

**PROJECT NO. 39349**

<b>RULEMAKING PROCEEDING TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND SUBSTANTIVE RULE 25.93,</b>	<b>§</b>	
<b>QUARTERLY WHOLESAL</b>	<b>§</b>	<b>OF TEXAS</b>
<b>ELECTRICITY TRANSACTION</b>	<b>§</b>	
<b>REPORTS</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.93  
AS APPROVED AT THE MAY 12, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.93, relating to Quarterly Wholesale Electricity Transaction Reports. The proposed amendments will eliminate the requirement that the reports are filed quarterly with the commission. Instead, wholesale sellers will retain the wholesale transaction information and submit the information to the commission upon request. The amendments also delete subsection (f), concerning additional information needed during an investigation of market power abuse, because information needed during investigations is addressed in detail in §25.503(l) (relating to Oversight of Wholesale Market Participants). In addition, the amendments also delete subsection (g), concerning confidentiality, because the Public Information Act adequately addresses the treatment of confidential reports provided to the commission. Furthermore, the amendments delete subsection (h), concerning implementation, because this subsection addresses the initial implementation of the rule, which has already occurred, and because the amendments eliminate the submission of periodic reports. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 39349 is assigned to this proceeding.

Tony Grasso, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Grasso has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be savings due to eliminating the mandatory reporting requirements, more efficient reporting of data to the commission, and less material maintained by the commission for recordkeeping purposes. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed; compliance costs are expected to decrease as a result of the amendments.

Mr. Grasso has also determined that for each year of the first five years the proposed amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to 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. The request for a public hearing must be received within 31 days after publication.

Initial comments on the proposed amendments 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 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 39349.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2008, Supplement 2010) (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 §39.001, which requires competitive rather than regulatory methods for achieving the goals of Chapter 39, finds that electric services and their prices should be determined by customer choices and the normal forces of competition, and finds that the competitive process should be protected in a manner that ensures the confidentiality of competitively sensitive information; PURA §39.101, which establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and grants the commission the authority to adopt and enforce rules to carry out this provision and to ensure that retail customer protections are established that afford customers safe, reliable, and reasonably priced electricity; PURA §39.155, which grants the commission the authority to require reporting, in a manner that ensures the confidentiality of competitively sensitive information, by

each person, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in this state any information necessary for the commission to assess market power or the development of a competitive retail market in the state; PURA §39.157, which requires the commission to monitor market power; PURA §40.004, which authorizes the commission to require reports of municipally owned utility operations to the extent necessary to determine information relating to market power; and PURA §41.004, which authorizes the commission to require reports of electric cooperative operations to the extent necessary to determine information relating to market power.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.001, 39.101, 39.155, 39.157, 40.004, and 41.004.

§25.93. Wholesale Electricity Transaction Information~~Quarterly Wholesale Electricity Transaction Reports.~~

(a) - (b) (No change.)

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:

(1) (No change.)

(2) Full Report -- A ~~Quarterly~~ Wholesale Transaction Report that contains all information required by this rule including information that the Wholesale Seller of Electricity claims is confidential or Protected Information. If the Wholesale Seller of Electricity does not claim confidentiality or Protected Information status for any of the information in its Full Report then the Full Report will be treated as a Public Report.

(3) Protected information -- Information contained in a ~~Quarterly~~ Wholesale Electricity Transaction Report that comports with the requirements for exception from disclosure under the Texas Public Information Act (TPIA).

(4) Public Report -- A ~~Quarterly~~ Wholesale Transaction Report that contains all information required by this rule except information that the Wholesale Seller of Electricity claims is confidential or Protected Information.

(5)-(6) (No change.)

(d) **~~Quarterly~~ Wholesale Electricity Transaction Reports.**

(1) Wholesale sellers of electricity shall ~~retain~~report to the commission information related to all wholesale electricity transactions with a point of delivery or point of receipt in Texas, including intermediate transactions involving electricity

generated in Texas or electricity ultimately delivered to customers in Texas, and report to the commission, within seven days of a request by the Executive Director or the Executive Director's designee, transaction information for a specified period of time. Wholesale sellers of electricity shall retain transaction information as specified in §25.503 of this title (relating to Oversight of Wholesale Market Participants)~~Reports shall be submitted quarterly and shall be due not later than 45 days after the last day of the quarter for which transactions are being reported.~~

- (2) Reports shall provide contact information for the reporting entity, information on each wholesale electricity contract, and information on each transaction of electricity from the reporting entity to another party.
- (A) (No change.)
- (B) Each wholesale seller of electricity must reportfile information on each contract for electricity that is in effect during the reporting period, including those that will continue to be in effect past the end of the reporting period. Information shall include the name of purchaser, contract execution and termination dates, time period over which the contract is in effect, product type, price, and applicable information about where the power was generated, delivered, and received.
- (C) Each wholesale seller of electricity must reportfile information on each transaction. Information shall include the time period over which the transaction was conducted; applicable information about where the power was generated, delivered, and received; product name; transaction

quantity; price; total transaction charges; and cross-reference to a contract reported under subparagraph (B) of this paragraph. If the period of a transaction extends outside of the~~over more than one~~ reporting period, the~~each~~ report shall include only the portion of the transaction that occurred during the reporting period.

- (D) Reporting parties may aggregate the following types of transactions:
- (i) A municipally owned utility may aggregate data on the portion of its generation that it used to serve its native load. The aggregated number should be in total MWh for the reporting period~~quarter~~, and need not include price.
  - (ii) A generation cooperative may aggregate data on cost-based sales to a distribution cooperative. The aggregated number should be in total MWh sold to each distribution cooperative for the reporting period~~quarter~~, and need not include price.
  - (iii) A river authority may aggregate data on cost-based sales to a wholesale customer. The aggregated number should be in total MWh sold to each wholesale customer for the reporting period~~quarter~~, and need not include price.
  - (iv) A qualifying facility may aggregate data on sales of electricity to a wholesale customer. The aggregated number should be in total MWh sold to each wholesale customer for the reporting period~~quarter~~, and need not include price.

(v) Any reporting entity may aggregate data on sales of electricity or capacity to an independent system operator for balancing energy service, ancillary capacity services, or other services required by the independent system operator. This subparagraph includes sales by an entity that is qualified to sell the reporting entity's capacity and electricity to the independent system operator. The aggregated number should be in total MWh provided under each type of service for the reporting ~~period~~quarter, and need not include price.

(e) **Filing procedures.** Wholesale sellers of electricity shall file the ~~Quarterly~~ Wholesale Electricity Transaction Reports using forms, templates, and procedures approved by the commission. The commission may also approve the use of forms and templates issued by federal agencies for reporting information similar to that required under this section. Reports shall be filed according to §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) except as specified in this subsection ~~and subsection (g) of this section~~.

(1) A Full Report shall be submitted electronically ~~and on standard format compact disks (two copies)~~ without a paper hard copy.

(2) If a Full Report is filed containing information that the Wholesale Seller of Electricity claims is confidential or is Protected Information, a Public Report shall also be submitted ~~electronically on standard format compact disks (two copies)~~.

(3) (No change.)

~~(f) **Additional information.** If during an investigation of market power abuse the commission determines that it needs contract and transaction information not included in the quarterly report, it may require any person or entity subject to this section to provide such additional information.~~

~~(g) **Confidentiality.** If a Full Report contains information which the Wholesale Seller of Electricity has claimed is confidential or is Protected Information, commission employees, and its consultants, agents, and attorneys shall treat the Full Report, including the electronic submission, as confidential to the same degree as information properly submitted under §22.71(d) of this title and shall not disclose protected information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act (TPIA).~~

~~(1) If the commission receives from a member of the Texas Legislature a request for protected information contained in a report, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated §552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify the reporting entity of the request, the identity of the requestor, and the substance of the request.~~

~~(2) If the commission receives a written request for protected information, the commission, through its General Counsel's office, shall make a good faith effort to provide notice of the request to the affected reporting entity within three business days of receipt of the request. If the reporting entity objects to the~~

~~release of the information, the General Counsel's office shall offer to facilitate an informal resolution between the requestor and the reporting entity in conformance with Texas Government Code §552.222. If informal resolution of an information request is not possible, the General Counsel's office will process the request in accordance with the TPIA.~~

- ~~(3) In the absence of a request for information, if the commission staff seeks to release protected information, the commission may determine the validity of the asserted claim of confidentiality through a contested case proceeding. In a contested case proceeding conducted by the commission pursuant to this subsection, the staff and the entity that provided the information to the commission will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under the TPIA.~~
- ~~(4) Any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion.~~
- ~~(5) Except as otherwise provided in paragraph (1) of this subsection, if either the commission or the attorney general determines that the disclosure of protected information is permitted, the commission shall provide notice to the reporting entity at least three business days prior to the disclosure of the protected information or, in the case of a valid and enforceable order of a state or federal~~

~~court of competent jurisdiction specifically requiring disclosure of protected information earlier than within three business days, prior to such disclosure.~~

~~(h) — **Implementation.** The commission shall establish a detailed implementation process that includes training sessions to educate parties required to file under this section about the data required and the form in which it should be submitted, and technical workshops to permit the commission and filing parties to exchange technical systems information.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 13<sup>th</sup> DAY OF MAY 2011 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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