The Public Utility Commission of Texas (commission) adopts new §26.229, relating to Requirements Applicable to Chapter 59 Electing Companies with changes to the proposed text as published in the May 19, 2000 issue of the *Texas Register* (25 TexReg 4448). New §26.229 sets forth the substantive and procedural requirements relating to new services and packaging and pricing flexibility, including customer promotional offerings, offered by incumbent local exchange companies (ILECs) regulated under Public Utility Regulatory Act (PURA) Chapter 59. Project Number 21159 has been assigned to this proceeding.

New §26.229 implements provisions of Senate Bill 560 (SB 560), 76th Legislature, Regular Session, related to new services and pricing flexibility and procedures for processing of informational notice filings by Chapter 59 electing companies. First, §26.229 establishes pricing standards for new services and flexible pricing of services offered by Chapter 59 electing companies. Second, §26.229 establishes the requirements for customer promotional offerings by Chapter 59 electing companies. Third, §26.229 provides Chapter 59 electing companies with guidelines for the introduction of customer-specific contracts in a manner consistent with SB 560. Fourth, §26.229 establishes filing and notice requirements for informational notice filings related to pricing flexibility including customer promotional offerings and new services. Finally, §26.229 establishes procedures for resolving disputes as to sufficiency or

appropriateness of filings and for handling complaints regarding services offered through informational notice filings.

Through the adoption of new §26.229, the commission makes its rules consistent with PURA and clarifies the standard and procedures applicable to Chapter 59 electing companies for exercising flexibility and offering new services. The procedures are necessary to allow an efficient and timely review of such offerings and to ensure fair and equitable handling of complaints. New §26.229 will provide an incentive for Chapter 59 electing companies to introduce new and innovative services and packages of services for telephone customers. As a result, the commission anticipates that telephone customers will benefit from lower prices and broader selection of service choices.

Comments on §26.229

On June 19, 2000 the commission received written comments on §26.229 from AT&T Communications of Texas, L.P. (AT&T) and 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, 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 §26.229. All timely filed comments, including any not specifically referenced herein, were fully considered by the commission.

TSTCI supported the proposed rule and offered no modifications. AT&T and Sprint offered the following modifications to proposed §26.229.

Comments on §26.229(c)(1)(D) and §26.229(d)(2)(D)

Subsections (c)(1)(D) and (d)(2)(D) set forth rebuttable presumptions regarding the competitiveness of new services and pricing and packaging flexibility filings, respectively. The proposed rule states that the prices of these services shall be presumed to be anticompetitive if the ILEC's retail price is less than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of the components of the service or package of services.

AT&T endorsed the use of this rebuttable presumption as "an initial measure rather than solely requiring the development of an evidentiary record in a contested case." However, AT&T noted that there is no clear standard by which an ILEC will be found to have rebutted the presumption. AT&T opined that the availability of a resale offering should not be sufficient to

rebut the presumption because it would leave competitors with the resale option as their only means of competing against ILEC pricing that undercuts wholesale costs.

The commission proposed the rebuttable presumption regarding anticompetitive behavior in rules applicable to Chapter 52 and 59 companies in the same manner as it did for Chapter 58 companies in order to apply the anticompetitive standard consistently to all ILECs. The commission received extensive comments regarding the appropriateness of the rebuttable presumption and the use of TELRIC in such a standard in the rules applicable to Chapter 58 companies (§26.225 relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies and §26.226 relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies). The commission concluded in §26.225 and §26.226 that an anticompetitive standard is more appropriately developed on a case-by-case basis. The commission found that circumstances surrounding allegations of anticompetitive behavior may vary significantly from case to case and, therefore, a single rebuttable presumption may not adequately address the range of anticompetitive behaviors over which the commission has jurisdiction pursuant to PURA §51.004 and other sections of PURA.

For reasons discussed in the preamble supporting §26.225 and §26.226, the commission also deletes the rebuttable presumption in §26.229 in order to treat Chapter 52, 58 and 59 companies consistently. Notwithstanding the fact that the rebuttable presumption is removed from §26.229, the commission remains committed to ensuring that discounts or other forms of

pricing flexibility are not "preferential, prejudicial, discriminatory, predatory or anticompetitive," as required by PURA §51.004. The commission notes that the filing requirements in subsection (g)(2)(D)(xii) require Chapter 59 electing companies to furnish information about the list of relevant TELRIC based wholesale prices and retail prices for the service or package of services being offered. An interested party may rely on this information to initiate a complaint to investigate potential anticompetitive behavior on the part of a Chapter 59 electing company. The commission, therefore, deletes proposed subsections (c)(1)(D) and (d)(2)(D).

