

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter I. TRANSMISSION AND DISTRIBUTION.

DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS.

§25.203. Alternative Dispute Resolution (ADR).

- (a) **Obligation to use alternative dispute resolution.** Subject to the right to seek direct commission review pursuant to subsection (f) of this section, in the event that a dispute arises under Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas) and the dispute is not subject to the alternative dispute resolution procedures established in the commission-approved Electric Reliability Council of Texas (ERCOT) protocols, the parties to the dispute shall engage in mediation or other alternative means for resolving the dispute, prior to filing a complaint with the commission.
- (b) **Referral to senior representatives.** Such disputes shall be referred for resolution to a designated senior representative of each of the parties to the dispute. The senior dispute representative shall be an individual who has authority to resolve the dispute. The senior dispute representatives shall make a good faith effort to resolve the dispute on an informal basis as promptly as practicable.
- (c) **Mediation or arbitration.** In the event the parties are unable to resolve the dispute under subsection (b) of this section, the parties shall either:
 - (1) refer the matter to arbitration in accordance with procedures in subsection (d) of this section; or
 - (2) upon agreement of all parties, engage in mediation with the assistance of a neutral third party, mutually selected by all parties concerned, who has training or experience in mediation.
- (d) **Arbitration.** If the parties choose to refer the matter to arbitration, pursuant to subsection (c) of this section:
 - (1) The commission shall maintain a commission-approved list of qualified persons available to serve on arbitration panels who are knowledgeable in electric utility matters, including electricity transmission and bulk power issues. The commission shall also maintain a separate list of qualified persons experienced in arbitration that may be available to chair the arbitration panels.
 - (2) A party shall initiate arbitration by filing a letter with the commission requesting that arbitration be scheduled. A copy of the letter shall be served upon the other party to the dispute at the same time the letter is filed with the commission.
 - (3) Only parties to the dispute may participate in the arbitration.
 - (4) **Arbitration panel.** Any arbitration initiated under this section shall be conducted before a three-member arbitration panel. Each party shall choose one arbitrator from the commission-approved list of panel members. In the event there are more than two parties to the dispute, the parties shall jointly select the two arbitrators. The two arbitrators chosen by the parties shall choose the chairman of the arbitration panel. If the two arbitrators chosen by the parties are unable to agree on the selection of a chairman, they will be dismissed and the parties shall select two different arbitrators from the approved list. The arbitrators are not required to choose the chairman from the names of persons on the commission's list of panel members so long as the person chosen is qualified as an arbitrator. Panel members chosen shall not have any current or past substantial business or financial relationships with any party to the arbitration (other than previous arbitration experience). The chairman of the panel shall make all necessary arrangements for arbitration to commence within ten working days of completion of the panel.

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§25.203(d) continue

- (5) **Procedures.** The arbitrators shall provide each of the parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable commission rules. The panel may request that the parties provide additional technical information relevant to the dispute. The arbitration panel shall render a decision within 30 calendar days from the closing of the evidentiary record of the arbitration and shall notify the parties in writing of such decision and the reasons therefore. The decision shall not be considered precedent in any future proceeding.
 - (6) **Basis for decision.** The arbitrators shall be authorized only to interpret and apply the provisions of the commission's rules relating to transmission services, the commission-approved ERCOT protocols, the transmission service provider's (TSP) transmission tariff, and any service agreement entered into under that tariff. The arbitrators shall have no power to modify or change any of the above in any manner. The arbitrators may agree with the positions of one or more of the parties, or may recommend a compromise position.
 - (7) If any party to the arbitration files a complaint before the commission, the arbitration panel decision shall be filed in the commission's Central Records and shall be considered by the commission in preparing a Preliminary Order in the complaint proceeding. The complaint shall be docketed and may be referred to the State Office of Administrative Hearings. The decision may be admitted in evidence in any such complaint proceeding.
 - (8) **Costs.** Each party shall be responsible for the following costs, if applicable:
 - (A) its own costs incurred during the arbitration process;
 - (B) its pro rata share of the costs of the three arbitrators, pooled and shared evenly among the parties.
- (e) **Effect of pending alternative dispute resolution.** The transaction which is the subject of the dispute shall be allowed to go forward pending the resolution of the dispute to the extent system reliability is not affected.
- (f) **Effect on rights under law.** Nothing in this section shall restrict the rights of any party to file a complaint with the commission under relevant provisions of the Public Utility Regulatory Act or with the Federal Energy Regulatory Commission under the Federal Power Act or the right of a TSP to seek changes in the rates or terms for transmission, following the completion of the alternative dispute resolution procedures in this section.
- (1) Use or application of the arbitration provisions in this subsection does not affect the jurisdiction of the commission over any matters arising under this section.
 - (2) Nothing in this section shall restrict the right of a market participant to file a petition seeking direct relief from the commission without first utilizing the alternative dispute resolution process where an action by a TSP, distribution service provider (DSP), or ERCOT might inhibit the ability of a transmission service customer to provide continuous and adequate service to its customers.
 - (3) Because of the imminent threat to the health and welfare of a TSP's customers in the event of a reliability problem, a petitioner's dispute will be heard by the commission in an emergency session except in those instances where a quorum of the commission is not present. In those instances where a quorum is not present, the chairman of the commission shall have the authority to issue an interim order to resolve the dispute so as to protect the reliability of the system, with the order remaining in effect until such time as a quorum is present.