

PROJECT NO. 37475

RULEMAKING FOR UTILITY § PUBLIC UTILITY COMMISSION
INFRASTRUCTURE STORM §
HARDENING § OF TEXAS

ORDER ADOPTING NEW §25.95
AS APPROVED AT THE JUNE 11, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.95, relating to Electric Utility Infrastructure Storm Hardening with changes to the proposed text as published in the February 12, 2010 issue of the *Texas Register* (35 TexReg 982). The rule requires that electric utilities prepare storm hardening plans that include certain information and provide the commission summaries of the plans. The rule is adopted under Project Number 37475.

The commission received written comments on the rule from CenterPoint Energy Houston Electric, LLC (CenterPoint); Oncor Electric Delivery, LLC (Oncor); Entergy Texas, Inc. (ETI); Southwestern Electric Power Company, AEP Texas Central Company, and AEP Texas North Company (collectively, AEP); Southwestern Public Service Company (SPS); Lower Colorado River Authority Transmission Services Corporation (LCRA TSC); the City of Houston (Houston); the Steering Committee of Cities Served by Oncor (Oncor Cities); El Paso Electric Company (EPE); and the Electric Reliability Council of Texas (ERCOT). A public hearing was not requested. The commission held a workshop on April 7, 2010, which was attended by Oncor, Oncor Cities, AEP, ETI, Sharyland Utilities, Houston, LCRA TSC, Xcel Energy, CenterPoint, Texas-New Mexico Power Company, and Texas Electric Cooperatives, Inc.

Comment Summary*Subsection (a)*

CenterPoint commented that the purpose statement should apply only to service operations and restoration of service during extreme weather conditions and that the commission should define the term “cost effective strengthening” used in the rule. Oncor stated that the proposed purpose statement was overly broad and proposed deleting or at least modifying the proposed subsection to reflect that the purpose of the rule is to keep the commission informed of utilities’ storm hardening plans. ETI commented that the rule does not impose specific storm hardening strategies. ETI provided language in its comments to clarify that this will be a storm hardening report, which will be a detailed summary of the Storm Hardening Plan.

Commission Response

The commission has changed subsection (a) to clarify the purpose of the rule and to refer to “cost-effective strategies” rather than “cost-effective strengthening.”

Subsection (b)

CenterPoint and Houston commented that there should be a corresponding rulemaking to address facilities owned, operated, or maintained by telecommunication utilities, and further stated that the commission should be proactive in requiring telecommunication utilities to maintain poles owned by each utility.

Commission Response

A rule for poles owned by telecommunications utilities is beyond the scope of this rulemaking. However, adopted subsection (e)(12) does require that the Storm Hardening Plan include plans and procedures for use of structures owned by other entities in the provision of distribution service, such as poles owned by telecommunications utilities.

Proposed subsection (c)

Oncor commented that subsection (c) requires the utility to file a summary of its Storm Hardening Report, which is to include its “storm hardening plans and goals over a five-year period,” but without a definition of “storm hardening” it is unclear what the Report should contain with respect to such plans and goals. Oncor and SPS recommended that the commission define “storm hardening.” AEP objected to the proposed July 1, 2010 reporting deadline because it did not provide sufficient time for the commission to adopt the proposed rule and very little time for the utilities to develop systems to collect and track required data. AEP and CenterPoint commented that the concept of “goals” should be deleted and AEP further objected to the setting of annual “goals” and stated that it does not have the systems in place to track progress against such annual goals. Oncor agreed that the concept of goals should be removed and Houston commented that it did not oppose these recommendations as long as benchmarks and performance goals are included in the Storm Hardening Plan. ETI made suggestions to improve the wording of this subsection of the rule. CenterPoint suggested that only a summary of the report be submitted while a detailed report could be kept on file in the utility’s office and available to the commission or commission staff upon request, and requested that references to

goals be deleted and that the focus remain on the submission of the report. Houston commented that a separate proceeding to establish minimum standards for storm hardening plans is necessary.

Commission Response

The commission agrees with the comments of Oncor and SPS and adds a definition for the term “storm hardening.” The commission has added this definition as subsection (c) of the rule, and changed the subsection designations of the remainder of the rule accordingly. The commission further agrees with the comments of AEP, and therefore has changed the deadline for plan submission from July 1, 2010 to May 1, 2011. Concerning Houston’s request for a separate proceeding to establish minimum standards for storm hardening plans, the commission believes that it is better to allow each utility to develop its own storm hardening plan so that the plan is tailored to the utility’s particular circumstances. The commission does not believe that establishing minimum standards at this time is cost effective, because such standards may not be suitable for all utilities. However, the commission may reconsider this issue at a later date after it has obtained experience with the storm hardening plans that the new rule requires.

Proposed subsection (d)

Oncor Cities recommended changes to the rule that would make clear that submission of a storm hardening plan does not excuse the utility from proving the reasonableness of its storm hardening costs in a rate case. SPS, Oncor, and AEP commented that specific storm hardening improvements are not separately tracked through any accounting mechanism. AEP further

commented that it believed that it is unnecessary to require separate reporting. CenterPoint commented that references to “projected expenditures” should be deleted because annual budget levels and projected expenditures are synonymous and further commented that the entire second sentence of this subsection should be deleted because the same information is already required in paragraph (5). Houston disagreed with CenterPoint’s recommendation that this subsection should reference a storm hardening report of budgets and expenditures rather than a plan requiring utilities to report on performance and progress. Houston stated that it is common knowledge that benchmarks and performance goals are crucial components in assessing success of certain activities and that inclusion of performance goals is critical.

Houston proposed adding a requirement that a storm hardening plan include a description of storm hardening plans targeted at hardening parts of the utility system serving high priority customers, critical infrastructure locations, and economic centers. Oncor disagreed with Houston’s proposal, stating that the terms are not sufficiently defined and that facilities designated under this rule should be defined by the utility and described with terminology appropriate to each utility. CenterPoint also disagreed, commenting that most customers would consider themselves “high priority” and without a clear standard could create a potential for discrimination and subsidization by other customers. It further objected to the term “critical infrastructure locations” because the term is unclear and adds confusion to already existing standards and requirements for “critical infrastructure” or “critical assets.” CenterPoint further disagreed with the term “economic center,” stating that the term lacks specificity and will lead to varying interpretations.

Commission Response

The commission declines to adopt Oncor Cities' recommended changes concerning proving the reasonableness of costs in a rate case, because the Public Utility Regulatory Act (PURA) already imposes this requirement. In response to comments of SPS, Oncor, and AEP, the commission has deleted the requirement to separately track costs for storm hardening, because at this time it is unclear whether the benefit of such a requirement would outweigh its cost. The commission agrees with Houston that it is important for a utility to report its progress in implementing its plan, and the rule contains this requirement. Concerning Houston's comments about performance goals, the commission is not in a position at this time to set specific performance goals. However, the commission may reconsider this issue at a later date after it has obtained experience with the storm hardening plans that the new rule requires. Concerning Houston's comments about targeted storm hardening, the commission has added a new paragraph that requires that a utility's Storm Hardening Plan include plans and procedures for restoration of service to priority loads and for consideration of targeted storm hardening of infrastructure used to serve priority loads. Storm hardening for priority loads is particularly important and therefore should be addressed separately. What constitutes a priority load may depend on the specific circumstances. Utilities work with the Texas Division of Emergency Management and local government officials to prioritize service restoration under the circumstances involving a specific storm, and the Report should reflect that.

Proposed subsection (d)(3)

CenterPoint commented that this paragraph should be clarified to require utilities to have procedures for consideration of infrastructure improvements, but not require a plan that would be a performance goal. Houston disagreed. CenterPoint further commented that the language should be amended to clarify that the section applies to the distribution system.

Commission Response

The commission is not in a position at this time to set specific performance goals. However, the commission may reconsider this issue at a later date after it has obtained experience with the storm hardening plans that the new rule requires. The commission agrees with CenterPoint and modifies this paragraph to clarify that it applies to the distribution system.

Proposed subsection (d)(4)

CenterPoint further requested clarification on whether this paragraph applies to the transmission or distribution system, or both.

Commission Response

The commission agrees with CenterPoint and modifies this paragraph to clarify that it applies to the distribution system. The commission disagrees with Center Point because commission does not want the plans and procedures to enhance post storm damage assessments to be limited to the transmission or distribution systems.

Proposed Subsection (d)(5)

CenterPoint requested this paragraph be clarified as to whether it applies to the transmission or distribution system, or both. CenterPoint recommended that the commission consider the enforceability of an electric utility's pole attachment policy.

Commission Response

The commission agrees with CenterPoint and amends this paragraph to refer to distribution and distribution.

Proposed subsection (d)(7)

CenterPoint and AEP commented that this paragraph is duplicative of paragraph (3) and recommended deleting it.

Commission Response

The commission declines to delete paragraph (7). Paragraph (7) pertains to transmission and distribution automation enhancements, whereas paragraph (3) pertains to consideration of distribution system improvements based on smart grid concepts. To the extent they overlap, they can be cross-referenced.

Proposed subsection (d)(8)

CenterPoint requested clarification on whether paragraph (8) applies to the transmission or distribution system, or both, and that the plan would not be considered a performance goal. Houston disagreed.

LCRA TSC requested language specifically addressing the National Electric Safety Code's (NESC's) exemption of existing facilities and the NESC 60-foot exemption, and asked whether the commission requires compliance for all facilities of all heights.

SPS requested that paragraph (8) be amended to exclude non-coastal utilities from this reporting requirement.

Commission Response

The commission modifies this paragraph to clarify that it deals with both transmission and distribution facilities. LCRA TSC's requested clarification, because paragraph (8)'s reference to the NESC includes applicable exemptions. Concerning SPS's comment, a utility that does not s serve hurricane prone areas need only explain that in its Storm Hardening Plan.

Proposed subsection (d)(9)

CenterPoint requested that the commission clarify whether paragraph (9) applies to the transmission or distribution system, or both.

Commission Response

The commission has modified this paragraph to clarify that it addresses only distribution facilities.

Proposed subsection (d)(10)

CenterPoint requested clarification requiring an electric utility to maintain procedures to develop a damage and outage prediction model, but not requiring a plan that would be a performance goal. Houston disagreed.

Commission Response

The commission is not in a position at this time to set specific performance goals. However, the commission may reconsider this issue at a later date after it has obtained experience with the storm hardening plans that the new rule requires.

Proposed subsection (d)(11)

CenterPoint commented that this paragraph should be deleted because it is duplicative of the report that must be submitted pursuant to §25.94 (relating to Report on Infrastructure Improvement and Maintenance). CenterPoint recommended that the commission merge the requirements of §25.94 and this proposed rule into one filing that is required by electric utilities. AEP and Houston offered similar comments.

Commission Response

The commission agrees that the paragraph is duplicative of §25.94 and therefore deletes this paragraph. The information required by §25.94 is specified in PURA §38.101, whereas the information required by §25.95 is information that the commission has chosen to require. Therefore, the commission will keep these reports separate.

Proposed subsection (d)(12)

CenterPoint requested that paragraph (12) clarify whether it applies to the transmission or distribution system, or both. CenterPoint further commented that this paragraph should be clarified to require an electric utility to have procedures to use other entities' structures, but not require a plan that would be a performance goal. Houston disagreed.

Commission Response

The commission has changed the paragraph to make it applicable only to distribution service. The commission is not in a position at this time to set specific performance goals. However, the commission may reconsider this issue at a later date after it has obtained experience with the storm hardening plans that the new rule requires.

Proposed subsection (e)

ETI commented that this subsection allows not only the commission staff, but any interested entity to request that the commission initiate a proceeding to determine whether a utility's storm hardening activities meet the purpose of the rule. They questioned that if the purpose of the rule is to provide the commission with information, a conflict would arise with inclusion of a provision that addresses disputes. AEP, SPS, Oncor, and CenterPoint recommended that this subsection be deleted from the proposed rule entirely.

Commission Response

The commission has changed this subsection to provide that interested entities may file comments to the commission staff within 30 days of a utility's filing, so that commission staff has an opportunity to address concerns with the utility's filing.

Other Comments

Houston commented that it believed that cyber assets/infrastructure should be considered within the scope of this rulemaking. CenterPoint commented on Houston's comments regarding cyber assets/infrastructure stating that it did not support the inclusion of information in the rule regarding "cyber assets."

Commission Response

The commission declines to address cyber security because it is outside of the scope of this rulemaking.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission has made other changes to clarify its intent.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and

jurisdiction; and specifically, PURA §14.001, which gives the commission the general power to regulate and supervise the business of each public utility; §14.003, which gives the commission the power to require a public utility to file a report relating to the public utility; §37.151(2), which requires that an electric utility provide continuous and adequate service in its certificated service area; §38.001, which requires that an electric utility furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers by electric utilities.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 37.151(2), 38.001, and 38.005.

§25.95. Electric Utility Infrastructure Storm Hardening.

- (a) **Purpose.** This section is intended to ensure that each electric utility has developed a Storm Hardening Plan that provides for the implementation of cost-effective strategies to increase the ability of its transmission and distribution facilities to withstand extreme weather conditions.
- (b) **Application.** This section applies to all electric utilities.
- (c) **Definition.** The following term when used in this section shall have the following meaning, unless the context indicates otherwise.

Storm hardening -- All activities related to improved resiliency and restoration times, including but not limited to emergency planning, construction standards, vegetation management, or other actions before, during, or after extreme weather events.

- (d) **Storm Hardening Plan Summary.** By May 1, 2011, a utility shall file with the commission a summary of its Storm Hardening Plan. The summary shall describe in detail the utility's current and future storm hardening plans over a five-year period beginning January 1, 2011. By May 1 of each subsequent year, the utility shall file a detailed summary of any material revisions to the Plan and a detailed summary of its progress in implementing the Plan. A full copy of the Plan shall be provided to the commission or commission staff upon request.

- (e) **Updating and contents of Storm Hardening Plan.** A utility's Storm Hardening Plan shall be updated at least every five years and shall include, at a minimum, the utility's:
- (1) Construction standards, policies, procedures, and practices employed to enhance the reliability of utility systems, including overhead and underground transmission and distribution facilities;
 - (2) Vegetation Management Plan for distribution facilities, including a tree pruning methodology and pruning cycle, hazard tree identification and mitigation plans, and customer education and notification practices related to vegetation management;
 - (3) Plans and procedures to consider infrastructure improvements for its distribution system based on smart grid concepts that provide enhanced outage resilience, faster outage restoration, and/or grid self-healing;
 - (4) Plans and procedures to enhance post storm damage assessment, including enhanced data collection methods for damaged poles and fallen trees;
 - (5) Transmission and distribution pole construction standards, pole attachment policies, and pole testing schedule;
 - (6) Distribution feeder inspection schedule;
 - (7) Plans and procedures to enhance the reliability of overhead and underground transmission and distribution facilities through the use of transmission and distribution automation;
 - (8) Plans and procedures to comply with the most recent National Electric Safety Code (NESC) wind loading standards in hurricane prone areas for new

construction and rebuilds of the transmission and distribution system;

- (9) Plans and procedures to review new construction and rebuilds to the distribution system to determine whether they should be built to NESC Grade B (or equivalent) standards;
 - (10) Plans and procedures to develop a damage/outage prediction model for the transmission and distribution system;
 - (11) Plans and procedures for use of structures owned by other entities in the provision of distribution service, such as poles owned by telecommunications utilities; and
 - (12) Plans and procedures for restoration of service to priority loads and for consideration of targeted storm hardening of infrastructure used to serve priority loads.
- (f) **Comments.** Interested entities may file comments to the commission staff within 30 days of a utility's filing pursuant to subsection (d) of this section.

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 §25.95 relating to Electric Utility Infrastructure Storm Hardening is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF JUNE 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER