PROJECT NO. 38257

RULEMAKING RELATING TO VEGETATION MANAGEMENT	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW §25.96
AS APPROVED AT THE DECEMBER 13, 2012 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.96, relating to Vegetation Management, with changes to the proposed text as published in the July 27, 2012 issue of the *Texas Register* (37 TexReg 5534). This reporting rule will provide the commission with information necessary to assess the distribution system vegetation management activities of electric utilities in determining their effectiveness in enhancing reliability and protecting public safety. The reports will address both plans for the coming year and progress in implementing plans for the preceding year. This new section is adopted under Project Number 38257.

The commission received written initial and/or reply comments on the new section from AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, AEP); CenterPoint Energy Houston Electric (CenterPoint); Entergy Texas, Inc. (Entergy); Oncor Electric Delivery Company LLC (Oncor); Sharyland Utilities, LP (Sharyland); Southwestern Public Service Company (SPS); Texas-New Mexico Power Company (TNMP); Brazos Electric Power Cooperative, Inc, (Brazos); East Texas Cooperatives (ETC); Texas Electric Cooperatives, Inc. (TEC); City of Houston (Houston); and the Steering Committee of Cities Served by Oncor (Cities). Additionally, State Senator Robert L. Nichols filed a letter commenting on the proposed rule.

A public hearing was tentatively scheduled for September 18, 2012 in the event a hearing was requested. ETC requested a hearing but withdrew the request on September 14, 2012. Since no other parties requested a hearing, it was canceled.

General Comments

CenterPoint commented that a new rule is unnecessary because the three reports that have been filed under §25.94 and §25.95 are sufficient to cover the subject, and the commission has not pointed to any deficiencies in the existing reports. TNMP, Oncor, AEP, and Entergy agreed.

CenterPoint noted that the rule does not provide needed flexibility or require cost-effective strategies. CenterPoint commented that the requirements are overly prescriptive, burdensome, and costly and will produce no significant benefits. Finally, CenterPoint remarked that the rule could not be finalized by November 2012 and therefore should not be implemented until November 2013. AEP agreed with this point.

Oncor commented that it appreciated the opportunity to comment on the two strawman rules and believes that the proposed rule addressed most of its initial concerns, but it stressed that the company understands this rule to be a reporting rule only that does not require utilities to take any new, specific vegetation management actions. AEP agreed.

AEP commented that it adheres to the industry standards referenced in the rule. AEP noted that it supports reporting to the commission on activities pertinent to electric utility distribution vegetation management and that if a new rule is adopted, it should be reasonably tailored and provide flexibility in what is reported to reflect a utility's manner and approach for its service area.

SPS commented that it does not oppose increased specificity in the Plan or more detailed information as required in the Report. For the most part, it is reasonably balanced. SPS appreciated staff's diligence in its evaluation and willingness to consider parties' strawman comments.

TNMP commented that the rule would add operational and administrative cost burdens by imposing significant, detailed reporting and tracking obligations, increasing costs without a commensurate improvement in system reliability. ETC also commented that this rule will increase costs.

Houston commented that it generally supports the proposed new rule and does not anticipate any costs to result from it. Houston remarked that the City hopes that the additional data provided by utilities will shed light on vegetation management best practices. Houston said that it intends to participate in any future rulemakings relating to establishing a set of vegetation management standards, including those recommended by previous reports commissioned by Houston and the commission.

Commission Response

The commission believes that the new rule adequately addresses the utilities' need for flexibility in their administration of vegetation management practices and does not impose

excessive costs. The new rule does, however, impose additional reporting requirements on the utilities but does not mandate that a utility undertake new vegetation management practices. The commission believes that the insight gained from receiving this increased level of information regarding the various vegetation management practices and the resulting potential for increased reliability outweigh the costs associated with the increased reporting requirements.

In response to CenterPoint's comments, the commission reiterates that the first filing due May 1, 2013 must cover subsection (f)(1) and not (f)(2). Utilities do not, therefore, need to report their implementation summaries for their 2012 activities but will report their implementation summaries for their 2013 activities in their 2014 Report.

Cities expressed concern that utilities may interpret the rule to allow utilities to recover projected vegetation management related expenses stated in their vegetation management reports even if those expenses have not actually been incurred and suggested language to cure the defect. TNMP did not support Cities' position since commission rules define recoverable costs and adjustments, and TNMP suggested language to that effect. CenterPoint urged the commission to reject Cities' proposed language as proposed modifications to test year expenses should occur in a base rate case, not this rulemaking. It argued that the language could discourage utilities from making improvements in their vegetation management programs. Sharyland opposed Cities' proposed language because it is unnecessary and inconsistent with established rate-making principles.

Commission Response

The new rule does not address rate recovery. Therefore, the Cities' proposed language is unnecessary.

ETC commented that the proposed rule appropriately accounts for the exclusive jurisdiction of cooperative boards of directors over operations, but ETC was concerned about the cost and administrative burden of implementation, the goal, the benefit to members who will bear the costs, and the unintended consequences of the rule. ETC did not welcome the thought of submitting an annual report that could lead cooperatives "straight to the courthouse in the event of an incident outside of their control." ETC believed "it is obvious that more vegetation management will definitely achieve" enhanced reliability and secure the public safety, "but it will not control the weather or keep a vehicle from taking out a distribution pole." ETC commented that the rule is a step backwards for the state's favorable business climate and tort reforms as wildfires have "spawned a cottage industry in the legal community in search of more and deeper pockets as nature takes its ever-changing course."

Commission Response

The commission acknowledges that events outside of a cooperative's control do occur. Wildfires caused by electrical infrastructure, however, pose a serious danger to people and property, and the state has a keen interest in whether those who maintain such infrastructure perform their due diligence in protecting the state from the threat.

The commission has concluded that it is not necessary to require vegetation management reports from electric cooperatives at this time. As a result, it has deleted proposed subsection (g). If in the future it appears that electric cooperatives' vegetation management practices are inadequate and may pose a threat to the public safety and the electric cooperatives' ability to provide continuous and adequate service, the commission will revisit whether to require vegetation management reports from electric cooperatives.

Comments on Specific Sections of the Proposed Rule

Section 25.96(b)(1): Definitions

Oncor commented that the definition of "distribution assets" should be focused solely on overhead distribution feeders and suggested changing the language to reflect the fact that substations rarely have vegetation-related issues, underground facilities are not impacted by overhead vegetation growth, and utilities may not perform vegetation management on service drops. Oncor noted that the proposed rule makes that distinction under subsections (f)(1)(F) and (f)(2)(G)(iii).

Commission Response

Oncor's proposal is reasonable, and the commission has therefore modified the language accordingly.

Section 25.96(b)(2): Definitions

CenterPoint commented that the company defines an outage event as one that affects service for more than one minute, and the definition of "outage" in the proposed rule as an event affecting service for more than five minutes would require modifications to its calculations. It argued that this definition is overly prescriptive, and it would take time to implement the change. CenterPoint suggested that the definition be removed because it is inconsistent with how that term is used in other rules and because the term is used only once and does not require definition. Entergy agreed.

SPS commented that it appreciated staff adding this definition as the company requested in its comments on the revised strawman, but it believes that adding "on a primary conductor" will provide further clarity because outages caused by vegetation that are impactful on reliability for multiple customers would occur on a primary conductor.

Commission Response

The commission concludes that changing the term "outages" to "interruptions" in subsection (f)(2)(F) relieves the need for a definition, and the commission thus deletes this definition.

<u>Section 25.96(b)(3): Definitions</u>

AEP commented that the term "reactive" should be changed to "unscheduled" for consistency with subsection (b)(5). AEP recommended replacing the word "unscheduled" with "responsive" because AEP responds to either customer or company requested maintenance.

Commission Response

AEP's proposed change is reasonable, and the commission has therefore modified the language accordingly.

<u>Section 25.96(b)(4): Definitions</u>

Oncor commented that the term "right to access" should be modified because it is the actual legal right to trim vegetation on that land that allows a utility to conduct work there. Oncor suggested that the legal rights should be stated and suggested deleting everything after "the right to access" and adding "existing ownership, easement, license or franchise rights entitling it to manage vegetation on that land." Entergy agreed.

AEP noted that the acronym "ROW" should be used in the definition of "right-of-way" since the acronym is used in other sections of the rule.

Commission Response

The commission declines to adopt Oncor's proposed changes because the proposed definition appropriately refers to the "the right to access for the purpose of maintaining its distribution system and managing vegetation." The commission agrees with AEP and has therefore modified the language accordingly.

Section 25.96(b)(6): Definitions

SPS suggested that the definition of "tree risk management" should conform to the ANSI Standard A300 definition of hazard tree management, which is the generally accepted industry standard.

