

PROJECT NO. 26188

RULEMAKING CONCERNING	§	
DISCLOSURE OF INFORMATION	§	PUBLIC UTILITY COMMISSION
RELATED TO ELECTRICITY	§	
TRANSACTIONS ORIGINATING OR	§	OF TEXAS
TERMINATING IN TEXAS	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.93 AS APPROVED AT THE
APRIL 17, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.93, relating to Quarterly Wholesale Electricity Transaction Reports. The proposed new rule will require power generation companies (PGCs), power marketers, bundled utilities, municipally owned utilities (MOUs), electric cooperatives, and river authorities to report to the commission certain information related to wholesale electricity transactions originating or terminating in Texas. Project Number 26188 is assigned to this proceeding.

The purpose of this rule is to increase market transparency with respect to bilateral contracts for the wholesale provision of electricity in Texas. Between 90% and 95% of the electricity sold at wholesale within the Electric Reliability Council of Texas (ERCOT) region is governed by such contracts. The commission currently has no database on bilateral contracts, which limits its ability to monitor market power as required by Public Utility Regulatory Act (PURA) §39.157(a). The proposed rule would provide the commission with bilateral contract data on a regular basis.

The commission published a notice of rulemaking in the *Texas Register* on July 12, 2002 (27 TexReg 6466) and asked for public comment on a number of questions regarding

transparency in the wholesale electricity market. On November 15, 2002, commission staff released for public comment a strawman rule and draft reporting forms.

Confidentiality of competitively sensitive information was an issue raised by numerous parties in response to the notice of rulemaking and the staff strawman. The proposed rule incorporates a provision similar to that adopted by the commission in §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) and §25.43 of this title (relating to Provider of Last Resort (POLR)), dealing with the determination of whether information is competitively sensitive. Under this provision, the commission may conduct a contested case proceeding to determine whether reported information is competitively sensitive by law. The contested proceeding would be initiated by commission staff in the absence of a request under the Texas Public Information Act (TPIA) and would give reporting parties a process for contesting the disclosure of information alleged to be competitively sensitive prior to such disclosure.

In addition to general comments on the proposed rule, the commission invites parties to comment on the following questions.

1. Would the transparency provided by an ERCOT day-ahead market, once established, alleviate the need for this rule? Why or why not?

2. Should the rule be modified to require the disclosure of information to facilitate the development of a Texas price index? Would such an index be beneficial to the marketplace? What modifications would need to be made to the rule language to facilitate the development of a price index? What role would the commission and others play in the development of a price index?

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

David Hurlbut, Senior Economist, Market Oversight Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section. The proposed section may have fiscal implications for local governments that own electric utilities and sell power into the wholesale market, in that MOUs will be required to report these sales to the commission.

Mr. Hurlbut has determined that for each year of the first five years the proposed section is in effect the public benefits anticipated as a result of enforcing the section will be to increase transparency in the state's wholesale electric market and to facilitate monitoring and prevention of market power problems. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Persons who are required to comply with the section as proposed may incur additional costs associated with compiling quarterly electricity transaction reports, but in most cases (especially for PGCs and power marketers) the additional costs will be small, as similar reports are already required of these entities by federal regulatory authorities.

Mr. Hurlbut has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, June 16, 2003 at 9:30 a.m.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326,

Austin, Texas 78711-3326, within 30 days after publication. 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 section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 26188.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.001 which requires competitive rather than regulatory methods for achieving the goals of Chapter 39, that electric services and their prices should be determined by customer choices and the normal forces of competition, and that the competitive process must be protected in a manner that ensures the confidentiality of competitively sensitive information; PURA §39.155 which grants the commission authority to require the reporting of certain information; and PURA §39.157 which requires the commission to monitor market power.

Cross Reference to Statutes: PURA §§14.002, 39.001, 39.155, and 39.157.

§25.93. Quarterly Wholesale Electricity Transaction Reports.

(a) **Purpose.** The purposes of this section are to:

- (1) Deter market power abuses and anticompetitive behavior by increasing wholesale market transparency with respect to bilateral contracts for delivery of electricity;
- (2) Improve the commission's ability to investigate allegations of market power abuse and anticompetitive behavior that may arise with respect to the bilateral contract market; and
- (3) Provide the commission with information of sufficient breadth and quality to calculate quarterly market price indices and other measures of market activity.

(b) **Application.**

- (1) This section applies to any person, municipally owned utility, electric cooperative and river authority that owns electric generation facilities and offers electricity for sale in this state. This section also applies to power marketers as defined in §25.5 of this title (relating to Definitions).
- (2) This section applies to all wholesale transactions for the sale of electricity that begin or terminate in Texas, or occur entirely within Texas, including areas of the state not served by the Electric Reliability Council of Texas (ERCOT).

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:

(1) **Contract** — An agreement for the wholesale provision of energy or capacity under specified prices, terms, and conditions. A contract governs the financial aspects of an electricity transaction.

