisdiction of the commission without proper commission authorization, registration, licensing, or certification;
- (viii) A violation committed by ERCOT;
- (ix) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates a hazard or potential hazard to the health or safety of the public;
- (x) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates economic harm to a person or persons, property, or the environment in excess of \$5,000, or creates an economic benefit to the violator in excess of \$5,000; and
- (xi) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that causes a risk to the reliability of a transmission or distribution system or a portion thereof.

(4) **Special violations.**

- (A) “Special violations” does not constitute a class of violations for purposes of PURA §15.023(d).
- (B) The following types of violations are special violations for which a penalty must not exceed \$1,000,000 per violation per day.
 - (i) A violation of PURA §39.157(a) or §25.503(g)(7) of this title (relating to Oversight of Wholesale Market Participants) in

conjunction with not adhering to an applicable voluntary mitigation plan adopted under PURA §15.023(f) or §25.504 of this title (relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region);

- (ii) A violation of PURA §35.0021 or a commission rule or order adopted under PURA §35.0021; and
- (iii) A violation of PURA §38.075 or a commission rule or order adopted under PURA §38.075.

(c) **Application of enforcement provisions of other rules.** To the extent that PURA or other rules in this chapter establish a range of administrative penalties that are inconsistent with the penalty ranges provided for in subsection (b) of this section, the other provisions control with respect to violations of those rules.

(d) **Assessment of administrative penalties.** In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties will indicate the class of violation.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.8, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers, is hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the _____ day of APRIL 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER