

PROJECT NO. 46393

RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION  
AMEND 16 TEX. ADMIN. CODE §  
§ 25.192, RELATING TO § OF TEXAS  
TRANSMISSION SERVICE RATES §  
§

**PROPOSAL FOR DISCUSSION**  
**NOVEMBER 16, 2016 WORKSHOP**

1 **§25.192. Transmission Service Rates.**

2 (a) **Application.** The provisions of this section apply to all transmission service providers  
3 (TSPs) providing transmission service within the Electric Reliability Council of Texas  
4 (ERCOT), to all distribution service providers (DSPs) within ERCOT, to all entities  
5 scheduling the export of power from ERCOT, and to other customers of the ERCOT  
6 transmission system.

7 (b) **Definitions.** The following terms, when used in this section, have the following  
8 meanings, unless context indicates otherwise.

9 (1) **Baseline values** – values that reflect the costs or other information used to  
10 establish rates in a rate proceeding.

11 (2) **DSP 4CP** – the average of the four demand values of a DSP that are coincident  
12 with the ERCOT 4CP intervals, with such demand values determined from the  
13 aggregate demand of all customers connected to a DSP and including load served  
14 at transmission voltage but excluding wholesale storage load and flows over a tie  
15 line.

16 (3) **ERCOT 4CP** – the sum of the DSP 4CP for all of the ERCOT DSPs, excluding  
17 the portion of demand attributable to wholesale storage load and to flows over a  
18 tie line.

19 (4) **ERCOT 4CP intervals** – the set of four intervals composed of the ERCOT  
20 system monthly peak demand interval for each of the months of June, July,  
21 August, and September.

1 (5) **Export entity** – any entity scheduling the export of power from the ERCOT  
2 region, including, but not limited to, Qualified Scheduling Entities (QSEs).

3 (6) **Tie line** – a facility connected to the ERCOT transmission grid that enables power  
4 to be imported into or exported out of the ERCOT power grid, including, but not  
5 limited to, high voltage direct current (HVDC) converter stations and variable  
6 frequency transformers (VFTs).

7 (7) **Wholesale storage load** – load associated solely and entirely with wholesale  
8 storage, as described by §25.501(m)(2) of this title (relating to Wholesale Market  
9 Design for the Electric Reliability Council of Texas).

10 **(ac) Tariffs.** Each ~~transmission service provider (TSP)~~ shall file a tariff for transmission  
11 service to establish its rates and other terms and conditions and shall apply its tariffs and  
12 rates on a non-discriminatory basis. The tariff shall apply to all ~~distribution service~~  
13 ~~providers (DSPs) and all export entities~~ any entity scheduling the export of power from  
14 the Electric Reliability Council of Texas (ERCOT) region. The tariff shall not apply to  
15 ~~wholesale storage load~~ any entity engaging in wholesale storage as described by  
16 §25.501(m) of this title (relating to Wholesale Market Design for the Electric Reliability  
17 Council of Texas) (storage entity).

18 **(bd) Charges for transmission service delivered within ERCOT.** DSPs, ~~excluding storage~~  
19 ~~entities,~~ shall incur transmission service charges pursuant to the tariffs of the TSP.

20 (1) A TSP's transmission rate shall be calculated as its commission-approved  
21 transmission cost of service divided by the ~~ERCOT 4CP average of ERCOT~~  
22 ~~coincident peak demand for the months of June, July, August and September~~  
23 ~~(4CP), excluding the portion of coincident peak demand attributable to wholesale~~  
24 ~~storage load.~~ The ERCOT 4CP value to be used in calculating a TSP's rate shall  
25 be:

26 (A) the most recently approved ERCOT 4CP in effect prior to the date of  
27 approval of the TSP's new transmission rate in the instant proceeding; or,

28 (B) if the treatment under subparagraph (A) of this paragraph would result in a  
29 transmission rate higher than the rate provided in the approved notice of  
30 the TSP's application, the most recently approved ERCOT 4CP in effect

1 prior to the filing date of the TSP's application in the instant rate  
2 proceeding. The rate approved may not exceed the noticed rate under any  
3 circumstance.

4 (2) A TSP's transmission rate shall remain in effect until the commission approves a  
5 new rate. The TSP's annual rate shall be converted to a monthly rate. The  
6 monthly transmission service charge to be paid by each DSP is the product of each  
7 TSP's monthly rate as specified in its tariff and the DSP's previous year's ~~average~~  
8 ~~of the 4CP demand that is coincident with the ERCOT DSP~~ 4CP.

9 (23) Payments for transmission services shall be consistent with commission orders,  
10 approved tariffs, and §25.202 of this title (relating to Commercial Terms for  
11 Transmission Service).

12 (ee) **Transmission cost of service.** The TSP shall bear the burden of proof regarding the  
13 assignment, functionalization, or allocation of any costs to the transmission cost of  
14 service, separate from and independent of any issues relating to the prudence,  
15 reasonableness, and necessity of those costs for cost recovery in general.

16 (1) The transmission cost of service for each TSP shall be based on:

17 (A) the expenses in Federal Energy Regulatory Commission (FERC) expense  
18 accounts 560-573 (or accounts with similar contents or amounts properly  
19 functionalized to the transmission function);

20 (B) ~~plus~~ the depreciation, federal income tax, ~~and~~ other associated taxes, and  
21 the commission-allowed rate of return based on FERC plant accounts 350-  
22 359 (or accounts with similar contents or amounts properly functionalized  
23 to the transmission function); less accumulated depreciation and  
24 accumulated deferred federal income taxes; ~~and, as applicable.~~

25 (C) the offsetting reduction to transmission cost of service for any revenues  
26 described in subsection (h) of this section and any other revenues  
27 appropriately creditable to the transmission function, including non-  
28 recurring transmission revenues, such as revenues related to payments for  
29 the use of transmission rights-of-way, that the TSP has received during the

1 test year for a filing under this subsection, shall be credited as a reduction  
2 in the transmission cost of service for the TSP.

3 ~~(+2)~~ Transmission Facilities.

4 (A) The following facilities are deemed to be transmission facilities:

5 (Ai) power lines, substations, reactive devices, and associated facilities,  
6 operated at 60 kilovolts or above, including radial lines operated at  
7 or above 60 kilovolts, except the step-up transformers and a  
8 protective device associated with the interconnection from a  
9 generating station or storage facility to the transmission network;

10 (Bii) substation facilities on the high side of the transformer, in a  
11 substation where power is transformed from a voltage higher than  
12 60 kilovolts to a voltage lower than 60 kilovolts;

13 (Ciii) the portion of the ~~direct-current tie line~~ interconnections with areas  
14 outside of the ERCOT region ~~(DC ties)~~ that are owned by a TSP in  
15 the ERCOT region, including those portions of the ~~DC-tie~~ line that  
16 operate at a voltage lower than 60 kilovolts; and

17 (Div) capacitors and other reactive devices that are operated at a voltage  
18 below 60 kilovolts, if they are located in a distribution substation,  
19 the load at the substation has a power factor in excess of 0.95 as  
20 measured or calculated at the distribution voltage level without the  
21 reactive devices, and the reactive devices are controlled by an  
22 operator or automatically switched in response to transmission  
23 voltage.

24 (B) Unless otherwise ordered by the commission, energy storage facilities  
25 shall not be considered transmission facilities.

26 (EC) As used in subparagraphs (A)—~~(D)~~ of this paragraph, reactive devices do  
27 not include generating facilities or energy storage facilities.

28 ~~(23)~~ ~~For municipally owned utilities, river authorities, and electric cooperatives, the~~  
29 ~~commission may permit the use of the cash flow method or other reasonable~~  
30 ~~alternative methods of determining the annual transmission revenue requirement,~~

1 ~~including the return element of the revenue requirement, consistent with the rate~~  
2 ~~actions of the rate setting authority for a municipally owned utility.~~ The following  
3 costs may not be included in a TSP's transmission cost of service:

4 (A) joint or common substation facility costs associated with substations that  
5 serve load at distribution voltage, including, but not limited to, land and  
6 station equipment; and

7 (B) any costs for an investor owned utility that may be recoverable under  
8 §25.243 of this title (relating to Distribution Cost Recovery Factor), or any  
9 similar costs for a municipally owned utility, river authority, or electric  
10 cooperative.

11 (34) For municipally owned utilities, river authorities, and electric cooperatives, the  
12 return may be determined based on the TSP's actual debt service and a reasonable  
13 debt service coverage ratio or interest coverage ratio. In determining a reasonable  
14 coverage ratio, the commission will consider the coverage ratios required in the  
15 TSP's bond indentures or ordinances and the most recent rate action of the rate-  
16 setting authority for the TSP. For municipally owned utilities, river authorities,  
17 and electric cooperatives, the return amount included in the transmission cost of  
18 service for such an entity may not exceed the lesser of:

19 (A) the product of the total return amount for the entity multiplied by the ratio  
20 of the transmission rate base properly recoverable under this subsection to  
21 the total rate base of the entity; or

22 (B) the product of the total return amount for the entity multiplied by the ratio  
23 of the transmission net plant to the total net plant for the entity.

24 (45) A municipally owned utility that is required to apply for a certificate of public  
25 convenience and necessity to construct, install, or extend a transmission facility  
26 within ERCOT pursuant to §25.101 of this title (relating to Certification Criteria)  
27 is entitled to recover, through the ~~utility~~TSP's wholesale transmission rate,  
28 reasonable payments made to a taxing entity in lieu of ad valorem taxes on that  
29 transmission facility, provided that:

- 1 (A) The utility enters into a written agreement with the governing body of the  
2 taxing entity related to the payments;
- 3 (B) The amount paid is the same as the amount the utility would have to pay to  
4 the taxing entity on that transmission facility if the facility were subject to  
5 ad valorem taxation;
- 6 (C) The governing body of the taxing entity is not the governing body of the  
7 utility; and
- 8 (D) The utility provides the commission with a copy of the written agreement  
9 and any other information that the commission considers necessary in  
10 relation to the agreement.

11 (6) With regard to any investments for which the commission has approved a  
12 certificate of public convenience and necessity but which have not been  
13 authorized by the commission as used and useful in providing service to the  
14 public, and for which investments the associated costs have not yet been approved  
15 by the commission as prudently incurred, an application under this subsection  
16 must include a comparison of the cost estimates provided in any certificate of  
17 public convenience and necessity proceedings with the actual costs incurred for  
18 those investments.

19 (7) Any transmission cost of service approved under this subsection, including those  
20 approved by stipulation and by litigation, must establish baseline values that  
21 reflect the costs used to establish the transmission rates. At a minimum,  
22 reasonable and accurate baseline values for invested capital, return on rate base,  
23 capital structure, cost of debt, operations and maintenance expense, federal  
24 income tax expense, and other taxes expense must be established. Failure to  
25 establish these minimum baseline values will preclude a utility, in any  
26 transmission cost of service proceeding under this subsection subsequent to the  
27 adoption of this rule, from receiving an increase to its transmission cost of service  
28 in an interim transmission cost of service proceeding under subsection (j) of this  
29 section. In the event baseline values are not established, the utility shall bear the  
30 burden of proof with regard to the values of any proposed baselines values used to

1 calculate rates in any subsequent interim proceeding under subsection (j) of this  
2 section.

3 (58) The commission may adopt rate-filing requirements that provide additional details  
4 concerning the costs that may be included in the transmission costs and how such  
5 costs should be reported in a proceeding to establish transmission rates.

6 (df) **Billing units.**

7 (1) 4CP. No later than December 1 of each year, ERCOT shall determine and file  
8 with the commission the current year's DSP 4CP average 4CP demand for each  
9 DSP, or the DSP's agent for transmission service billing purposes, as appropriate.  
10 ERCOT shall also include in this filing the ERCOT 4CP for the current year,  
11 excluding the portion of coincident peak demand attributable to wholesale storage  
12 load. This demand shall be used to bill transmission service for the next year.  
13 The ERCOT average 4CP demand shall be the sum of the coincident peak of all  
14 of the ERCOT DSPs, excluding the portion of coincident peak demand  
15 attributable to wholesale storage load, for the four intervals coincident with  
16 ERCOT system peak for the months of June, July, August, and September,  
17 divided by four. As used in this section, a DSP's average 4CP demand is  
18 determined from the total demand, coincident with the ERCOT 4CP, of all  
19 customers connected to a DSP, including load served at transmission voltage, but  
20 excluding the load of wholesale storage entities. The measurement of the  
21 coincident peak shall be in accordance with commission-approved ERCOT  
22 protocols.

23 (2) Export from ERCOT. Within 45 days after the close of a month, ERCOT shall  
24 file aggregate ERCOT export data for that month and the preceding 23 months,  
25 including any revisions to those months.

26 (eg) **Transmission rates for entities scheduling exports from ERCOT.** Transmission  
27 service charges for the use of the ERCOT system for the purpose of the export of power  
28 exports of power from ERCOT will be assessed to export entities transmission service  
29 customers for transmission service within the boundaries of the ERCOT region, in  
30 accordance with this section and the ERCOT protocols.

1 (1) ~~An export entity transmission service customer~~ shall be assessed a transmission  
2 service charge by each TSP for the use of the ~~ERCOT~~ transmission system in  
3 exporting power from ERCOT based on the megawatts that are actually exported,  
4 the duration of the transaction in hours, and the rates established under  
5 subsections ~~(ee)~~ and ~~(df)~~ of this section. ~~Billing intervals shall consist of a year,~~  
6 ~~month, week, day, or hour.~~

7 (2) The ~~hourly monthly~~ on-peak transmission rate will be ~~one fourth~~ the TSP's annual  
8 rate divided by 2,920, and the ~~hourly monthly~~ off-peak transmission rate will be  
9 ~~one twelfth~~ its annual rate divided by 8,760. The peak period used to determine  
10 the applicable transmission rate for such transactions shall be the months of June,  
11 July, August, and September.

12 (3) The ~~export entity DSP or an entity scheduling the export of power over a DC tie~~ is  
13 solely responsible to ~~each the~~ TSP for payment of transmission service charges  
14 under this subsection.

15 ~~(4) A transmission service customer's charges for use of the ERCOT transmission~~  
16 ~~system for export purposes on a monthly basis shall not exceed the annual~~  
17 ~~transmission charge for the transaction.~~

18 ~~(fh)~~ **Transmission export revenue.** In establishing the transmission service rates for a TSP,  
19 revenues that are properly recoverable ~~Revenue from the transmission of electric energy~~  
20 ~~out of the ERCOT region over the DC ties that is recovered~~ under subsection ~~(eg)~~ of this  
21 section and consistent with the new rates approved for the TSP and the test year level and  
22 duration of exports from ERCOT shall be credited ~~to all transmission service customers~~  
23 as a reduction in the TSP's transmission cost of service ~~for TSPs that receive the revenue.~~

24 ~~(gi)~~ **Revision of transmission rates.** Each TSP in the ERCOT region shall periodically  
25 revise its transmission service rates to reflect changes in the cost of providing such  
26 services. Any request for a change in transmission rates shall comply with the filing  
27 requirements established by the commission under this section.

28 ~~(hj)~~ **Interim Update of Transmission rates.**

29 (1) **Frequency.** Each TSP in the ERCOT region may apply to update its transmission  
30 rates on an interim basis not more than once per calendar year to reflect changes

1 in its invested capital. Each TSP in the ERCOT region is required to submit a  
2 complete application for an interim update under this subsection within 48 months  
3 of its most recently approved change in transmission rates under this section.~~Upon~~  
4 ~~the effective date of an amendment to §25.193 pursuant to an order in Project~~  
5 ~~Number 37909, Rulemaking Proceeding to Amend P.U.C. Subst. R. 25.193,~~  
6 ~~Relating to Distribution Service Provider Transmission Cost Recovery factors~~  
7 ~~(TCRF), that allows a distribution service provider to recover, through its~~  
8 ~~transmission cost recovery factor, all transmission costs charged to the~~  
9 ~~distribution service provider by TSPs, each TSP in the ERCOT region may apply~~  
10 ~~to update its transmission rates on an interim basis not more than twice per~~  
11 ~~calendar year to reflect changes in its invested capital.~~

12 (2) Denial due to earnings. The commission shall deny a TSP's application under  
13 this subsection if:

14 (A) approval of the application would result in an increase to the TSP's  
15 transmission service rates; and

16 (B) the TSP's most recent earnings monitoring report shows that the TSP is  
17 earning more than its authorized rate of return on transmission assets, as  
18 adjusted consistent with paragraph (3)(D) of this subsection, using  
19 weather-normalized data adjusted for normal weather using weather data  
20 for the most recent ten calendar years. In making this determination, the  
21 commission shall correct the calculation of the earned rate of return in the  
22 earnings monitoring report to the extent that the calculation does not  
23 comply with §25.73(b) of this title (relating to Financial and Operating  
24 Reports) and any form adopted to implement that section.

25 (3) Costs that may be included. ~~In an interim~~ ~~If the TSP elects to update to a~~  
26 ~~TSP's~~ transmission rates under this subsection, the new level of transmission  
27 rate base rates shall reflect the addition and retirement of transmission facilities  
28 properly booked to FERC plant accounts 350-359. ~~and~~ The new rates shall include  
29 appropriate depreciation, federal income tax and other associated taxes,  
30 accumulated deferred federal income tax, and the commission-authorized rate of

1 return on the new level of transmission rate base, ~~such facilities~~ as well as changes  
2 in loads and transmission revenues consistent with the new rates and properly  
3 recoverable under subsection (e)(1)(C) of this section.

4 (A) The new rates shall not reflect increases in any other costs or decreases in  
5 any other revenues.

6 (B) –If the TSP does not have a commission-authorized rate of return, an  
7 appropriate rate of return shall be used, as determined by the commission.

8 (C) The adjustment to accumulated deferred federal income taxes related to  
9 the incremental invested capital shall not result in an increase to rate base.

10 (D) The commission-authorized rate of return shall be adjusted to reflect the  
11 TSP’s cost of debt as reported in its most recent earnings monitoring  
12 report and shall be applied to the updated total level of transmission rate  
13 base.

14 (E) Any baseline values established in the most recent transmission rate  
15 proceeding under subsection (e) of this section shall be used to inform the  
16 calculation of interim rates under this subsection. The inclusion or  
17 exclusion of specific cost values or cost categories in any baseline shall  
18 not limit the commission’s authority to deviate from or modify baseline  
19 values or cost categories where necessary to calculate and establish  
20 appropriate interim rates. A TSP requesting a deviation from baseline  
21 values must justify its request with testimony and supporting evidence.

22 **(24) Reconciliation.** An interim update of transmission rates under ~~paragraph (1)~~ of  
23 this subsection shall be subject to reconciliation at the next complete review of the  
24 TSP’s transmission cost of service, at which time the commission shall review the  
25 costs of the interim transmission plant additions to determine if they were  
26 reasonable, ~~and necessary,~~ and prudent. Any amounts resulting from an update  
27 that are found to have been unreasonable, ~~or unnecessary,~~ or imprudent, plus the  
28 corresponding return and taxes, shall be refunded with carrying costs determined  
29 as follows: for the time period beginning with the date on which over-recovery is  
30 determined to have begun to the effective date of the TSP’s rates set in that

1 complete review of the TSP's transmission cost of service, carrying costs shall be  
2 calculated using the same rate of return that was applied to the transmission  
3 investments included in the update. For the time period beginning with the  
4 effective date of the TSP's rates set in that complete review of the TSP's  
5 transmission cost of service, carrying costs shall be calculated using the TSP's  
6 rate of return authorized in that complete review.

7 ~~(35)~~ **Future e**Consideration of the effect on a TSP's financial risk and rate of  
8 **return.** For a TSP that has increased its rates pursuant to ~~paragraph (1) of~~ this  
9 subsection, the commission may, in setting rates in the next complete review of  
10 the TSP's transmission cost of service, expressly consider the effects of reduced  
11 regulatory lag resulting from the interim updates to the TSP's rates and the  
12 concomitant impact on the TSP's financial risk and rate of return.

13 ~~(46)~~ **Commission processing of application.** The commission shall process an  
14 application filed pursuant to paragraph (1) of this subsection in the following  
15 manner.

16 (A) **Notice and intervention deadline.** The applicant shall provide notice of  
17 its application to all parties in the applicant's last complete review of the  
18 applicant's transmission cost of service and all of the distribution service  
19 providers listed in the last docket in which the commission set the annual  
20 transmission service charges for the Electric Reliability Council of Texas.  
21 The intervention deadline shall be 21 days from the date service of notice  
22 is completed.

23 (B) **Sufficiency of application.** A motion to find an application materially  
24 deficient shall be filed no later than 21 days after an application is filed.  
25 The motion shall be served on the applicant by hand delivery, facsimile  
26 transmission, or overnight courier delivery, or by e-mail if agreed to by the  
27 applicant or ordered by the presiding officer. The motion shall specify the  
28 nature of the deficiency and the relevant portions of the application, and  
29 cite the particular requirement with which the application is alleged not to  
30 comply. The applicant's response to a motion to find an application

1 materially deficient shall be filed no later than five working days after such  
2 motion is received. If within ten working days after the deadline for filing  
3 a motion to find an application materially deficient, the presiding officer  
4 has not filed a written order concluding that material deficiencies exist in  
5 the application, the application is deemed sufficient.

6 (C) **Review of application.** A proceeding initiated pursuant to paragraph (1)  
7 of this subsection is eligible for disposition pursuant to §22.35(b)(1) of  
8 this title (relating to Informal Disposition). If the requirements of §22.35  
9 of this title are met, the presiding officer shall issue a notice of approval  
10 within 60 days of the date a materially sufficient application is filed unless  
11 good cause exists to extend this deadline or the presiding officer  
12 determines that the proceeding should be considered by the commission.

13 ~~(57)~~ **Filing Schedule.** The commission may prescribe a schedule for providers of  
14 transmission services to file proceedings to revise the rates for such services.

15 ~~(6) DSP's right to pass through changes in wholesale rates. A DSP may~~  
16 ~~expeditiously pass through to its customers changes in wholesale transmission~~  
17 ~~rates approved by the commission, pursuant to §25.193 of this title (relating to~~  
18 ~~Distribution Service Provider Transmission Cost Recovery Factors (TCRF)).~~

19 ~~(78)~~ **Reporting requirements.** TSPs shall file reports that will permit the commission  
20 to monitor their transmission costs and revenues, in accordance with any filing  
21 requirements and schedules prescribed by the commission.

22 ~~(9) Dismissal of proceeding. A TSP may not receive a transmission rate increase~~  
23 ~~under this subsection while a comprehensive base-rate proceeding or~~  
24 ~~comprehensive transmission rate proceeding for the TSP is pending. In addition,~~  
25 ~~the presiding officer shall dismiss a TSP's application for a proceeding filed under~~  
26 ~~this subsection if the TSP or commission initiates a comprehensive base-rate~~  
27 ~~proceeding within 60 days after the TSP filed the application for a proceeding~~  
28 ~~under this subsection, unless the application seeks a decrease of transmission~~  
29 ~~rates.~~

1 (k) **Transition issues.** For any municipally owned utility, river authority, or electric  
2 cooperative for which there has not been a transmission rate change request approved  
3 under subsection (e) of this section subsequent to the adoption of this rule or within 36  
4 months prior to the adoption of this rule, the following deadlines apply for submitting an  
5 application to change the TSP's transmission rates under this section:

6 (1) TSPs for which the most recent transmission rate update approved under  
7 subsection (e) of this section occurred prior to December 31, 1999, shall apply for  
8 an update of transmission rates under subsection (e) of this section within one year  
9 of the adoption of this rule.

10 (2) TSPs for which the most recent transmission rate update approved under  
11 subsection (e) of this section occurred prior to December 31, 2005, shall apply for  
12 an update of transmission rates under subsection (e) of this section within two  
13 years of the adoption of this rule.

14 (3) TSPs for which the most recent transmission rate update approved under  
15 subsection (e) of this section occurred prior to December 31, 2011, shall apply for  
16 an update of transmission rates under subsection (e) of this section within three  
17 years of the adoption of this rule.

18 (4) TSPs for which the most recent transmission rate update approved under  
19 subsection (e) of this section occurred prior to the adoption of this rule shall apply  
20 for an update of transmission rates under subsection (e) of this section within four  
21 years of the adoption of this rule.