Comments on **§***26.229(d)(2)(E)*

Subsection (d)(2)(E) states that the price of a package of services that includes unregulated products or services or products or services provided by an affiliate shall recover the ILEC's cost of acquiring and providing these same services. While subsection (d)(2)(E) does not appear to address the pricing of packages that include regulated products or services, the inclusion of regulated products and services is implied.

AT&T opined that an ILEC's cost may be zero or may be limited to billing and collection costs. AT&T proposed that an ILEC be required to demonstrate that the total bundled offer recovers the total cost of the offer, including costs of the affiliate.

The commission agrees generally with AT&T that regulated products or services which are packaged with unregulated products or services or the products or services of an ILEC's affiliate merit scrupulous attention. The commission also recognizes that joint marketing efforts merit a similar level of attention. A heightened level of scrutiny is necessary to protect competitors and customers. Therefore, the commission modifies and expands subsection (d)(2)(E) to address the concerns of AT&T.

The commission finds that PURA §51.004(a) provides the commission with authority to adopt subsection (d)(2)(E), as revised and expanded to include subsections (d)(2)(D)-(F) (hereafter referred to as the expanded provisions). PURA §51.004(a) states "A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory or anticompetitive." The commission interprets the phrase "or other form of pricing flexibility" to include the packaging or joint marketing of services described in the expanded provisions, consistent with the definition of "pricing flexibility" in PURA §51.002(7).

Without authority to review the pricing of joint marketing efforts and packages of services that include both regulated, unregulated or affiliated components, PURA §51.004(a) would be rendered meaningless with respect to those types of pricing flexibility (i.e. packaging of services and joint marketing). Indeed, to be able to assess whether a package or joint marketing effort is priced in an anticompetitive, preferential or prejudicial manner, the commission must be able to ascertain whether the cost to a Chapter 59 electing company of acquiring and providing an

unregulated service or the service of an affiliate is recovered from revenues generated by a regulated service.

PURA §52.051(1)(C) underscores the commission's authority to exercise oversight in this area. PURA §52.051(1)(C) directs the commission to balance the public interest in adopting rules and establishing procedures by considering, in part, the prevention of subsidization of competitive services with revenues from regulated monopoly services. Given the commission's responsibility with respect to the issue of subsidization, the commission is sympathetic to AT&T's concern regarding situations where an ILEC purchases an affiliate product or service at or near a rate of zero. The commission notes that proposed subsection (d)(2)(E), as modified and expanded, requires that the price of a package that combines regulated products or services with the products or services of an affiliate recover the cost to the Chapter 59 ILEC of acquiring and providing its affiliate's products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services.

The commission also addresses AT&T's concern by referencing the Federal Communications Commission's (FCC) requirements in the expanded provisions. To the extent Chapter 59 electing companies are subject to the FCC's affiliate transaction rules, such ILECs are to follow FCC requirements in the state jurisdiction, as well as the federal jurisdiction. Although the commission's discussion centers on the FCC's affiliate transaction rules, the rule language adopted by the commission recognizes that there may be other rules or orders, existing or

future, relevant to the implementation of subsections (d)(2)(D)-(F). Therefore, the reference to FCC requirements in intentionally broad.

PURA §60.165 prescribes that the commission may not adopt any affiliate rule, including any accounting rule, cost allocation rule, or any structural separation rule, that is more burdensome than federal law or applicable rules or orders of the FCC, except as prescribed in PURA, Chapters 61, 62 and 63. The expanded provisions, which incorporate by reference the FCC's requirements, meet the requirement of PURA §60.165. In conclusion, the commission finds the expanded provisions to be in the public interest because they require a Chapter 59 electing company to price certain packages and joint marketing efforts at a level that is unlikely to be anticompetitive, preferential or prejudicial. Therefore, the commission adopts new subsection (d)(2)(D)-(F).

Comments on §26.229(e)

Subsection (e) states that an ILEC may file an informational notice to offer customer promotional offerings. AT&T suggests that the subsection be amended to read "An ILEC shall file an informational notice…." AT&T opined that while an ILEC is not required to introduce promotional offerings, if an ILEC chooses to do so then the ILEC must follow the procedures outlined by the rule. AT&T commented that the language as proposed makes it permissive rather than mandatory.

The commission finds the SB 560 amendments to PURA authorizing informational notice filings do not make it mandatory that an ILEC offer promotions only through informational filings. Informational notice filings are but one vehicle for the ILEC to offer certain services allowed by PURA. The ILEC may continue to offer services and make tariff changes through processes established in commission substantive rules adopted prior to the SB 560 amendments to PURA. Section 26.229(e) delineates the substantive requirements that a Chapter 59 company must follow if it chooses to introduce promotional offerings through informational notice filings. The commission, therefore, declines to modify §26.229(e) as suggested by AT&T.

Comments on §26.229(g)(2)(D)(ix)

Sprint noted that if the commission decides to alter proposed §26.214 to remove references to the notice of intent, then similar references should be deleted from §26.229(g)(2)(D)(ix).

The commission did not delete the language on notice of intent in §26.214 for reasons described in the preamble to §26.214 and, therefore, declines to modify §26.229(g)(2)(D)(ix) as suggested by Sprint. However, the commission clarifies the last sentence in §26.229(g)(2)(D)(ix) to tie the filing of the notice of intent to LRIC studies rather than the filing of the informational notice.

Comments on §26.229(g)(2)(D)(xiii)

Subsection (g)(2)(D)(xiii) requires an ILEC to confirm that a service is available for resale by a competitor. AT&T suggests that this could be misinterpreted to require confirmation that a service is available for resale to one class of competitors. AT&T suggests that this be clarified by either affirming that the service is available to "all telecommunications carriers" or affirming that the service is available for resale to both CLECs and IXCs.

The commission does not believe it is necessary to define the term "competitor" in the manner suggested by AT&T. Commission policies regarding whether a service or package of services should be offered on a resale basis to particular categories of competitors are best addressed through facts developed in individual contested cases.

Comments on §26.229(g)(2)(D)(xiv)

This clause requires an affidavit indicating that the price of packages containing unregulated or affiliate products or services recover the cost, to the ILEC, of offering the unregulated or affiliate product or service. AT&T referred to its comments given under subsection (d)(2)(E).

The commission agrees generally with AT&T that regulated products or services which are packaged with unregulated products or services or the products or services of an ILEC's

affiliate merit scrupulous attention. The commission also recognizes that joint marketing efforts merit a similar level of attention. A heightened level of scrutiny is necessary to protect competitors and customers. The commission notes that this subsection complements the requirements of proposed subsection (d)(2)(E) (renumbered as subsection (d)(2)(D)-(F)). With respect to that subsection, the commission has considered the concerns about cross-subsidization and anticompetitive behavior in its effort to balance the public interest. Proposed subsection (d)(2)(E), as modified and expanded, requires an electing company to price certain packages of services and jointly marketed services at a level that is unlikely to be anticompetitive, preferential or prejudicial.

The commission clarifies §26.229(g)(2)(D)(xiv) to make it consistent with subsections (d)(2)(D)-(F), as modified and expanded. Further, the commission adds language to specify affidavit requirements for package offerings or joint marketing efforts involving regulated products or services combined with unregulated (unaffiliated) products or services and/or the products or services of a Chapter 59 ILEC's affiliate.

Comments on §26.229(g)(5)

Subsection (g)(5) states that the commission may not suspend a tariff for a new service introduced by an informational notice during the pendency of any complaint. AT&T opined that this is not appropriate for Chapter 59 electing companies. AT&T contended that there is no

statutory indication that Chapter 59 electing companies should receive greater protection than under the commission's past practice. In the past, the burden of obtaining interim relief lay with the ILEC seeking interim approval of its tariff.

The commission agrees that PURA Chapter 59 does not prohibit suspension of a tariff for a new service introduced by an informational notice during the pendency of a complaint. The commission, therefore, deletes the first sentence in §26.229(g)(5).

With respect to the issue of the burden of proof in motions for interim relief, the commission finds that prior commission practice was designed for a tariff approval methodology in which an ILEC sought interim approval of its tariff. Such a practice is inappropriate to the informational notice process, where interim relief in the form of tariff suspension is sought by a complainant. By authorizing introduction of specified classes of services ten days after provision of informational notice, PURA expressed the intent of the legislature that these services be available to customers promptly and without commission approval. A complainant seeking to interfere with this process seeks to change the status quo. The burden in such instances is traditionally on the party seeking extraordinary relief. This rule properly places the burden of proof for obtaining interim relief on the party seeking that relief.

In addition to modifications described thus far, the commission makes other minor modifications 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 §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 and customer promotional offerings for ILECs regulated under PURA Chapter 59; PURA §59.032 which sets out the requirements relating to customer promotional offerings for ILECs regulated under PURA Chapter 59; and PURA §60.165 which provides a framework for the establishment of rules affecting affiliate transactions.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 59.030, 59.031, 59.032, and 60.165.

§26.229. Requirements Applicable to Chapter 59 Electing Companies.

(a) **Application**. This section applies to electing companies, as defined in the Public Utility Regulatory Act (PURA) §59.002(1).

(b) **Purpose.** The purpose of this section is to establish the substantive and procedural requirements for an electing company to introduce new services and/or to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.

(c) **New services.** The term "new services" has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An electing company may file an informational notice to introduce a new service. An electing company filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.

(1) **Pricing standards.**

(A) An electing company shall price each new service at or above the service's long run incremental cost (LRIC).

(B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(2) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).

(3) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.

(4) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(5) **Packaging of new services.** If an electing company offers a new service as a component of a package, the electing company shall also offer the new service as a separately tariffed service.

(d) **Pricing and packaging flexibility.** An electing company may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) **General requirements.**

(A) Pricing flexibility includes:

(i) customer specific contracts;

(ii) packaging of services;

(iii) volume, term, and discount pricing;

(iv) zone density pricing, with a zone defined as an exchange; and

(v) other promotional pricing.

(B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) An electing company may exercise pricing flexibility, including the packaging or joint marketing of any regulated service with any other regulated or unregulated service or any service of an affiliate.

(2) **Pricing standards.**

(A) An electing company shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.

(B) An electing company shall price each service at or above the service's LRIC.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) The price of a package that combines regulated products or services with unregulated products or services shall recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.

(E) The price of a package that combines regulated products or services with the products or services of an affiliate shall recover the cost to the electing company of acquiring and providing its affiliate's products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with Federal Communications Commission (FCC) requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph.

(F) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.

(3) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title.

(4) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.

(5) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(e) **Customer promotional offerings.** An electing company may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(2) Customer promotional offerings may consist of:

(A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.

(3) Although electing companies are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.

(f) **Requirements for customer specific contracts.** An electing company may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an electing company must offer customer specific contracts pursuant to this section.

(g) **Procedures related to the filing of informational notices and associated tariffs.** The provisions of this subsection apply to electing companies choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) **Notice requirements.** An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public

Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

(2) **Filing requirements.**

(A) **Filing of informational notice and confidential information**. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) The commission staff shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has

taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) **Effective date.** A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

(C) **Access to confidential information**. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) **Format of filing**. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);

(ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title to establish a LRIC floor and shall be filed before or simultaneously with the informational notice filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the LRIC study;

(x) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an electing company chooses to adopt

LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable;

(xi) except for customer promotional offerings, relevant tariff rates or specific tariff references, if the electing company chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable;

(xii) a response of "yes", "no", or "not applicable", with explanatory language, to the following question: "Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" Except for customer promotional offerings, if the response is "yes" or "no", the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xiii) a response of "yes" or "no" to the following question: "Is the service available for resale by a competitor?" If the answer is "no", does the proposed price meet the standards set forth in §26.274 (f) – (h) of this title (relating to Imputation)? For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the electing company's provisioning of the service to the electing company's customers;

(xiv) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company's affiliate, an affidavit indicating that the price of the package recovers the cost to the electing company of acquiring and providing the unregulated products or services or the affiliate's products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate's products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements, to the extent FCC requirements are applicable to the electing company, and with subsection (d)(2)(F) of this section. For a joint marketing effort that includes regulated products or services and the products or

services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

(xv) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xvi) a privacy concerns statement.

(E) For customer promotional offerings:

(i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.

(ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(A) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the

assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(C) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(4) **Complaints regarding service offerings introduced by informational notice filings.**

(A) Subject to subparagraph (E) of this paragraph, an affected person, the OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.

(B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.

(C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the electing company shall either:

(i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(ii) discontinue the service.

(D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.

(F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint,

bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice(s).

(G) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention at any time prior to determination on the merits. No motion is necessary for such intervention.

(H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).

(5) **Interim relief.** All tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(i) the pleading must state an appropriate and bona fide cause of action;

(ii) the pleading must be verified or supported with affidavits based on personal knowledge; and

(iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

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 rule §26.229 relating to Requirements Applicable to Chapter 59 Companies 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

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Chairman Pat Wood, III

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Commissioner Judy Walsh

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Commissioner Brett A. Perlman