TNMP requested that the definition be changed to make it applicable only to trees actually located on property owned or controlled by the utility to align with the utility's legal rights.

Commission Response

The commission agrees with SPS and has modified the language to conform to the ANSI Standard A300 definition of hazard tree management. The commission disagrees with TNMP because some utilities do consider off-ROW vegetation in their tree risk management programs.

Section 25.96(c): Vegetation management requirements under other provisions

CenterPoint commented that if the commission wants to address vegetation management, it should do so through modifications to the existing rules. If it does not choose to follow CenterPoint's recommendation, the commission should delete the vegetation management requirements of §25.94 and §25.95. Oncor, AEP, and TNMP agreed.

Commission Response

Vegetation management warrants its own rule because of its importance. In a future rulemaking, the commission may delete §25.94(c)(2) and §25.95(e)(2), which are no longer necessary as a result of this new vegetation management rule.

<u>Section 25.96(d): Utility conformance to standards of the industry</u>

CenterPoint commented that its vegetation management work will conform to the standards when it is performed, but vegetation growth will remove it from conformance prior to the next trim cycle. CenterPoint also suggested that “reasonable efforts” is too subjective. CenterPoint noted that paragraphs (1) and (2) are inconsistent in requiring reasonable efforts “where applicable” and explanations of when it “does not conform.” CenterPoint stated that the rule would necessitate submission of reports for deviations that will be unnecessary and time consuming. CenterPoint commented that the reference to ANSI Part 7 should be deleted because it would add staffing requirements, intensive oversight, and several years to implement. Instead, Part 7 should be required only when economical and reasonable.

Oncor commented that it saw this section as requiring only a brief explanation when it does not fully comply with all of the standards in subsection (d). If the commission intends the rule to require strict compliance with only a limited number of deviations, however, Oncor would join CenterPoint’s objections.

Commission Response

The purpose of subsection (d) is to provide the commission with notice when a utility's policy regarding a specific vegetation management practice deviates from industry standards. The utility must provide the commission with information explaining why there is a deviation. The commission has modified subsection (d) to clarify its intent.

CenterPoint remarked that the reference to ANSI Part 9 should be deleted because it applies to professional commercial tree care companies assessing for private land owners and is therefore more technically detailed than the company's practices and would not be cost effective. Entergy and AEP agreed with this point.

TNMP commented that Part 9 requires a utility to report and carry out mitigation measures whether a tree is actually subject to the utility's control or right to access the property. This would require a utility to either vastly over pay for a narrow easement to mitigate the tree or pursue condemnation. Subsection (d)(2) allows for an explanation if the utility does not conform to the provision, but the utility would still be exposed to regulatory penalty because the rule does not state whether any explanation is sufficient for relief. The provision must state that a utility need not acquire additional land or property rights in order to comply, and if an adjoining owner denies a utility's request to inspect or mitigate, the rule should provide that the utility has discharged its duty regarding hazard trees located outside its legal authority. Entergy and AEP agreed.

Commission Response

The commission disagrees with CenterPoint and TNMP. The standard is designed for the user (the utility) to write a "specification" for tree risk management that its arborists will follow. TNMP's concerns regarding trees that lie outside of its ROW are satisfied if TNMP were to maintain a Level 1 risk assessment plan under ANSI Part 9. A Level 1 risk assessment simply requires the identification of trees that have "obvious defects." Footnote 5 of TNMP's comments stated that the utility currently maintains a procedure for seeking landowner consent for mitigating trees "that clearly threaten a line." The standard contains no requirement for mitigation of these out-of-ROW trees by the utility. Part 9 addresses certain recommendations that a utility can make regarding the tree risk assessment data; there is no requirement that a utility undertake any action regarding that data. In fact, Section 93.6.4.1 provides that the responsibility for action, follow-up, and/or mitigation rests with the owner of the tree. The utility's responsibility may be in reporting and making recommendations to that owner, a procedure that TNMP claims to have in place already.

Section 25.96(e)(1): Vegetation Management Plan

CenterPoint commented that this is already required under §25.95 so requiring it here is repetitive and unnecessary unless the existing rules are amended to delete the requirement.

Commission Response

The commission disagrees as described under subsection (c). Since utilities no longer need to report under the vegetation management §25.95(e)(2), doing so under this rule is not repetitive.

