

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter J. COSTS, RATES AND TARIFFS.

#### §25.236. Recovery of Fuel Costs.

- (a) **Eligible fuel expenses.** Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 503, 518, 536, 547, 555, and 565, as modified in this subsection, as of April 1, 1997, and the items specified in paragraph (7) of this subsection. Any later amendments to the System of Accounts are not incorporated into this subsection. Subject to the commission finding special circumstances under paragraph (6) of this subsection, eligible fuel expenses are limited to:
- (1) For any account, the electric utility may not recover, as part of eligible fuel expense, costs incurred after fuel is delivered to the generating plant site, for example, but not limited to, operation and maintenance expenses at generating plants, costs of maintaining and storing inventories of fuel at the generating plant site, unloading and fuel handling costs at the generating plant, and expenses associated with the disposal of fuel combustion residuals. Further, the electric utility may not recover maintenance expenses and taxes on rail cars owned or leased by the electric utility, regardless of whether the expenses and taxes are incurred or charged before or after the fuel is delivered to the generating plant site. The electric utility may not recover an equity return or profit for an affiliate of the electric utility, regardless of whether the affiliate incurs or charges the equity return or profit before or after the fuel is delivered to the generating plant site. In addition, all affiliate payments must satisfy the Public Utility Regulatory Act (PURA) §36.058.
  - (2) For Accounts 501 and 547, the only eligible fuel expenses are the delivered cost of fuel to the generating plant site excluding fuel brokerage fees. For Account 501, revenues associated with the disposal of fuel combustion residuals will also be excluded.
  - (3) For Accounts 518 and 536, the only eligible fuel expenses are the expenses properly recorded in the Account excluding brokerage fees. For Account 503, the only eligible fuel expenses are the expenses properly recorded in the Account, excluding brokerage fees, return, non-fuel operation and maintenance expenses, depreciation costs and taxes.
  - (4) For Account 555, the electric utility may not recover demand or capacity costs.
  - (5) For Account 565, an electric utility may not recover transmission expenses paid to affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operating costs associated with transmission assets. A non-ERCOT electric utility may not recover expenses for wheeling transactions. An ERCOT electric utility may recover only the expenses properly recorded in Account 565 for ISO fees related to planned and unplanned transmission service and for payments to parties related to unplanned transmission service, such as losses and re-dispatch fees.
  - (6) Upon demonstration that such treatment is justified by special circumstances, an electric utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in paragraphs (1) - (5) of this subsection. In determining whether special circumstances exist, the commission shall consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.
  - (7) Eligible fuel expenses shall not be offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. In addition to the expenses designated in

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paragraphs (1) - (6) of this subsection, unless otherwise specified by the commission, eligible fuel expenses shall be offset by:

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- (A) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503; and
  - (B) revenues from wheeling transactions except for non-ERCOT electric utilities; and
  - (C) revenues from off-system sales in their entirety, except as permitted in paragraph (8) of this subsection.
  - (D) For electric utilities in ERCOT, revenues from third parties for unplanned transmission service, such as ISO fees, losses, and re-dispatch fees.
- (8) **Shared margins from off-system sales.** An electric utility may retain 10% of the margins from an off-system energy sales transaction if the following criteria are met:
- (A) the electric utility participates in a transmission region governed by an independent system operator or a functionally equivalent independent organization;
  - (B) a generally-applicable tariff for firm and non-firm transmission service is offered in the transmission region in which the electric utility operates; and
  - (C) the transaction is not found to be to the detriment of its retail customers.
- (b) **Reconciliation of fuel expenses.** Electric utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled. However, notwithstanding the previous sentence, a reconciliation shall be requested in any general rate proceeding under the PURA, Chapter 36, Subchapters C and E and may be performed in any general rate proceeding under the PURA, Chapter 36, Subchapter D. Upon motion and showing of good cause, a fuel reconciliation proceeding may be severed from or consolidated with other proceedings.
- (c) **Petitions to reconcile fuel expenses.** In addition to the commission prescribed reconciliation application, a fuel reconciliation petition filed by an electric utility must be accompanied by a summary and supporting testimony that includes the following information:
- (1) a summary of significant, atypical events that occurred during the reconciliation period that affected the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;
  - (2) a general description of typical constraints that limit the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;
  - (3) the reasonableness and necessity of the electric utility's eligible fuel expenses and its mix of fuel used during the reconciliation period;
  - (4) a summary table that lists all the fuel cost elements which are covered in the electric utility's fuel cost recovery request, the dollars associated with each item, and where to find the item in the prefiled testimony;
  - (5) tables and graphs which show generation (MWh), capacity factor, fuel cost (cents per kWh and cents per MMBtu), variable cost and heat rate by plant and fuel type, on a monthly basis; and
  - (6) a summary and narrative of the next-day and intra-day surveys of the electricity markets and a comparison of those surveys to the electric utility's marginal generating costs.
- (d) **Fuel reconciliation proceedings.** Burden of proof and scope of proceeding are as follows:

