

PROJECT NO. 42740

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE 25.101,	§	
RELATING TO CERTIFICATION	§	OF TEXAS
CRITERIA	§	

**ORDER ADOPTING AMENDMENTS TO § 25.101
AS APPROVED AT THE APRIL 17, 2015 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.101, relating to Certification Criteria, with changes to the proposed text as published in the January 30, 2015 issue of the *Texas Register* (40 TexReg 423). The amendments will remove any presumption that the commission has a preference for transmission line routes to parallel natural gas or other pipelines by identifying types of rights-of-way that generally may be compatible with transmission lines. The list of compatible rights-of-way does not include pipelines. This intentional omission of pipelines from the list of compatible rights-of-way is intended to remove any preference for paralleling or utilizing pipeline rights-of-way while not prohibiting such consideration. This amendment is adopted under Project Number 42740.

The commission received comments on the proposed amendment from Lone Star Transmission, LLC (Lone Star); CenterPoint Energy Houston Electric, LLC (CenterPoint); AEP Texas Central Company, AEP Texas North Company, Southwestern Electric Power Company, and Electric Transmission Texas, LLC (AEP Companies and ETT); LCRA Transmission Services Corporation (LCRA); and Sharyland Utilities, L.P. (Sharyland).

General Comments

Sharyland and CenterPoint indicated that they support the proposed amendments. Lone Star commented that it generally supports the intent of the proposed amendments.

Commission Response

The commission appreciates the comments.

LCRA indicated that the proposed amendments are benign, but remarked that the amendments are unnecessary, as the routing criteria have worked well in the past. In addition, LCRA asserted that there is currently no preference in the rule for utilizing or paralleling pipeline rights-of-way (ROW). Pipelines are simply another routing feature that may or may not constitute a routing opportunity in a given transmission CCN case and it is unnecessary to give pipelines attention in an amended rule.

Commission Response

The commission has not made changes in response to these comments. The amendments appropriately clarify the commission's intent that paralleling or utilizing pipeline ROW not be given any preference.

Comments on subsection (b)(3)(B)(i)-(ii)

AEP Companies and ETT stated that the original language in these clauses created a distinction between clause (i) to *utilize* existing compatible ROW, and clause (ii), to *parallel* existing compatible ROW. Adding “parallel” to clause (i) and “utilize” to clause (ii) would eliminate this

distinction. AEP Companies and ETT believed this distinction is material and should be maintained. AEP Companies and ETT asserted that clauses (i)-(iii) should maintain and recognize a distinction between the types of features that the commission considers and the context of the consideration. AEP Companies and ETT proposed to remove the new language added, and instead state that utilizing or paralleling existing compatible ROW, respectively, and adding “but not limited to existing transmission lines or ” to clause (i) and “including but not limited to existing transmission lines, highways, or railroads” to clause (ii), in addition to the criteria currently in the rule. AEP Companies and ETT stated that these changes are not intended alter the substantive intent of the proposed amendments, but would retain the expression of the intent to eliminate any preference for certain routing features while also retaining the distinction in how certain features are considered by the commission. Lone Star supported the modifications suggested by AEP Companies and ETT.

Commission Response

The commission has not made changes in response to these comments, because it believes that the amendments as proposed are better organized and more descriptive than the language proposed by AEP Companies and ETT. The language proposed by AEP Companies and ETT makes no mention of compatible ROW other than “existing transmission lines.” The commission’s intent is to list types of ROW that generally may be compatible with new electric transmission lines. The commission has not listed pipeline ROW because concerns have been raised about the impact of transmission lines on some pipelines. By exclusion of pipeline ROW from the list of types of ROW in the rule, the

commission intends to remove any preference for paralleling or utilizing pipeline rights-of-way while not prohibiting such consideration.

LCRA stated that the term “electric facilities” listed in clause (i) may inadvertently be including a preference for electric distribution facilities. LCRA asserted that utilizing or paralleling distribution facilities may be warranted, depending on the facts of a case, but should not be a preference for the commission. LCRA proposed to change the term to “electric transmission facilities.”

LCRA commented that by including specific criteria in clause (ii), the commission is creating a preference for these criteria to the exclusion of other types of ROW. LCRA also stated that telephone utility easements are problematic in the same way that electric distribution facilities are and should be removed. Finally, LCRA pointed out that the proposed term “property boundaries” in clause (ii) is different from the term “property lines” currently in clause (iii), and proposes that “property lines” be used in clause (ii) to remain consistent.

Commission Response

The commission’s intent is to list types of ROW that generally may be compatible with new electric transmission lines. By listing these types of ROW, the commission intends to ensure that compatible ROW of these types are considered in the routing of a transmission line under consideration. If the utilization or paralleling of the existing ROW for a transmission line under consideration would be compatible with a ROW of a type listed in the rule, then the commission may prefer that route based on that factor but will continue

to weigh this preference with all of the various other factors when deciding which route to choose.

Meriam-Webster's online dictionary includes as a definition of "compatible": "capable of existing together in harmony." For example, if a transmission line under consideration could not be located in or parallel to an existing electric distribution ROW due to space limitations, then that distribution ROW is not compatible and would not need to be considered in the routing evaluation. Existing ROW is land that has already been dedicated to public use. Therefore, all other things equal, the commission may prefer to utilize or parallel such land when routing a transmission line. The same holds true of telephone utility ROW. The commission has changed the reference from "telephone utility easements" to "telephone utility rights-of-way" to clarify that it is referring to the land covered by the easements.

The commission has changed subsection (b)(3)(B)(ii) to clarify that it is requiring consideration of existing ROW of a type listed in the rule only if the ROW is compatible with the transmission line under consideration. The commission has deleted property boundaries and fence lines from subsection (b)(3)(B)(ii) because they are not ROW. Existing subsection (b)(3)(B)(ii) already requires consideration of paralleling property lines, and fence lines are frequently located along property lines.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (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, §37.051 that requires an electric utility to obtain certification for electric facilities, and §37.056, which governs the issuance of certificates of convenience and necessity for electric facilities.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 37.051, and 37.056.

§25.101. Certification Criteria.

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) **Construction and/or extension** -- Shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way shall not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction and/or extension is necessary for the service, accommodation, convenience, or safety of the public.
 - (2) **Generating unit** -- Any electric generating facility. This section does not apply to any generating unit that is less than ten megawatts and is built for experimental purposes only.
 - (3) **Habitable structures** -- Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.
 - (4) **Prudent avoidance** -- The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.
- (b) **Certificates of convenience and necessity for new service areas and facilities.** Except for certificates granted under subsection (e) of this section, the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the

service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission shall render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

- (1) **Change in service area.** Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated.
 - (A) Uncontested applications: An application for a certificate under this paragraph shall be approved administratively within 80 days from the date of filing a complete application if:
 - (i) no motion to intervene has been filed or the application is uncontested;
 - (ii) all owners of land that is affected by the change in service area and all customers in the service area being changed have been given direct mail notice of the application; and
 - (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements,

including, but not limited to, the provision of proper notice of the application.

(B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions shall be approved administratively within 45 days of the filing of the application provided that:

- (i) all utilities whose certificated service area is affected agree to the change;
- (ii) all customers within the affected area have given prior consent; and
- (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(2) **New generating unit.** A new electric generating unit constructed, owned, or operated by a bundled electric utility.

(3) **New electric transmission line.** All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports).

(A) Need:

- (i) Except as stated below, the following must be met for a transmission line in the Electric Reliability Council of Texas (ERCOT) power region. The applicant must present an economic

cost-benefit study that includes an analysis that shows that the levelized ERCOT-wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part. Indirect costs and benefits to the transmission system may be included in the cost-benefit study. The commission shall give great weight to such a study if it is conducted by ERCOT. This requirement for an economic cost-benefit study does not apply to an application filed pursuant to §25.174 of this title (relating to Competitive Renewable Energy Zones) for a transmission line that is intended to serve a competitive renewable energy zone. This requirement also does not apply to an application for a transmission line that is necessary to meet state or federal reliability standards, including: a transmission line needed to interconnect a transmission service customer or end-use customer; or needed due to the requirements of any federal, state, county, or municipal government body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air or water quality.

- (ii) For a transmission line not addressed by clause (i) of this subparagraph, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a

reliable and adequate network and to facilitate robust wholesale competition. The commission shall give great weight to:

- (I) the recommendation of an organization that meets the requirement of PURA §39.151; and/or
 - (II) written documentation that the transmission line is needed to interconnect a transmission service customer or an end-use customer.
- (B) **Routing:** An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):
- (i) whether the routes parallel or utilize existing compatible rights-of-way for electric facilities, including the use of vacant positions on existing multiple-circuit transmission lines;

- (ii) whether the routes parallel or utilize other existing compatible rights-of-way, including roads, highways, railroads, or telephone utility rights-of-way;
 - (iii) whether the routes parallel property lines or other natural or cultural features; and
 - (iv) whether the routes conform with the policy of prudent avoidance.
- (C) Uncontested transmission lines: An application for a certificate for a transmission line shall be approved administratively within 80 days from the date of filing a complete application if:
 - (i) no motion to intervene has been filed or the application is uncontested; and
 - (ii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.
- (D) Projects deemed critical to reliability. Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for

such a certificate unless good cause is shown for extending that period.

(c) **Projects or activities not requiring a certificate.** A certificate, or certificate amendment, is not required for the following:

- (1) A contiguous extension of those facilities described in PURA §37.052;
- (2) A new electric high voltage switching station, or substation;
- (3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies shall proceed without delay or prior approval of the commission and shall be reported to the commission in accordance with §25.83 of this title.
- (4) The construction or upgrading of distribution facilities within the electric utility's service area.
- (5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs shall be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:
 - (A) The modification or extension of an existing transmission line solely to provide service to a substation or metering point provided that:

- (i) an extension to a substation or metering point does not exceed one mile; and
 - (ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.
- (B) The rebuilding, replacement, or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or reconductoring of an existing transmission facility, provided that:
 - (i) no additional right-of-way is required; or
 - (ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.
- (C) The installation, on an existing transmission line, of an additional circuit not previously certificated, provided that:
 - (i) the additional circuit is not greater than 230 kV; and
 - (ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.
- (D) The relocation of all or part of an existing transmission facility due to a request for relocation, provided that:
 - (i) the relocation is to be done at the expense of the requesting party; and
 - (ii) the relocation is solely on a right-of-way provided by the requesting party.

- (E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.
 - (F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air and water quality, provided that:
 - (i) all landowners of property crossed by the electric facilities have given prior written consent; and
 - (ii) the relocation, alteration, or reconstruction is responsive to the governmental request.
- (d) **Standards of construction and operation.** In determining standard practice, the commission shall be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

- (1) The standards of construction shall apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.
- (2) For electric transmission line construction requiring the acquisition of new rights-of-way, electric utilities must include in the easement agreement, at a minimum, a provision prohibiting the new construction of any above-ground structures within the right-of-way. New construction of structures shall not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures. Utilities may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.
- (3) Measures shall be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures shall be adapted to the specifics of each project and may include such requirements as:
 - (A) selective clearing of the right-of-way to minimize the amount of flora and fauna disturbed;
 - (B) implementation of erosion control measures;
 - (C) reclamation of construction sites with native species of grasses, forbs, and shrubs; and

(D) returning site to its original contours and grades.

(e) **Certificates of convenience and necessity for existing service areas and facilities.** For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1, 1975, unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes:

- (1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.
- (2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.
- (3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the

construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

- (f) **Transferability of certificates.** Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission.

- (g) **Certification forms.** All applications for certificates of convenience and necessity shall be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

- (h) **Commission authority.** Nothing in this section is intended to limit the commission's authority to recommend or direct the construction of transmission under PURA §§35.005, 36.008, or 39.203(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.101 relating to Certification Criteria is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER