

PROJECT NO. 34202

RULEMAKING TO REPEAL P.U.C.	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE 25.53 AND	§	
PROPOSE NEW 25.53 RELATING TO	§	OF TEXAS
ELECTRIC SERVICE EMERGENCY	§	
OPERATIONS PLANS	§	

**ORDER ADOPTING THE REPEAL OF §25.53 AND NEW §25.53
AS APPROVED AT THE DECEMBER 19, 2007, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §25.53 relating to Emergency Operations Plan and adopts new §25.53 relating to Electric Service Emergency Operations Plans with changes to the proposed text as published in the September 28, 2007 issue of the *Texas Register* (32 TexReg 6708). The commission also amends Chapter 25, Subchapter C, Quality of Service, by changing the title to Infrastructure and Reliability. New §25.53 will establish the minimum requirements for emergency operations plans maintained by market entities. Project Number 34202 is assigned to this proceeding.

Municipally owned utilities have historically provided information regarding emergency operations to the commission on a voluntary basis, and they are encouraged to continue this practice. Such information may include emergency contacts, status reports during emergency events (either directly or through local emergency operations centers), and summaries or copies of emergency operations plans. A complete copy of the emergency operations plan should be made available at the main office of each municipally owned utility for inspection by the commission or commission staff upon request.

On October 29, 2007, the commission received comments on the proposed repeal and new section from AEP Texas North Company, AEP Texas Central Company, and Southwestern Electric Power Company (AEP Companies); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); the City of Houston Office of Emergency Management; El Paso Electric Company (EPE); the Electric Reliability Council of Texas, Inc. (ERCOT); Entergy Gulf States, Inc. (EGSI); Fox Smolen & Associates, Inc. (FSA); Oncor Electric Delivery (Oncor); the Retail Electric Provider Coalition (REP Coalition), which consisted of CPL Retail Energy, Direct Energy, Gexa Energy, Green Mountain Energy Company, Liberty Power, Reliant Energy, Strategic Energy, Stream Energy, TXU Energy, WTU Retail Energy, the Alliance for Retail Markets, and the Texas Energy Association for Marketers; South Texas Electric Cooperative, Inc., Jackson Electric Cooperative, Inc., Karnes Electric Cooperative, Inc., Magic Valley Electric Cooperative, Inc., Medina Electric Cooperative, Inc., Nueces Electric Cooperative, Inc., San Patricio Electric Cooperative, Inc., Victoria Electric Cooperative, Inc., and Wharton County Electric Cooperative, Inc. (STEC and its distribution cooperative members); Southwestern Public Service Company (SPS); Texas Electric Cooperative, Inc. (TEC); and Texas-New Mexico Power Company (TNMP).

On November 12, 2007 the commission received reply comments on the proposed repeal and new section from EPE, FPL Energy, Inc. (FPLE), Pedernales Electric Cooperative, Inc. (PEC), and TEC.

The commission posed two questions in this proceeding, which are listed below.

Question 1: To what extent are the minimum requirements for emergency operations plans described in proposed §25.53(c) duplicative of ERCOT's filing requirements for market participants?

AEP and CenterPoint Energy were not aware of any filing requirements for transmission and distribution utilities (TDUs) that would be considered duplicative.

Oncor stated that the only item that is duplicative of ERCOT's filing requirements is its Black Start Plan. Therefore, Oncor asserted that its filing with the commission should not include a section on its Black Start Plan.

STEC and its distribution cooperative members stated that STEC's distribution cooperative members are not required to file an emergency operations plan with ERCOT. As a qualified scheduling entity (QSE), STEC is required to file with ERCOT a "back-up plan for operation during emergencies." As a transmission and/or distribution service provider (TDSP), STEC is required to file a complete emergency plan with ERCOT. STEC noted that the plan filed with ERCOT does not address pandemics. Further, STEC asserted that the ERCOT requirements allow them to meet the requirements of the commission with relative ease.

The REP Coalition stated that REPs are not required to file an emergency operations plan with ERCOT.

Commission response

The commission declines to make changes to the rule in response to these comments since the EOP required by the rule is not unnecessarily duplicative. The intent of the rule is to ensure emergency preparedness. Contrary to Oncor's comment, the rule does not require an entity to include a section on Black Start Plans in its filing with the commission.

Question 2: Should electric utilities and REPs develop policies for disaster aid offerings for customers displaced by catastrophic events such as hurricanes and flooding (i.e., waiver of transfer fees and/or deposits)? If so, to what extent should those policies and offerings be memorialized in an electric utility's tariff or a REP's terms of service?

STEC and its distribution cooperative members supported the inclusion of disaster aid offerings, including the waiver of transfer fees and/or deposits, in electric utilities' tariffs. They also stated that the commission should urge REPs to include similar policies in their terms of service.

While SPS was not opposed to the idea of disaster aid offerings, they felt that this issue could be better addressed in a separate rulemaking proceeding. This would allow affected parties the opportunity to comment on more specific issues associated with this topic.

The REP Coalition opposed requiring REPs to make disaster aid offerings but argued that REPs have traditionally made such offerings following a catastrophic event. From a competitive perspective, the REP Coalition asserted that the waiver of transfer fees and/or deposits may

allow for the acquisition of customers. Further, they asserted that such a requirement would contradict Public Utility Regulatory Act (PURA) §39.001(d).

EGSI opposed the idea of a disaster aid offering, including the waiver of fees. They argued that a “blanket waiver” would result in administrative issues and would force its shareholders to absorb the costs deferred from customers. EGSI believed that the entities responsible for providing assistance to citizens following a catastrophic event are social and governmental agencies. They further argued that rather than requiring utilities to establish policies or make tariff revisions, the commission should issue emergency rules or orders stating that certain substantive rules are suspended following a disaster proclamation by the governor.

Oncor urged the commission not to require utilities to establish formal disaster aid offerings. They argued that utilities have traditionally offered assistance to customers during disasters, including hurricane and flooding events. Further, they asserted that the definition of a catastrophic event would need to be clarified. Similar to EGSI’s comments, Oncor suggested that the determination of what constitutes a disaster is at the governor’s discretion.

AEP Companies and EPE believed that each catastrophic event presents unique challenges for customers and responses to those challenges should fit the needs of customers during a given situation. Therefore, they did not support the inclusion of disaster aid offerings in a utility’s tariff. EPE also stated that the commission’s existing customer protection rules adequately protect customers during a disaster.

CenterPoint Energy stated that if the commission adopted disaster aid offerings, it should exempt unbundled TDUs from these requirements.

Commission response

Market entities have traditionally responded in a positive manner following an emergency event, and the commission would encourage market entities to continue meeting customer needs following an event. Therefore, the commission declines mandating such tariff or terms of service revisions.

Subsection (b)

FPLE expressed concern that the requirement to file an affidavit imposes a strict liability requirement for a market entity to follow its EOP.

Commission response

The affidavit required by final rule subsection (c)(1)(H) requires an affirmation about commitment to follow the EOP in order to help ensure that the market entity has adequately prepared for an emergency. However, the affirmation is not intended to preclude deviations from the EOP during the course of an emergency to the extent such deviations are appropriate under the circumstances. Further, the commission does not oppose the affidavit being signed by a local operation's officer and has deleted the term "senior" from subsection (c)(1)(H), (c)(2)(F), and (j)(2) of the rule.

TNMP endorsed filing an EOP summary plan but not a detailed EOP plan. SPS proposed the deletion of the term “comprehensive” in the first sentence because they are concerned about confidentiality. However, they did support filing a “general” description of their EOP plan. FPLE also expressed concern about confidentiality of EOP plans filed pursuant to subsection (b). FPLE, as the largest renewable energy generator in the state, would be willing to supply the commission with enough information to assess market-wide emergency readiness without compromising security-sensitive information regarding the state’s critical infrastructure.

Commission response

The commission does not expect a market entity to submit confidential information in its comprehensive summary of its emergency operations plan. A “comprehensive summary” means that all aspects of emergency operations are addressed in a market entity’s emergency plan summary submitted to the commission.

The commission has amended subsection (b) to permit filing the EOP in lieu of a comprehensive summary. If a market entity does file confidential information, §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials) addresses the manner in which the confidential information should be filed.

FPLE stated that the requirements proposed in subsection (c)(2) may not be fully implemented by all market entities by May 1, 2008. Therefore, FPLE proposed filing a status report about the items that need to be included but that they should not be required to file a full summary until December 31, 2008.

Commission response

The commission declines to make this change. Market entities have sufficient time to meet the May 1, 2008 deadline. Furthermore, the commission set the required filing date to ensure adequate preparedness prior to hurricane season.

Oncor argued that providing a summary of a Black Start Plan would be duplicative of ERCOT's filing requirements; and therefore, Oncor provided specific language to exclude the Black Start Plan.

Commission response

A summary of a Black Start Plan is not included in the list of requirements under subsection (c). The commission did not intend for market entities to file a summary of this plan. Therefore, Oncor's suggested rule language is unnecessary.

The REP Coalition proposed moving the affidavit requirement to subsection (c).

Commission response

REP Coalition's proposed change creates consistency throughout subsection (c) since REPs and ERCOT are only required to file an affidavit, as outlined in subsections (c)(3) and (c)(4). Therefore, the commission adopts this change.

Subsection (c)(1)(A)

FSA provided specific language for including critical care customers and providing for coordination between utilities and governmental entities. TEC objected to FSA's suggestion that governmental entities be included in the proposed rule and any involvement of governmental entities should be addressed in §25.497, not in the current rulemaking proceeding.

Commission response

FSA's suggestions are beyond the scope of the rule, and the commission declines to make changes to subsection (c)(1)(A).

TNMP agreed with FSA that a database of critical load customers is crucial but argued that the list of critical load customers should not be filed with the commission.

Commission response

The commission agrees with TNMP's assessment. The commission is primarily concerned with the process for registering and contacting critical load customers. Therefore, the commission will not add a requirement to the rule that utilities must file a list of critical load customers with the commission.

Subsection (c)(1)(B)

TNMP stated that the filing of an EOP by the May 1, 2008 deadline is feasible. FSA provided specific language for including critical care customers and providing for coordination between utilities and governmental entities. TEC objected to FSA's suggestion that governmental entities

be included in the proposed rule and any involvement of governmental entities should be addressed in §25.497, not in the current rulemaking proceeding.

Commission response

As stated previously, the commission believes that the suggestions offered by FSA are beyond the scope of the rule and declines to make the suggested changes to subsection (c)(1)(B).

Subsection (c)(1)(F)

Oncor and FPLE stated that the phrase “hurricane evacuation zone” should be more defined or better referenced.

Commission response

The commission agrees with Oncor’s and FPLE’s comments, and has changed the rule accordingly.

Subsection (c)(1)(G)

Commission response

The Texas 9-1-1 Agencies filed comments in response to proposed §26.51 in Project Number 34594, *Rulemaking to Repeal P.U.C. Substantive Rule 26.51 and Propose New 26.51 Relating to Reliability of Operations of Telecommunications Providers* and recommended the following language be added:

(G) Following the [a]nnual [d]rill, the utility shall assess the effectiveness of the [d]rill and modify its emergency operations plan as needed.

The commission believes the addition of this language is appropriate for §25.53 as well, and adding this language to §25.53 will make it more consistent with §26.51.

Subsection (c)(1)(H)

The REP Coalition provided specific language regarding the incorporation of the affidavit requirement in subsection (c)(1), which would require the addition of subsection (c)(1)(H). They suggested this would create consistency throughout subsection (c), considering that REPs and ERCOT are required to only file an affidavit.

Commission response

The commission agrees with the addition of subsection (c)(1)(H) for the reasons indicated in response to the REP Coalition's comments in subsection (b). REP Coalition's proposed change more closely aligns the requirements throughout subsection (c) since REPs and ERCOT are only required to file an affidavit, as outlined in subsections (c)(3) and (c)(4). Therefore, the commission adopts this change.

The affidavit required by final rule subsection (c)(1)(H) requires an affirmation about commitment to follow the EOP, in order to help ensure that the market entity has adequately prepared for an emergency. However, the affirmation is not intended to preclude deviations from the EOP during the course of an emergency to the extent such deviations are appropriate under the circumstances. Further, the commission does not

oppose the affidavit being signed by a local operation's officer and has deleted the term "senior" from subsection (c)(1)(H) of the rule.

Subsection (c)(1)(I)

The City of Houston suggested language that would require certification of coordination by TDUs and electric utilities with their local emergency management coordinators.

Commission response

The commission disagrees with the City of Houston. While the commission would encourage local emergency management coordinators to work with market entities on issues related to emergency management, requiring a utility to obtain certification from a municipality is outside the scope of this rulemaking and exceeds the commission's jurisdiction.

Subsection (c)(2)(E)

FPLE stated that the phrase "hurricane evacuation zone" should be more defined or referenced.

Commission response

The commission agrees with FPLE's assessment, and has made changes to the rule accordingly.

Subsection (c)(2)(F)

The REP Coalition provided specific language regarding the incorporation of the affidavit requirement in subsection (c)(2), which would require the addition of subsection (c)(2)(F).

Commission response

The commission agrees with the addition of subsection (c)(2)(F) for the reasons indicated the REP Coalition’s comments in subsection (b). The REP Coalition’s proposed change creates consistency throughout subsection (c) since REPs and ERCOT are only required to file an affidavit, as outlined in subsections (c)(3) and (c)(4). Therefore, the commission adopts this change.

The affidavit required by final rule subsection (c)(2)(F) requires an affirmation about commitment to follow the EOP, in order to help ensure that the market entity has adequately prepared for an emergency. However, the affirmation is not intended to preclude deviations from the EOP during the course of an emergency to the extent such deviations are appropriate under the circumstances. Further, the commission does not oppose the affidavit being signed by a local operation’s officer and has deleted the term “senior” from subsection (c)(2)(F) of the rule.

*Subsection (c)(2)(G)**Commission response*

The Texas 9-1-1 Agencies filed comments in response to proposed §26.51 in Project Number 34594, *Rulemaking to Repeal P.U.C. Substantive Rule 26.51 and Propose New 26.51*

Relating to Reliability of Operations of Telecommunications Providers and recommended the following language be added:

- (G) Following the [a]nnual [d]rill, the utility shall assess the effectiveness of the [d]rill and modify its emergency operations plan as needed.

The commission believes the addition of this language is appropriate for §25.53 as well, and adding this language to §25.53 will make it more consistent with §26.51.

Subsection (c)(3)

FPLE stated that requiring Option 2 REPs to file an EOP is unnecessary, because Option 2 REPs do not provide retail service to the general public.

Commission response

REPs are only required to file an affidavit affirming that they have a business continuity plan (BCP). The commission recognizes the role of REPs during an emergency event and has set the requirements accordingly.

The REP Coalition asserted that REPs are required to file only an affidavit concerning their business continuity plans, and references to §25.485 and §25.497 should be eliminated because they are not relevant to a business continuity plan.

Commission response

The commission agrees with the REP Coalition's comments, and has made changes to the rule accordingly.

Subsection (c)(4)

The REP Coalition suggested changes to reflect that ERCOT is required to file only an affidavit.

Commission response

The commission agrees with this comment, and has changed the rule accordingly.

Subsection (d)

Oncor and FPLE requested that the commission allow participation in ERCOT's annual drills to meet the requirement set forth in subsection (d).

Commission response

The commission agrees with Oncor's and FPLE's suggestions to allow market entities to meet the drill requirement through participation in ERCOT's annual drill. Rather than specifically citing ERCOT's drill in the rule, the commission has amended subsection (d) to allow market entities to participate in an annual drill in lieu of conducting their own internal drills. The commission believes this option allows more alternatives for meeting this requirement.

TNMP requested that the 30-day notification prior to the date of the annual drill be reduced to 14 days.

Commission response

The commission has reduced the notification deadline to 21 days, which is necessary to provide commission staff adequate time to prepare to attend the drills.

The City of Houston requested that annual drills be conducted in coordination with local exercise programs and that a market entity in a hurricane evacuation zone be required to participate in local hurricane exercises.

Commission response

The commission declines to make these changes, because they could be overly burdensome. However, the commission encourages market entities to coordinate exercises with the local exercise program wherever feasible. This could include participation in a local hurricane exercise in the coastal regions in coordination with the Texas Engineering Extension Service (TEEX).

Subsection (e)

TNMP requested that the commission provide more detail concerning emergency contact information and the intervals at which it is required.

Commission response

The commission expects to initiate another rulemaking to require contact information to be submitted in one annual report by each market entity.

The City of Houston requested that the rule require the commission to forward market entity emergency contact information to state and local emergency management coordinators.

Commission response

The commission disagrees with the City of Houston's proposal for the commission to provide emergency contact information to state and local emergency coordinators upon receipt from market entities. This information will be kept on file at the commission in a company database and the commission can make the emergency contact information available to state and local emergency management coordinators upon request.

Subsection (f)

TMNP requested a more specific emergency event reporting schedule. In its reply comments, EPE agreed with TNMP's proposed rule language regarding outage reporting during an emergency. EPE further opined that submitting detailed information during the course of a major event might be difficult and suggested that TNMP's proposed rule language allows utilities adequate flexibility while trying to restore power and supply information to the commission.

Commission response

TNMP's proposed language is contained in §25.52 (relating to Quality of Service) of this title. The commission recognizes that emergency conditions may cause reporting requirements to change over the course of an emergency. In that respect, TNMP's proposed language addresses the need for flexibility. The commission, however, must be

able to fulfill its reporting responsibilities during an emergency event while not being overly burdensome on the market entities working to restore power in the impacted areas. To that end, the commission is amending subsection (f) in attempts to strike an appropriate balance that represents the commission's expectations of market entities and the expectations that are placed upon the commission.

The REP Coalition proposed to subject ERCOT to the reporting requirements of subsection (f) and proposed non-substantive changes to the language.

Commission response

ERCOT currently provides notification to the commission for situations outlined in its Crisis Communications Procedures and Section 5.6, Emergency and Short Supply Operation, of its protocols. The commission believes it is unnecessary to include ERCOT in subsection (f) of the rule. The commission also declines to make the non-substantive changes proposed by the REP Coalition.

Subsection (g)

The City of Houston suggested municipalities with populations greater than 100,000 should receive a copy of a market entity's EOP.

FSA argued that the market entities that serve in a particular municipality or county should include local emergency management coordinators in the process of developing EOPs. In its reply comments, EPE argued that it would be unduly burdensome for utilities to include

municipal and county governments in the process of drafting an emergency operations plan (EOP). Further, EPE opined that this may result in two separate EOPs being drafted, one to meet the requirements of the proposed rule and one to meet the requirements of a local jurisdiction. EPE stated that it continually works with local emergency officials but believed this suggestion was outside the scope of this rulemaking and urged the commission to reject this request.

Commission response

The commission declines to adopt the City of Houston’s and FSA’s proposals. While the commission expects utilities to work with local emergency management coordinators and governments to the extent appropriate, imposing specific obligations at this time without further consideration could result in overly broad and burdensome requirements.

Subsection (h)

Commission response

Proposed subsection (h) addressed the filing of confidential information. What information in a report filed with the commission is exempt from public disclosure is addressed by Texas Government Code, Chapter 552, and the procedures for filing documents confidentially are outlined in §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). Therefore, subsection (h) has been deleted.

Subsection (i)

The REP Coalition stated that the following sentence is redundant: “Each market entity shall comply with the filing requirements set forth in subsection (b) of this section.”

Commission response

The commission agrees, and has deleted all of proposed subsection (i), because it is superfluous.

*Subsection (j)(2)**Commission response*

Consistent with its change to subsection (b) and its action on §26.51 of this title in Project Number 34594, *Rulemaking to Repeal P.U.C. Substantive Rule §26.51 and Propose New §26.51 Relating to Reliability of Operations of Telecommunications Providers*, the commission has amended subsection (j)(2) to permit electric cooperatives to file an EOP in lieu of a comprehensive summary.

The affidavit required by final rule subsection (j)(2) requires an affirmation about commitment to follow the EOP, in order to help ensure that the electric cooperative has adequately prepared for an emergency. However, the affirmation is not intended to preclude deviations from the EOP during the course of an emergency to the extent such deviations are appropriate under the circumstances. Further, the commission does not oppose the affidavit being signed by a local operation's officer and has deleted the term "senior" from subsection (j)(2) of the rule.

Subsections (j)(3)(A) and (B)

FSA commented that subsections (j)(3)(A) and (j)(3)(B) should be amended to emphasize the importance of critical care customers. PEC asserted that §25.497 does not apply to cooperatives; therefore, this subsection should be deleted or made voluntary. TEC argued that FSA's proposal to include governmental entities in the process of registering critical load customers is beyond the scope of this rulemaking. TEC, however, did not oppose including a description of the process for registering critical load customers in an EOP.

Commission response

The commission previously addressed the substance of FSA's comments. Concerning PEC's comments, the reference to §25.497(a) is only for the purpose of defining critical load customers. Therefore, the commission declines to delete the reference. The commission recognizes that electric cooperatives are not required to maintain a registry of critical load customers. The commission has therefore modified subsection (j)(3)(A) accordingly.

Subsection (j)(3)(F)

PEC suggested that the phrase "hurricane evacuation zone" should be more defined or referenced.

Commission response

The commission agrees with PEC's assessment and has changed the rule accordingly.

Subsection (j)(3)(J)

Commission response

The Texas 9-1-1 Agencies filed comments in response to proposed §26.51 in Project Number 34594, *Rulemaking to Repeal P.U.C. Substantive Rule §26.51 and Propose New §26.51 Relating to Reliability of Operations of Telecommunications Providers* and recommended that utilities should conduct an after action review following a drill. Electric cooperatives are required to conduct an annual preparedness review and a modification of their EOPs following the review may be appropriate. Therefore, the commission has added subsection (j)(3)(J) to reflect this additional requirement.

Subsections (j)(4)-(j)(7)

The City of Houston offered comments on the proposed language in subsections (j)(4) through (j)(7) that would enhance communication between electric cooperatives and local emergency management coordinators. It was suggested that cooperatives should include local emergency management coordinators in their annual preparedness review, should provide contact information to local emergency management coordinators, and should provide a copy of their emergency operations plans to local emergency management coordinators if the local jurisdiction has a population greater than 100,000 people.

Commission response

While the commission expects electric cooperatives to work with local emergency management coordinators and governments to the extent appropriate, imposing specific

obligations at this time without further consideration could result in overly broad and burdensome requirements.

Subsection (j)(6)

TNMP offered language regarding outage reporting during an emergency in subsection (f). EPE commented that TNMP's proposed rule language allows utilities adequate flexibility while trying to restore power and supply information to the commission.

Commission response

TNMP's proposed language is contained in §25.52 (relating to Quality of Service) of this title. The commission recognizes that emergency conditions may cause reporting requirements to change over the course of an emergency. In that respect, TNMP's proposed language addresses the need for flexibility and should also be considered in subsection (j)(6) to ensure consistency throughout the rule. The commission, however, must be able to fulfill its responsibilities during an emergency event while not being overly burdensome on the electric cooperatives working to restore power in the impacted areas. To that end, the commission is amending subsection (j)(6) in attempts to strike an appropriate balance that represents the commission's expectations of electric cooperatives and the expectations that are placed upon the commission.

*Subsection (j)(8)**Commission response*

Consistent with its deletion of proposed subsection (h), the commission has deleted subsection (j)(8).

Subsection (j)(9)

TEC wished to clarify its position regarding the jurisdiction of the commission with regards to reporting requirements and operational standards. TEC agreed that PURA §41.004(5)(A) grants the commission the authority “to require reports of electric cooperative operations only to the extent necessary to: (A) ensure the public safety...” By definition, a comprehensive summary of an emergency operations plan is an example of such a report. TEC cautioned against the use of language in the proposed rule that would assume that the commission has the authority to “modify an electric cooperative’s retail operations.” To that end, TEC argued that its interpretation of subsection (j)(9) led to the conclusion that a review of a cooperative’s summary and subsequent recommendations by commission staff could have an impact on a cooperative’s retail operations. Further, TEC stated that the authority to “establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers” is properly vested in the hands of a cooperative’s board of directors, as outlined in PURA §41.055(7).

Commission response

Consistent with its deletion of proposed subsection (i), the commission has deleted subsection (j)(9), which therefore resolves TEC’s concern with that subsection.

All comments, including those not specifically discussed herein, were fully considered by the commission.

This repeal and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.001, which provides the commission the power to regulate a public utility and to do anything designated or implied to carry out that power; §14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §31.001, which states that PURA Subtitle B was enacted to protect the public interest in establishing an adequate regulatory system to assure operations and services that are just and reasonable; 37.001, defines an electric utility to include an electric cooperative for purposes of Chapter 37; §37.151, which provides that a certificate holder shall serve all customers within the certificated area and shall provide continuous and adequate service within that certificated area; §38.001, which provides that electric utilities and electric cooperatives shall furnish service that is safe, adequate, efficient, and reasonable; §38.002, which provides the commission with the authority to adopt reasonable standards for an electric utility to follow, to adopt standards for measuring the quantity and quality of service, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers; §38.021, which prohibits an electric utility from providing an unreasonable preference to a person in a classification; §38.022, which prohibits discrimination

and restriction on competition; §38.071, which provides the commission with authority to order an electric utility to provide improvements in its service; §39.101, which provides the commission with the authority to ensure that customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity; and §41.004, which provides the commission with jurisdiction to require electric cooperatives to report to the commission to the extent necessary to ensure the public safety.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.021, 38.022, 38.071, 39.101 and 41.004.

§25.53. Electric Service Emergency Operations Plans.

- (a) **Application.** Unless the context clearly indicates otherwise, this section is applicable to electric utilities, transmission and distribution utilities (TDUs), power generation companies (PGCs), retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT), collectively referred to as “market entities,” and electric cooperatives (“cooperatives”) and shall refer to the definitions provided in the Public Utility Regulatory Act §11.003 and §31.002. For the purposes of this section, market entities and cooperatives are those operating within the State of Texas.
- (b) **Filing requirements.** Each market entity shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan, as required in subsection (c) of this section, by May 1, 2008. To the extent significant changes are made to an emergency operations plan, the market entity shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the changes to the plan no later than 30 days after such changes take effect.
- (c) **Information to be included in the emergency operations plan.**
- (1) TDUs and electric utilities shall include in their emergency operations plans, but are not limited to, the following:
- (A) A registry of critical load customers, as defined in §25.497(a) of this title (relating to Critical Care Customers), directly served. This registry shall be updated as necessary but, at a minimum, annually. The description

filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and a process for training staff with respect to serving critical load customers;

- (B) A communications plan that describes the procedures for contacting the media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan should also address its telephone system and complaint-handling procedures during an emergency;
- (C) Curtailment priorities, procedures for shedding load, rotating black-outs, and planned interruptions;
- (D) Priorities for restoration of service;
- (E) A plan to ensure continuous and adequate service during a pandemic; and
- (F) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the Governor's Division of Emergency Management).
- (G) Following the annual drill, the utility shall assess the effectiveness of the drill and modify its emergency operations plan as needed.
- (H) An affidavit from the market entity's operations officer indicating that all relevant operating personnel within the market entity are familiar with the contents of the emergency operations plan; and such personnel are

committed to following the plan and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters except to the extent deviations are appropriate under the circumstances during the course of an emergency.

- (2) Electric utilities that own or operate electric generation facilities and PGCs shall include in their emergency operations plans, but are not limited to, the following:
 - (A) A summary of power plant weatherization plans and procedures;
 - (B) A summary of alternative fuel and storage capacity;
 - (C) Priorities for recovery of generation capacity;
 - (D) A pandemic preparedness plan; and
 - (E) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the Governor's Division of Emergency Management).
 - (F) An affidavit from the market entity's operations officer indicating that all relevant operating personnel within the market entity are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters except to the extent deviations are appropriate under the circumstances during the course of an emergency.
 - (G) Following the annual drill, the utility shall assess the effectiveness of the drill and modify its emergency operations plan as needed.

- (3) REPs shall include in their filing with the commission, but are not limited to, an affidavit from an officer of the REP affirming that it has a plan that addresses business continuity should its normal operations be disrupted by a natural or manmade disaster, a pandemic, or a State Operations Center (SOC) declared event.
- (4) ERCOT shall include in its filing with the commission, but is not limited to, an affidavit from a senior operations officer affirming the following:
 - (A) ERCOT maintains Crisis Communications Procedures that address procedures for contacting media, governmental entities, and market participants during events that affect the bulk electric system and normal market operations and include procedures for recovery of normal grid operations;
 - (B) ERCOT maintains a business continuity plan that addresses returning to normal operations after disruptions caused by a natural or manmade disaster, or a SOC declared event; and
 - (C) ERCOT maintains a pandemic preparedness plan.
- (d) **Drills.** Each market entity shall conduct or participate in an annual drill to test its emergency procedures if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If a market entity is in a hurricane evacuation zone (as defined by the Governor's Division of Emergency Management), this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified 21 days prior to the date of the drill.

- (e) **Emergency contact information.** Each market entity shall submit emergency contact information in a form prescribed by commission staff by May 1 of each calendar year. Notification to commission staff regarding changes to its emergency contact information shall be made within 30 days. This information will be used to contact market entities prior to and during an emergency event.

- (f) **Reporting requirements.** Upon request by the commission or commission staff during a SOC inquiry or SOC declared emergency event, affected market entities shall provide updates on the status of operations, outages and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff.

- (g) **Copy available for inspection.** A complete copy of the emergency operations plan shall be made available at the main office of each market entity for inspection by the commission or commission staff upon request.

- (h) **Electric cooperatives.**
 - (1) **Application.** This subsection is applicable to electric cooperatives, as defined in the Public Utility Regulatory Act §11.003, that operates, maintains or controls in this state a facility to provide retail electric utility service or transmission service.

- (2) **Reporting Requirements.** Each electric cooperative shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan by May 1, 2008. The filing shall also include an affidavit from the electric cooperative's operations officer indicating that all relevant operating personnel within the electric cooperative are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters, except to the extent deviations are appropriate under the circumstances during the course of an emergency. To the extent significant changes are made to an emergency operations plan, the electric cooperative shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the changes to the plan no later than 30 days after such changes take effect.
- (3) **Information to be included in the emergency operations plan.** Each electric cooperative's emergency operations plan shall include, but is not limited to, the following:
- (A) A registry of critical load customers, as defined in §25.497(a) of this title, directly served, if maintained by the electric cooperative. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load

customers, and a process for training staff with respect to serving critical load customers;

- (B) A communications plan that describes the procedures for contacting the media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan should also address its telephone system and complaint-handling procedures during an emergency;
 - (C) Curtailment priorities, procedures for shedding load, rotating black-outs, and planned interruptions;
 - (D) Priorities for restoration of service;
 - (E) A plan to ensure continuous and adequate service during a pandemic;
 - (F) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the Governor's Division of Emergency Management);
 - (G) A summary of power plant weatherization plans and procedures;
 - (H) A summary of alternative fuel and storage capacity; and
 - (I) Priorities for recovery of generation capacity.
 - (J) Following the annual preparedness review, the electric cooperative shall assess the effectiveness of the review and modify its emergency operations plan as needed.
- (4) **Preparedness Review.** Each electric cooperative shall conduct an annual review of its emergency procedures with key emergency operations personnel if its

emergency procedures have not been implemented in response to an actual event within the last 12 months. If the electric cooperative is in a hurricane evacuation zone, this review shall also address its hurricane plan/storm recovery plan. The commission shall be notified 30 days prior to the date of the review.

- (5) **Emergency contact information.** Each electric cooperative shall submit emergency contact information to the commission by May 1 of each year.
- (6) **Reporting requirements.** Upon request by the commission or commission staff during a SOC inquiry or SOC declared emergency event, affected electric cooperative shall provide updates on the status of operations, outages and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff.
- (7) **Copy available for inspection.** A complete copy of the emergency operations plan shall be made available at the main office of each electric cooperative for inspection by the commission or commission staff upon request.

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 §25.53 relating to Emergency Operations Plan is hereby repealed and §25.53 relating to Electric Service Emergency Operations Plans is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 20__.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE CARUTHERS PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER