

The Public Utility Commission of Texas (commission) proposes new §26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs). Proposed 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 and 59. Project Number 21159 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rules created in this project at two workshops convened on November 15, 1999, and March 28, 2000. Commission staff coordinated the product of Project Number 21159 with Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packing Flexibility, and Promotional Offerings*; Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Withdrawal of Election, Rate Caps, and Rate Adjustments*; Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provision of New Services*; and Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Provisions for PURA Chapters 52, 58, and 59*.

Ms. Anne McKibbin, Senior Economist, Office of Regulatory Affairs, 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 or local government as a result of enforcing or administering the section.

Ms. McKibbin 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 this section will be the clarification of the substantive requirements and procedures relating to the filing of LRIC studies by Chapter 52 and 59 companies. There will be no effect on small businesses or micro-businesses resulting from the enforcement of these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. McKibbin 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 joint public hearing on this rulemaking and Project Numbers 21155, 21156, 21157, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 a.m. in the Commissioners Hearing Room.

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. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to Anne.McKibbin@puc.state.tx.us, if possible. 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 proposed section. All comments should refer to Project Number 21159 and Proposed Rule §26.214.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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 §52.0583, regarding new services for non-electing companies; §52.0584, regarding pricing and packaging flexibility requirements for non-electing companies; §52.0585, regarding customer promotional offering requirements for non-electing companies; §59.030, regarding new services for Chapter 59 electing companies; §59.031, regarding pricing and packaging flexibility for Chapter 59 electing companies; and §59.032, regarding customer promotional offering requirements for Chapter 59 electing companies.

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 ILEC's 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 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 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, Office of Public Utility Counsel (OPUC) 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, OPUC, 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, OPUC, 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, OPUC, 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, OPUC, 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 4th DAY OF MAY 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**