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- (1) In a proceeding to reconcile fuel factor revenues and expenses, an electric utility has the burden of showing that:

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- (A) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service to retail customers;
  - (B) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the electric utility, the prices charged by the supplying affiliate to the electric utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and
  - (C) it has properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factor during the reconciliation period.
- (2) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness of the electric utility's fuel expenses during the reconciliation period and whether the electric utility has over- or under-recovered its reasonable fuel expenses.
- (e) **Refunds.** All fuel refunds and surcharges shall be made using the following methods.
- (1) Interest shall be calculated on the cumulative monthly ending under- or over-recovery balance at the rate established annually by the commission for overbilling and underbilling in §25.28 (c) and (d) of this title (relating to Bill Payment and Adjustments). Interest shall be calculated based on principles set out in subparagraphs (A) - (E) of this paragraph.
    - (A) Interest shall be compounded annually by using an effective monthly interest factor.
    - (B) The effective monthly interest factor shall be determined by using the algebraic calculation  $x = (1 + i)^{(1/12)} - 1$ ; where  $i$  = commission-approved annual interest rate, and  $x$  = effective monthly interest factor.
    - (C) Interest shall accrue monthly. The monthly interest amount shall be calculated by applying the effective monthly interest factor to the previous month's ending cumulative under/over recovery fuel and interest balance.
    - (D) The monthly interest amount shall be added to the cumulative principal and interest under/over recovery balance.
    - (E) Interest shall be calculated through the end of the month of the refund or surcharge.
  - (2) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the electric utility.
  - (3) Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor.
  - (4) Intraclass allocations of refunds and surcharges shall depend on the voltage level at which the customer receives service from the electric utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given refunds or assessed surcharges based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

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- (5) Unless otherwise ordered by the commission, all refunds shall be made through a one-time bill credit and all surcharges shall be made on a monthly basis over a period not to exceed 12 months through a bill charge. However, refunds may be made by check to municipally-owned electric utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge. All other customers shall be given a credit or assessed a surcharge based on a factor which will be applied to their kilowatt-hour usage over the refund or surcharge period. This factor will be determined by dividing the amount of refund or surcharge allocated to each rate class by forecasted kilowatt-hour usage for the class during the period in which the refund or surcharge will be made.
- (6) A petition to surcharge or refund a fuel under- or over-recovery balance not associated with a proceeding under subsection (d) of this section shall be processed in accordance with the filing schedules in §25.237(d) of this title (relating to Fuel factors) and the deadlines in §25.237(e) of this title.
- (f) **Procedural schedule.** Upon the filing of a petition to reconcile fuel expenses in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within one year after a materially complete petition was filed. However, if the deadlines result in a number of electric utilities filing cases within 45 days of each other, the presiding officers shall schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether such procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed.
- (g) **Final fuel reconciliation.** Notwithstanding the provisions of subsections (b) and (f) of this section, each electric utility's affiliated power generation company, except El Paso Electric Company's, shall file after January 1, 2002, a final fuel reconciliation according to the schedule in paragraphs (1) — (9) of this subsection. For the final fuel reconciliation, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within six months of the filing date, except for Reliant Energy, Central Power and Light and TXU Electric proceedings, which will be completed in eight months.
  - (1) West Texas Utilities — June 1, 2002;
  - (2) Reliant Energy — July 1, 2002;
  - (3) Southwestern Public Service — August 1, 2002;
  - (4) TXU Electric — October 1, 2002;
  - (5) Central Power & Light — December 1, 2002;
  - (6) Lower Colorado River Authority — February 1, 2003;
  - (7) Entergy Gulf States, Inc. — March 1, 2003;
  - (8) Texas-New Mexico Power Company — April 1, 2003; and
  - (9) Southwestern Electric Power Company — May 1, 2003.