(2) **Protected information** — Information contained in a Quarterly Wholesale Electricity Transaction Report that comports with the requirements for exception from disclosure under the Texas Public Information Act (TPIA). Information ceases to be protected information upon a determination by the Legislature, a court, the attorney general, or the commission that the information is not subject to an exception under the TPIA.

(3) **Transaction** — The provision of a specific quantity of energy or the commitment of a specific amount of generating capacity for a specific period of time from a wholesale seller of electricity to a customer, whether pursuant to a contract, a market operated by an independent organization as defined in the Public Utility Regulatory Act §39.151(b), or any other provision of electricity or commitment of reserve capacity.

(4) **Wholesale seller of electricity** — Any power generation company, power marketer, municipally owned utility, electric cooperative, river authority, or other entity that sells power at wholesale.

(d) Quarterly Wholesale Electricity Transaction Reports.

(1) Wholesale sellers of electricity shall report to the commission information related to electricity transactions with a point of delivery or point of receipt in Texas, including intermediate transactions involving electricity generated in Texas or electricity ultimately delivered to customers in Texas. Reports shall be submitted quarterly and shall be due not later than 30 days after the last day of the quarter for which transactions are being reported.

(2) Reports shall provide contact information for the reporting entity, information on each wholesale electricity contract, and information on each transaction of electricity from the reporting entity to another party.

(A) Contact information shall include company name, address, telephone number, and facsimile machine number, if available; name, position, and telephone number of person attesting to the report; time period covered by the report; and any other information the commission deems necessary to achieve the purposes of this section.

(B) Each wholesale seller of electricity must file information on each contract for electricity that is in effect during the reporting period, including those that will continue to be in effect past the end of the reporting period. Information shall include the name of purchaser,

contract execution and termination dates, time period over which the contract is in effect, product type, price, point of delivery into transmission system, point of receipt from transmission system, and any other information the commission deems necessary to achieve the purposes of this section.

(C) Each wholesale seller of electricity must file information on each transaction. Information shall include the time period over which the transaction was conducted, the point of delivery into transmission system, the point of receipt from transmission system, product name, transaction quantity, price, total transaction charges, cross-reference to a contract reported under subparagraph (B) of this paragraph, and any other information the commission deems necessary to achieve the purposes of this section. If the period of a transaction extends over more than one reporting period, each report shall include only the portion of the transaction that occurred during the reporting period.

(e) **Filing procedures.** Wholesale sellers of electricity shall file the Quarterly Wholesale Electricity Transaction Reports using forms, templates, and procedures approved by the commission. The commission may also approve the use of forms and templates issued by federal agencies for reporting information similar to that required under this section. Reports shall be filed according to §22.71 of this title

(Relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) except as specified in this subsection and subsection (g) of this section.

(1) The entirety of the report shall be submitted on standard-format compact disks (four copies) without a paper hard copy. The commission may also provide for reports to be submitted electronically to a secure file server.

(2) Pages containing the information required under subsection (d)(2)(A) of this section along with attestations and other necessary documents shall be filed in hard copy form.

(f) **Additional information.** If the commission determines that it needs contract and transaction information not included in the quarterly report, it may require any person or entity subject to this section to provide such additional information.

(g) **Confidentiality.** If a wholesale seller of electricity asserts that any part of its Quarterly Wholesale Electricity Transaction Report is confidential, it must submit its entire report according to §22.71(d) of this title, and in addition must submit for public disclosure a copy that omits specific information for which the reporting entity asserts confidentiality. The full report, including material for which confidentiality is asserted, shall be submitted electronically and on compact disk as described in subsection (e)(1) of this section. The public report

shall be filed on compact disk and as hard copy and shall follow the requirements of §22.71 of this title. Commission employees, consultants, agents, and attorneys who have access to reports shall not disclose protected information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act (TPIA).

- (1) If the commission receives from a member of the Texas Legislature a request for protected information contained in a report, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated §552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify the reporting entity of the request, the identity of the requestor, and the substance of the request.
- (2) If the commission receives a written request for protected information, the commission, through its General Counsel's office, shall make a good faith effort to provide notice of the request to the affected reporting entity within three business days of receipt of the request. If the reporting entity objects to the release of the information, the General Counsel's office shall offer to facilitate an informal resolution between the requestor and the reporting entity that would allow the requestor to receive the information it seeks in conformance with Texas Government Code §552.222. If informal resolution of an information request is not possible, the General

Counsel's office will process the request within a reasonable time but not later than the tenth business day after the date of receiving the request.

- (3) In the absence of a request for information, if the commission staff seeks to release protected information, the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding.
- (4) Any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion.
- (5) Except as otherwise provided in paragraph (1) of this subsection, if either the commission or the attorney general determines that the disclosure of protected information is permitted, the commission shall provide notice to the reporting entity at least three business days prior to the disclosure of the protected information or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of protected information earlier than within three business days, prior to such disclosure.

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

**ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF APRIL 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**