

PROJECT NO. 55955

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

PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §25.8

The Public Utility Commission of Texas (commission) proposes 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.

This proposed rule will implement, in part, Public Utility Regulatory Act (PURA) §15.023 as revised by H.B. 1500 during the Texas 88th Regular Legislative Session. The amended rule will increase the authorized penalty for violations of voluntary mitigation plans up to \$1,000,000 per violation per day. The amendment also aligns violation definitions across classifications, consolidates violation descriptions, and adds a new description for “special violations.”

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 and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability;
and
- (8) 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

Barksdale English, Director, Division of Compliance and Enforcement, 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. English 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 to incentivize market participants who enter into voluntary mitigation plans to comply with those plans. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

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 February 22, 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. **Comments must be filed by February 22, 2024.** Comments should be organized in a manner consistent with the organization of the proposed rule. 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 55955. Parties may file comments on the Chapter 22 and Chapter 25 proposals filed in this project in a single filing.

Each set of comments should 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 amendment 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; and §15.023, which authorizes the commission to impose an administrative penalty of up to \$1,000,000 for a violation of a voluntary mitigation plan.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; and 15.023.

§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~~may 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~~may not exceed \$5,000 per violation

per day.

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

(3) **Class A violations.**

- (A) ~~Each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 is a Class A violation and the administrative penalty will not exceed \$1,000,000 per violation per day.~~ Penalties for ~~all other~~ Class A violations ~~must~~will 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 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 18TH DAY OF JANUARY 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**