

**PROJECT NO. 32008**

<b>RULEMAKING TO AMEND SUBST. R.</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>§25.263, RELATING TO TRUE-UP</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PROCEEDING</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.263  
AS APPROVED AT THE JANUARY 12, 2006, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.263, relating to True-Up Proceeding. The proposed amendment will implement the provisions of Public Utility Regulatory Act (PURA) §39.262, which sets forth the requirements for the final true-up of stranded costs. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 32008 is assigned to this proceeding.

The commission proposes to amend §25.263 by modifying subsection (l)(3), which establishes the interest rate used to determine carrying costs on a utility's unsecuritized true-up balance. The proposed amendment changes the interest rate from the utility's cost of capital established in the utility's unbundled cost-of-service proceeding to the utility's most recently authorized or reported cost of debt. Additionally, the commission proposes to delete subsection (d)(1), which establishes the schedule by which companies were to file their true-up applications. Subsection (d)(1) is no longer needed because the filing dates listed therein have passed.

Darryl Tietjen, Director of the Financial Review Section of the Electric Industry 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 or local government as a result of enforcing or administering the section.

Mr. Tietjen has also 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 the section will be a more accurate alignment of the risks borne by the utilities in recovering from retail customers the unsecuritized true-up balances and interest charges on those balances, which are included in rates for electric delivery service. There will be no adverse economic effects on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost for persons who are required to comply with the section as proposed.

Mr. Tietjen 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 Wednesday, March 1, 2006, at 10:00 a.m.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be filed no later than 45 days after publication. All comments should refer to Project Number 32008.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2005) (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 §39.252, which addresses a utility's right to recover stranded costs, and PURA §39.262, which requires the commission to conduct a true-up proceeding for each investor-owned electric utility after the introduction of customer choice and which prohibits over-recovery of stranded costs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.252 and 39.262.

**§25.263. True-up Proceeding.**

**(a) – (c) (No change.)**

**(d) Obligation to file a true-up proceeding.**

- (1) Each TDU, its APGC, and its AREP shall jointly file a true-up application pursuant to subsection (e). **(2) – (3) (No change.)**

**(e) – (k) (No change.)**

**(l) TDU/APGC True-up balance.**

**(1) – (2) (No change.)**

- (3) The TDU shall be allowed to recover, or shall be liable for, carrying costs on the true-up balance. This provision shall apply to all amounts the commission has authorized to be collected under this section that have not been securitized. Carrying costs on the unrecovered true-up balance shall be calculated from January 1, 2002, until the true-up balance is fully recovered, and shall be established as provided in this subsection. Carrying costs shall be calculated using an interest rate based on the utility's cost of debt.

(A) If, prior to the effective date of this rule the commission has entered in a true-up proceeding a final order establishing carrying costs on the TDU's unsecuritized balance, the TDU shall file an application to adjust the carrying costs on a prospective basis in conformance with this paragraph within 30 days of the effective date of this paragraph. The establishment of the cost of debt shall be based upon one of the following methods:

- (i) The cost of debt as determined in a final commission order, provided that the order was entered within three years of the

effective date of this rule, for a rate proceeding in which the TDU's cost of debt was 1) explicitly addressed, or 2) can be determined based upon the order's authorized weighted-average cost of capital (overall rate of return on invested capital), proportions of debt and equity, and allowed return on equity; or

(ii) If the commission, within three years of the effective date of this rule, has not entered a final order in a rate proceeding that addresses the TDU's cost of debt, the utility's cost of debt shall be based upon the cost of debt reported in the utility's most recent Earnings Monitoring Report filed pursuant to §25.73 of this title (relating to Financial and Operating Reports), adjusted for known and measurable changes.

(B) If, prior to the effective date of this rule the commission has not entered in a true-up proceeding a final order establishing carrying costs on the TDU's unsecuritized balance, the TDU's carrying costs from January 1, 2002 forward shall be established in a proceeding under subsection (n) of this section. The cost of debt shall be determined according to the provisions of subparagraph (A)(i)-(ii) of this paragraph.

(C) In each subsequent rate case for the TDU, the calculation of carrying costs on the TDU's unsecuritized true-up balance shall be reviewed and adjusted to reflect changes in the TDU's cost of debt.

**(m) - (n) (No change.)**

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 12<sup>TH</sup> DAY OF JANUARY 2006 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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