

PROJECT NO. 37472

**INFRASTRUCTURE IMPROVEMENT § PUBLIC UTILITY COMMISSION
AND MAINTAINENCE REPORT §
PURSUANT TO HOUSE BILL 1831 § OF TEXAS**

**ORDER ADOPTING NEW §25.94
AS APPROVED AT THE DECEMBER 2, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.94, relating to Report on Infrastructure Improvement and Maintenance with changes to the proposed text as published in the October 23, 2009 issue of the *Texas Register* (34 TexReg 7281). The rule implements recently enacted §38.101 of Public Utility Regulatory Act, Tex. Util Code §§11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA) which requires electric utilities to submit a report to the commission that describes the utility's activities related to identifying areas that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas, vegetation management and inspecting distribution poles. This new section is adopted under Project Number 37472.

The commission received comments on the proposed new section from CenterPoint Energy Houston Electric, LLC (CenterPoint), Oncor Electric Delivery Company, LLC (Oncor), Entergy Texas, Inc (Entergy), and the City of Houston, Texas (Houston).

CenterPoint commented that the proposed rule should be modified to more closely track the provisions of §38.101 of PURA. CenterPoint does not believe that there is a justification to adopt a rule that deviates from the statute. CenterPoint suggested that subsection (d) of the proposed

rule be changed to delete the requirement for reporting on the inspections of “transmission and distribution facilities.” Instead, CenterPoint suggested that the report only entail inspections of “distribution poles.” Oncor and Houston filed similar comments. Oncor further commented that subsection (d)(4) should be changed to track §38.101 of PURA by including a provision that the report on utility activities relating to emergency preparations be a “summary” and that the requirement for that report not reference preparations for the “upcoming year.”

Commission Response

The commission modifies the proposed rule based on these comments. These changes make the proposed rule consistent with §38.101 of PURA.

CenterPoint also indicated that subsection (a) regarding the purpose of the rule was incorrect, and recommended that subsection (a) be deleted.

Commission Response

The commission modifies the proposed rule based on these comments.

Entergy recommended that the reporting year be based on the calendar year.

Commission Response

The commission modifies subsection (b) of the proposed rule to indicate that the report shall be filed based on a calendar year.

Entergy also noted that broadening and/or accelerating storm hardening efforts beyond what has been outlined in the Entergy Hurricane Hardening Study filed in Docket Number 32182 would require significant costs. To the extent the commission orders hardening strategies that exceed recommendations by the Hardening Study, the costs for implementing such hardening strategies, Entergy comments, would need to be recovered pursuant to a rate rider or other rate mechanism through which these costs could be recovered. Oncor also agreed with Entergy that any commission-required hardening actions should be accompanied with timely cost recovery mechanisms.

Commission Response

The proposed rule does not impose any obligations on utilities beyond reporting requirements. Costs should be minimal.

Entergy also recommended that the utility be required to provide the information on a confidential basis with the Commission. Oncor agreed.

Commission Response

The commission does not agree with the suggested changes. A utility may use the existing confidentiality procedures of the commission as needed.

Houston suggested that this rulemaking and Project Number 37475 (Rulemaking for Utility Infrastructure Storm Hardening) be combined. Alternatively, Houston suggested that during the

rulemaking process in Project Number 37475 that the commission considers whether language refers to or amends the proposed rule be considered.

Commission Response

Section 2.05 of House Bill 1831 (Acts 2009, 81st Leg., ch. 1280, eff September 1, 2009) (H.B. 1831) requires the commission to adopt a rule implementing §38.101 of PURA by January 1, 2010. This rule addresses that requirement. The commission will consider amendments to this rule in Project Number 37475 as needed to harmonize any provisions adopted in that docket with this rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted pursuant to §2.05 of H.B.1831 which directs the commission to adopt rules to implement §38.101 of PURA and §14.002 of PURA which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 & 38.101 and Acts 2009, 81st Leg., ch. 1280, §2.05, eff September 1, 2009.

§25.94. Report on Infrastructure Improvement and Maintenance.

- (a) **Application.** This rule applies to all electric utilities.
- (b) **Reports.** By May 1st of each year, an electric utility shall file with the commission a report that contains the information described in subsection (c) of this section for the previous calendar year.
- (c) The utility shall include in the report a description of the utility's activities related to:
 - (1) Identifying areas in its service territory that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas;
 - (2) Vegetation management; and
 - (3) Inspecting distribution poles.
- (d) Each electric utility shall include in a report required under subsection (b) of this section a summary of the utility's activities related to preparing for emergency operations.

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 §25.94 relating to the Report on Infrastructure Improvement and Maintenance is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER