

The Public Utility Commission of Texas (commission) adopts new §26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs) with changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4433). New §26.214 clarifies the substantive and procedural requirements for filing LRIC studies for ILECs regulated under the Public Utility Regulatory Act (PURA) Chapters 52 or 59. Project Number 21159 has been assigned to this proceeding.

New §26.214 implements provisions of Senate Bill 560 (SB 560), 76th Legislature, Regular Session, related to LRIC studies submitted by Chapter 52 ILECs or Chapter 59 electing companies. First, §26.214 provides Chapter 52 ILECs or Chapter 59 electing companies with standards for LRIC studies they submit as cost justification for services offered through informational notice filings. Second, §26.214 establishes procedures for review of LRIC studies submitted by Chapter 52 ILECs or Chapter 59 electing companies. Pursuant to new Chapter 52 and 59 provisions enacted by SB 560, services or packages of services offered through informational notice filings must recover the long run incremental cost of the service. Through the adoption of new §26.214, the commission makes its rules consistent with PURA and clarifies the standards required of Chapter 52 ILECs or Chapter 59 electing companies for

submitting LRIC studies. The procedures are necessary to allow an efficient and timely review of such LRIC studies.

Comments on §26.214

On June 19, 2000 the commission received written comments on Project Number 21159 from Texas Statewide Telephone Cooperative Incorporated (TSTCI). A public hearing on the proposed section was held at commission offices on June 27, 2000 at 9:30 a.m. Representatives from Southwestern Bell Telephone Company (SWBT), Allegiance Telecom Of Texas, Inc. (Allegiance), AT&T Communications of Texas, L.P. (AT&T), the Office of Public Utility Counsel (OPC), United Telephone company of Texas, Inc., doing business as Sprint and Central Telephone Company of Texas doing business as Sprint and Sprint Communications Company L.P. (collectively, Sprint), and the Coalition of Competitive Local Exchange Carriers (CLEC Coalition) attended the hearing. The parties did not provide comments at the public hearing on the proposed rule. On July 3, 2000, Sprint filed reply comments on §26.214. All comments, including any not specifically referenced herein, were fully considered by the commission.

TSTCI supported the proposed rule and offered no modifications. Sprint offered the following modification to proposed §26.214.

Comments on §26.214(d)(1)

Subsection (d)(1) requires "at least ten days before an ILEC files any LRIC study pursuant to this section, the ILEC shall file with the commission and the Office of Public Utility Counsel a notice of its intent to file such LRIC study and the expected filing date". This provision also requires the commission to publish this notice of intent to file a Long Run Incremental Cost (LRIC) study in the *Texas Register*. Sprint opined that this provision turns a ten-day filing into a 20-day filing in contradiction to PURA §59.030 and §59.031. Sprint noted that staff may review a LRIC study within the ten-day filing period and any party may file an objection if necessary. Sprint recommended removing subsection (d)(1).

The commission finds that the notice of intent is tied to the LRIC studies and not the informational notice filing, as Sprint suggests. In those instances in which a service is being offered in the informational notice process for which no approved LRIC exists, a LRIC study must be filed on or before the filing of the informational notice. This is the nexus between the informational notice and LRIC approval process. The commission disagrees with Sprint that a notice of intent to file a LRIC study is unduly burdensome. The commission notes that the notice of intent requirement is consistent with a similar requirement imposed on companies subject to §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Further, subsection (d)(2)(A) requires staff to notify the applicant of any material deficiencies in the LRIC study

within three days after the filing date of such study. The commission concludes that the ten day notice of intent affords an opportunity for staff to work with the applicant to address any potential problems with the LRIC study prior to its filing. The commission, therefore, declines to delete §26.214(d)(1).

The commission makes minor modifications to the rule for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000)(PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.0583 which sets out the requirements relating to new services for ILECs regulated under PURA Chapter 52; PURA §52.0584 which sets out requirements relating to pricing and packaging flexibility and customer promotional offerings for ILECs regulated under PURA Chapter 52; PURA §52.0585 which sets out the requirements relating to customer promotional offerings for ILECs regulated under PURA Chapter 52; PURA §59.030 which sets out the requirements relating to new services for ILECs regulated under PURA Chapter 59; PURA §59.031 which sets out requirements relating to pricing and packaging flexibility offerings for ILECs regulated under PURA Chapter 59; and PURA §59.032 which sets out the requirements relating to customer promotional offerings for ILECs regulated under PURA Chapter 59.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.0583, 52.0584,
52.0585, 59.030, 59.031, and 59.032.

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs).

- (a) **Application.** This section shall apply to ILECs with annual revenues from regulated telecommunications operations in Texas of less than \$100 million for five consecutive years.
- (b) **Purpose.** This section shall be used to determine the long run incremental costs incurred by ILECs in the provision of telecommunications services in those instances in which the ILEC chooses to establish LRIC studies.
- (c) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC cost study that conforms to the following general requirements:
 - (1) A LRIC study must identify the ILEC's investment in all facilities that reflect forward looking least cost technology, as set forth in §26.215(f)(3) of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), used in the provision of the service.
 - (2) A LRIC study must apply appropriate loading and fill factors associated with the service.

- (3) A LRIC study must apply appropriate annual cost factors, including but not limited to depreciation and cost of money, associated with the service.
 - (4) A LRIC study must identify non-capital costs associated with the service, including but not limited to maintenance, billing and collection, and marketing costs.
- (d) **Procedures for review of LRIC studies filed under subsection (c) of this section.**

A LRIC study considered under this section shall be reviewed administratively to determine whether the ILECs LRIC study is consistent with the requirements of this section.

- (1) **Notice.** At least ten days before an ILEC files any LRIC study pursuant to this section, the ILEC shall file with the commission and the Office of Public Utility Counsel (OPC) a notice of its intent to file such LRIC study and the expected filing date. The ILEC's notice shall indicate that the filing is being made pursuant to this section. The commission shall then publish notice of the ILEC's intent to file the LRIC study in the *Texas Register*.
- (2) **Sufficiency.** The LRIC study shall be examined for sufficiency. To be sufficient, the LRIC study shall conform to the requirements of this section.
 - (A) Except as required under subparagraph (B) of this paragraph, if the commission staff concludes that material deficiencies exist in the LRIC study, the ILEC shall be notified by the commission staff of the specific

deficiency within three working days after the filing date of the LRIC study. The ILEC shall have two working days after the date it is notified of the deficiency to file a corrected LRIC study. On or before five working days after the date of the ILEC response, the presiding officer shall issue an order with regard to the sufficiency.

- (B) If the LRIC study filed for approval pursuant to this section is also filed simultaneously as part of an informational notice filing and a contested case arises as a result of the dispute regarding sufficiency of the LRIC study filed as part of the informational notice filing, the review of the LRIC study pursuant to this section shall be abated pending the resolution of the contested case.
- (3) **Time schedule.**
- (A) No later than 45 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest may file with the presiding officer written comments or recommendations concerning the LRIC study.
 - (B) No later than 55 days after the filing date of the sufficient LRIC study, OPC may file with the presiding officer written comments or recommendations concerning the LRIC study.

- (C) No later than 65 days after the filing date of the sufficient LRIC study, the commission staff shall file with the presiding officer written comments or recommendations concerning the LRIC study.
- (D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates justiciable interest, OPC, or the ILEC may file with the presiding officer a written response to the commission staff's recommendation.
- (E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer shall issue a notice stating whether the ILEC's LRIC study is consistent with the requirements of this section. In this notice, the presiding officer shall approve the LRIC study or order the ILEC to refile the LRIC study incorporating all modifications recommended by the presiding officer.
- (F) Any party may appeal to the commission an administrative notice by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders a cost study to be changed, the ILEC shall be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

- (G) Requests for information. While the LRIC study is being administratively reviewed, the commission staff, OPC, and any party that demonstrates a justiciable interest may submit requests for information to the ILEC. Copies of all answers to such requests for information shall be provided within ten days after receipt of the request by the ILEC to the commission staff, OPC, and any party that demonstrates a justiciable interest.
- (H) Suspension. At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPC, the ILEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only upon determination that the party has demonstrated a good cause exists for the suspension.
- (I) Effective date of the LRIC study. The effective date of the LRIC study shall be the date it is approved by the presiding officer.

This agency hereby certifies that the rule, as adopted, 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 §26.214 relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs) is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF SEPTEMBER 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman