

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter O. UNBUNDLING AND MARKET POWER.

DIVISION 5. COMPETITION IN NON-ERCOT AREAS.

§25.421. Transition to Competition for a Certain Area Outside the Electric Reliability Council of Texas Region.

- (a) **Purpose.** The purpose of this section is to address the process and the sequence of events for the introduction of retail competition in the portions of Texas served by El Paso Electric Company (EPE).
- (b) **Application.** This section shall apply to an electric utility that is subject to Public Utility Regulatory Act (PURA) §39.102(c), namely EPE.
- (c) **Readiness for retail competition.** The commission determines that the power region in which EPE is located will be unable to offer fair competition and reliable service to all retail customer classes in Texas upon the expiration of its system-wide rate freeze period in August 2005. Therefore, pursuant to PURA §39.103, the introduction of retail competition for the portions of the power region in Texas is delayed until this region can offer fair competition and reliable service to all retail customer classes.
- (d) **Cost-of-service regulation.** Until the date on which EPE is authorized by the commission to implement retail competition pursuant to this section, its rates are subject to regulation under Chapter 36 of PURA.
- (e) **Transition to competition.** The sequence of events set forth in paragraphs (1) through (5) of this subsection shall be followed to introduce retail competition in EPE's service territory. All the listed items in each stage must be completed before the next stage is initiated. Unless stated otherwise in the rule, each of the activities will be conducted by the commission in conjunction with EPE and other interested parties. Full retail competition will not begin in EPE's service territory until completion of the fifth stage.
 - (1) The first stage consists of the following activities:
 - (A) Develop and obtain approval of a regional transmission organization for the EPE region by the Federal Energy Regulatory Commission and commence independent operation of the transmission network under the approved regional transmission organization.
 - (B) Develop retail market protocols to facilitate retail competition.
 - (C) Complete an expedited proceeding to develop non-bypassable delivery rates for the customer choice pilot project to be implemented under paragraph (2)(A) of this subsection.
 - (2) The second stage consists of the following activities:
 - (A) Initiate the customer choice pilot project pursuant to PURA §39.104 and §25.431 of this title (relating to Retail Competition Pilot Projects).
 - (B) Develop a balancing energy market, market for ancillary services, and market-based congestion management system for the wholesale market in the region in which the regional transmission organization operates.
 - (C) Implement a seams agreement with adjacent power regions to reduce barriers to entry and facilitate competition.

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- (3) The third stage consists of the following activities:
 - (A) EPE shall:
 - (i) Prepare and file with the commission an application for business separation pursuant to PURA §39.051 and §25.342 of this title (relating to Electric Business Separation);
 - (ii) Prepare and file with the commission an application for unbundled transmission and distribution rates pursuant to PURA §39.201 and §25.344 of this title (relating to Cost Separation Proceedings);
 - (iii) Prepare and file with the commission an application for certification of a qualified power region pursuant to PURA §39.152; and
 - (iv) Prepare and file with the commission an application for price-to-beat rates pursuant to PURA §39.202 and §25.41 of this title (relating to Price to Beat).
 - (B) The activities to be completed by the commission in the third stage are to:
 - (i) Approve a business separation plan;
 - (ii) Set unbundled transmission and distribution rates;
 - (iii) Certify a qualified power region, which includes conducting a formal evaluation of wholesale market power in the region, pursuant to PURA §39.152;
 - (iv) Set price-to-beat rates for EPE; and
 - (v) Determine which competitive energy services must be separated from regulated utility activities pursuant to PURA §39.051 and §25.343 of this title (relating to Competitive Energy Services).
 - (C) The activity to be completed by the regional transmission organization, the statewide registration agent and market participants in the third stage is testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions.
 - (4) The fourth stage consists of the following activities:
 - (A) The commission shall evaluate the results of the pilot project pursuant to §25.431 of this title.
 - (B) EPE shall initiate capacity auctions pursuant to PURA §39.153 and §25.381 of this title (relating to Capacity Auctions) at a time to be determined by the commission.
 - (C) EPE shall separate competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy services.
 - (5) The fifth stage consists of the commission evaluating whether the power region can offer fair competition and reliable service to all retail customer classes. If the commission concludes that the power region can offer fair competition and reliable service to all retail customer classes, it shall issue an order initiating retail competition and directing EPE to complete the business separation and unbundling.
- (f) **Applicability of energy efficiency and renewable energy requirements.** Beginning January 1, 2006, EPE shall be subject to the energy efficiency requirements under PURA §39.905 and §25.181 of this title (relating to Energy Efficiency Goal) and the renewable energy credit requirements under PURA §39.904 and §25.173 of this title (relating to Goal for Renewable Energy).

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- (1) EPE shall begin administering the energy efficiency programs prescribed in §25.181 of this title by January 1, 2006. EPE shall meet, at a minimum, 5.0% of its growth in demand through energy efficiency savings resulting from these programs by January 1, 2007 and 10% of its growth in demand by January 1, 2008, and each year thereafter.
 - (2) EPE shall obtain, at a minimum, renewable energy credits in an amount sufficient to meet the requirements for the compliance period beginning January 1, 2006, and for each compliance period thereafter.
- (g) **Applicability of other rules.** This section governs the implementation of PURA Chapter 39 requirements as applied to EPE. If there is an inconsistency or conflict between this section and other rules in this Chapter (relating to Substantive Rules Applicable to Electric Service Providers), the provisions of this section shall control.
- (h) **Good cause.** Upon a finding of good cause, as determined by the commission, the sequence for retail competition set forth in subsection (e) of this section may be modified by commission order.