<u>Section 25.96(e)(2): Vegetation Management Plan</u>

CenterPoint commented that the meaning of the terms "vegetation mitigation methods" and "applicable" distribution assets are unclear.

Commission Response

The commission has modified the language for clarity by describing its meaning more plainly.

<u>Section 25.96(e)(3): Vegetation Management Plan</u>

TNMP commented that it does not have a separate tree risk management program that would be required by ANSI A300 Part 9, and implementing one would be expensive with a small improvement to reliability. Mitigating hazard trees outside TNMP's authority would increase the vegetation management budget by $500,000 per year plus the cost of acquiring legal access. Hiring foresters and staff would cost a minimum of $150,000 annually. Merely tracking the information will require additional cyclical inspections and costs. If the commission does not delete the provision, TNMP suggests that (1) the cost and risk impact be reduced by restricting the applicability to only trees located on a utility's easements/property and (2) the rule provide that a utility be exempt from complying for 12 months following adoption of the rule to allow time to implement them. Entergy agreed that significant cost increases would result.

Commission Response

The commission disagrees as stated in its responses under subsection (d) above. Since the commission is not requiring utilities to change their tree risk management programs but only to describe them and inform the commission if a utility does not follow industry standards, any increase to the cost of their programs will not be commission-prescribed.

Section 25.96(e)(4): Vegetation Management Plan

CenterPoint commented that this provision is unnecessary and inappropriate micro-management of a business decision. If the utility's system is unreliable, the commission should address it through the regulatory process, not by mandating continuing education that is unlikely to correlate to reliability. TNMP agreed.

Oncor interpreted this provision as nothing more than a report of what continuing education participation occurred for the utility's internal employees; no specific level of continuing education was required. Oncor thus did not oppose this provision. SPS commented that its understanding is that the only continuing education plan required is for direct employees of the utility and suggested that the word "internal" be inserted to clarify this intent.

Commission Response

The commission disagrees with CenterPoint and TNMP. The rule allows a utility to determine what level of continuing education is appropriate. The rule merely requires that utilities report continuing education hours.

The commission agrees with SPS that adding the word "internal" will clarify its intent and has modified the language accordingly.

<u>Section 25.96(e)(5): Vegetation Management Plan</u>

SPS commented that this provision should read "number of miles of circuit" to be trimmed because it would be more descriptive of the amount of work being performed than the number of circuits alone.

Commission Response

The commission agrees that this language is more accurate and has modified the language accordingly.

<u>Section 25.96(e)(6): Vegetation Management Plan</u>

CenterPoint commented that this provision would require the company to change from a cycle-based program to a reliability-based program, and the commission should not dictate which is best for the company. CenterPoint expressed concern that the requirement would increase costs because it would need to add a plan for the 10% of feeders related specifically to vegetation outages. The 10% worst feeders for vegetation-caused issues may not be the worst-performing feeders generally, so the rule could shift resources away from those that need the most urgent attention.

Commission Response

The commission disagrees. This provision requires only that a utility describe its plan to remediate its vegetation-caused, worst performing feeders. If a utility does not have a plan to remediate these feeders, the utility need only say as much to be in full compliance with this provision.

Oncor commented that it understands that the SAIDI and SAIFI scores in this provision refer to the utility's non-storm scores, consistent with the way the scores are reported. Oncor also suggested that the measure be changed from "worst ten percent performing feeder" to reflect a similar change in PURA §38.005 to a "greater than 300% of system average" standard. TNMP agreed with Oncor. AEP concurred that a change in language would be appropriate given the statutory framework and suggested instead that the entire clause be replaced with "plan to address issues on feeders which are on the worst vegetation caused performing feeder list for the previous calendar year." Entergy agreed.

Commission Response

The commission agrees with AEP, Oncor, and TNMP and has modified the language to align with the Service Quality Report utilities are required to file pursuant to §25.52, relating to Reliability and Continuity of Service, and §25.81, relating to Service Quality Reports.

<u>Section 25.96(e)(7): Vegetation Management Plan</u>

CenterPoint commented that this is already reported under §25.95 so requiring it here is repetitive and unnecessary unless the existing rules are amended to delete the requirement.

Commission Response

The commission disagrees as described previously with respect to subsection (c). Since utilities no longer need to report under the vegetation management subsection of §25.95, doing so here is not repetitive.

<u>Section 25.96(f): Vegetation Management Report</u>

CenterPoint noted that the list of subparagraphs under subsection (f)(1) is more expansive than the list in subsection (e), and they should be consistent. CenterPoint recommended that the language proposed for the summary be deleted and inserted under subsection (e), and the introduction to subsection (f) should be amended to require the summary to include the issues under subsection (e).

Commission Response

The commission disagrees. The lists are different because subsections (e) and (f) have different goals. Subsection (e) specifies information that the commission believes should be included in a utility's vegetation management plan. The commission does not necessarily need to see that information annually but expects it to be up to date should the commission

ask to see the utility's full plan. Subsection (f)(1) specifies information the commission would like to see annually.

Oncor requested that the deadline be moved from February 1 to May 1 of each year because it does not finalize its books until after February 1 and would not have all of the data compiled for the prior year's Report. TNMP agreed because its prior year budget is not available for non-confidential release until mid-February, and May 1 would coincide with the current date for §25.94 and §25.95. Entergy agreed.

AEP requested that the deadline be changed and suggested March 15 to permit inclusion of SAIDI and SAIFI data compiled for the Service Quality Report which is due on February 15. In reply comments, AEP changed its position to concur with Oncor and Entergy that May 1 would be preferable.

SPS proposed that the initial Plan be recognized as the Report filing made on February 1, 2013 for the purposes of review in the subsequent year's Report.

Commission Response

A deadline of May 1 is reasonable, and the commission has therefore modified the language accordingly. In response to SPS's comments, the commission notes that the rule provides that the first filing due May 1, 2013 must cover subsection (f)(1) and not (f)(2). Utilities do not, therefore, need to report their implementation summaries for their 2012 activities but will report their implementation summaries for their 2013 activities in their 2014 Report.

<u>Section 25.96(f)(1): Vegetation Management Report</u>

CenterPoint commented that the requirements of subparagraphs (B) and (C) are the same as the requirements of subsections (e)(1) and (e)(6), and they should thus be deleted.

Commission Response

The commission disagrees as described previously with respect to subsection (f). The procedure for and goals of subsections (e) and (f) are different, which is why there are distinct requirements in each of these subsections.

<u>Section 25.96(f)(1)(C): Vegetation Management Report</u>

AEP suggested the same language alteration for this subsection as it did for subsection (e)(6).

Commission Response

The commission agrees and has modified the language to align with the Service Quality Report.

<u>Section 25.96(f)(1)(D): Vegetation Management Report</u>

TNMP reasserts the same comments it made regarding subsection (e)(3).

Commission Response

The commission disagrees as stated previously with respect to subsection (e)(3). Since the commission is not requiring utilities to change their tree risk management programs, any increase to the cost of their programs will not be commission-prescribed.

Section 25.96(f)(1)(E): Vegetation Management Report

CenterPoint noted that subparagraph (E) should be limited in scope to specify vegetation management issues, and it suggested that different utilities will have different determinations of an event that qualifies as an adverse environmental condition, including the meaning of a drought and wildfire. CenterPoint expressed concern that the language is too broad and could lead to accusations of non-compliance if the company is forced by conditions outside of its control to change its practices in the middle of a plan year as it did in response to the drought of 2011.

Commission Response

The commission agrees to limit the scope and has modified the language by tying it directly to conditions that may impact a utility's vegetation management policies. Subsection (f)(1) is forward-looking, and the commission understands that plans can and will change to accommodate unforeseen events such as the 2011 drought.

Section 25.96(f)(1)(F): Vegetation Management Report

Oncor questioned whether this provision is necessary.

Commission Response

Subsection (f)(1)(F) requires that a utility provide its total overhead distribution miles in its system, excluding service drops. This information provides one measure of the portion of the system for which the utility must perform vegetation management. The commission would also like to see this information as a basis of comparison from year to year.

<u>Section 25.96(f)(1)(G): Vegetation Management Report</u>

CenterPoint commented that this subsection should be limited to the total number of distribution customers served by the utility because many of its customers are served at transmission level. TNMP suggested that the word "distribution" be added. Since Oncor's customers are retail providers and not end users, Oncor suggested that "total number of customers served" be replaced with "total electric points of delivery," consistent with the language in the Earnings Monitoring Report pursuant to §25.73(b). Oncor questioned the usefulness of this information.

Commission Response

Oncor's suggestion is helpful, and the commission has therefore modified the language accordingly. This information provides one measure of the size of the utility's system. The commission would like to see this information as a basis of comparison from year to year.

<u>Section 25.96(f)(1)(H): Vegetation Management Report</u>

CenterPoint commented that the term "amount of vegetation-related work" is too broad and needs clarification on whether it should be answered in dollar amounts, circuit miles worked, or number of circuits worked.

Commission Response

The commission disagrees. This subsection refers to subparagraph (A) of the same paragraph, which requests the method the utility employs to measure its progress and leaves it to the discretion of the utility to determine how to measure that progress. The commission is not requiring that a utility change its practices by imposing a uniform method. However, a utility should report information using the same method from year to year, or explain any changes in the reporting method.

SPS commented that the use of the term "next year" was incorrect and suggested that it be replaced with "in the current calendar year."

Commission Response

The commission agrees with SPS that the change reflects its intent and has modified the language accordingly.

Section 25.96(f)(1)(I): Vegetation Management Report

AEP commented that flexibility is key to maintaining a reasonable, cost-effective approach and that the commission should avoid overly-prescriptive and arbitrary budget buckets. It should be sufficient to demonstrate that a budget as determined in the last base rate case is effectively and sufficiently applied to the best of the utility's ability and limited only by what the overall utility budget allows. AEP also suggested that the word "reactive" be changed to "unscheduled" as described above.

TNMP commented that although the company's budget categories do not align with those mandated in the provision, it appreciated the commission's recognition of the need for flexibility in permitting TNMP to tailor the budget categories to fit TNMP's practices with a simple explanation. However, TNMP does not budget separately for tree risk management, so if the commission is requiring it to do so, it will be costly to adjust.

Oncor commented that its budget categories do not align with the commission's but that providing the information in this format would not require it to change its practices. Oncor did not view the proposed rule as requiring the company to actually budget a certain amount for any expense category if the company's practices would simply create a $0 amount.

Commission Response

The commission agrees that AEP's suggestion of changing "reactive" to "unscheduled" is reasonable and has modified the language accordingly. The commission otherwise disagrees with AEP and TNMP. This provision does not require any change in vegetation management practice. It simply requires a utility to arrange its existing budget categories and subcategories under four commission-prescribed categories for these reports. If one or more of these categories do not have a budgeted amount, an explanation would be sufficient for the utility to be in full compliance with this subsection, as Oncor suggested.

<u>Section 25.96(f)(2)(C): Vegetation Management Report</u>

CenterPoint commented that this requirement is similar to those in subsection (e)(6) and subsection (f)(1)(C), and it should be deleted for the reasons stated in its comments under subsection (e)(6) above. Oncor and TNMP reiterated their comments stated under subsection (e)(6).

Commission Response

The commission disagrees with CenterPoint for the reasons outlined previously with respect to subsection (e)(6) but has modified the language to align it with changes made to subsection (e)(6).

<u>Section 25.96(f)(2)(D): Vegetation Management Report</u>

CenterPoint commented that this requirement is similar to subsection (e)(4), and it should be deleted for the reasons stated in its comments under subsection (e)(4) above.

SPS commented that its understanding is that the only continuing education report required is for direct employees of the utility and suggested use of the word "internal" to clarify.

Commission Response

The commission agrees with SPS and has modified the language for specificity. The commission disagrees with CenterPoint for the reasons explained previously with respect to subsection (e)(4) and declines to delete the provision. The commission is not mandating

curricula, requiring personnel to log a certain number of hours, or otherwise prescribing training requirements.

<u>Section 25.96(f)(2)(E): Vegetation Management Report</u>

CenterPoint commented that this requirement is similar to subsection (f)(1)(H), and it should be clarified for the reasons stated in its comments above.

Commission Response

The commission disagrees as discussed previously with respect to subsection (f)(1)(H). This subsection refers to subparagraph (A) of the same paragraph, which requests the method the utility employs to measure its progress and leaves it to the discretion of the utility to determine how to measure that progress.

<u>Section 25.96(f)(2)(F): Vegetation Management Report</u>

CenterPoint commented that SAIDI and SAIFI scores are calculated on an annual basis because the indices should be cumulative calculations to supply useful data, and averaging the numbers does not provide measurable metrics. The indices are highly impacted by weather and seasons so the annual report is the best indicator of the manner in which a utility is responding to system outages.

AEP requested clarification on whether this is to be applied by feeder or by company level, and the company proposes that the information be presented on a company level, aggregated monthly and annually. AEP also noted that reactive or responsive unscheduled maintenance budget dollars will prove to be a variance every year because they will be estimates.

Commission Response

The commission has modified the language to align this provision with current reporting requirements under §25.52 and §25.81.

Section 25.96(f)(2)(G)(ii): Vegetation Management Report

Entergy commented that the 2% negative budget is overly stringent and requested that the commission replace it with the 10% negative variance from staff's original Proposal for Publication.

Commission Response

The commission disagrees and declines to alter the provision. It is important to know when a utility's actual expenditures fall below budgeted amounts since that signals that less vegetation management is being accomplished than anticipated. Given the importance of vegetation management, the commission will want to know why that is occurring. The commission believes that a utility should report when its expenditures are 2% or more below budgeted amounts rather than 10% since that will result in more information being provided to the commission on this significant issue.

Section 25.96(f)(2)(G)(iii) and (iv): Vegetation Management Report

Oncor commented that clause (iii) does not explicitly state inclusion of expenditures from the storm reserve while clause (iv) does and requests that the lack of clarity this casts on "total expenditures" be resolved. Oncor suggested that the phrase "number of customers" be replaced with “points of delivery” for reasons set forth under subsection (f)(1)(G). Oncor questioned the usefulness of the data because it cannot be used to make utility-to-utility comparisons considering the diversity of service areas and vegetation across the state. Similarly, comparisons over time for a single utility will be difficult because of the varying number and severity of storms. Entergy agreed.

Commission Response

The commission agrees with Oncor’s first point that subsection (f)(1)(G) should be modified to refer to points of delivery and not number of customers. The commission disagrees with Oncor’s second point and declines to alter the provision. The commission would like to see this information in this context. The commission understands that this information is subject to a number of variables, but it does provide a frame of reference for comparing a utility’s program from year to year. It will be considered in concert with the rest of the information submitted under this rule.

SPS commented that a more reasonable, informative and accurate comparison would be of annual vegetation management expenditures to the total number of overhead distribution miles worked in that calendar year and that the provision should specify pole-to-pole miles of right of way to account for the difference in miles between a single and triple phase line.

Commission Response

The commission agrees with SPS that this information would provide for more useful comparisons and has modified the language accordingly.

<u>Section 25.96(f)(2)(G)(v): Vegetation Management Report</u>

Oncor commented that rate cases do not involve a review of budgets but of test year expenses, and the reference should be to "base rate case" as not all rate cases are base rate cases that include vegetation management expenses. Oncor suggested, therefore, that the provision be modified to read "the vegetation management expense amount approved as part of the utility's last base rate case." Even with the modification, Oncor noted that the commission rarely "approves" specific expense items such as vegetation management expenses so utilities will likely estimate what level of such expenses were included in the approved cost of service amount.

Commission Response

The commission agrees with Oncor that the reference should be to base-rate case, and has modified the language accordingly.

Entergy requested a template or form with the format the commission would prefer for the submission of this information to provide specificity.

Commission Response

The commission staff will work with utilities to develop a template.

<u>Section 25.96(g): Vegetation Management Report for Electric Cooperatives</u>

TEC and Brazos filed comments asserting that the proposed rule is outside the scope of the commission's jurisdiction over electric cooperatives. TEC contended that PURA §38.101, which requires the submission to the commission of reports on vegetation management applies only to electric utilities and not electric cooperatives. TEC explained that PURA §38.101 specifically refers to an "electric utility" and that "electric utility" is a defined term in PURA which expressly excludes an electric cooperative and a municipal cooperation. TEC further contended that PURA §38.101 is the only section of PURA that specifically addresses reporting on vegetation management activities and no other provision of PURA specifically mentions vegetation management reporting requirements. TEC concluded that the legislature did not intend for electric cooperatives to be included in the rules establishing vegetation management reporting requirements. TEC asserted that PURA §38.101 also requires reporting of information identifying areas that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas. TEC surmised that based on its understanding that PURA §38.101 applied only to electric utilities, the commission chose to exclude electric cooperatives from reporting requirements relating to system hardening as reflected in §25.95(b).

TEC stated that under PURA §41.055, an electric cooperative's board of directors has exclusive jurisdiction to: (1) manage and operate the electric cooperative's utility system; (2) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers; (3) determine any other utility matters; and (4) make any other decisions affecting the cooperative's method of conducting business. TEC claimed that to avoid any overlap between an electric cooperative's board of directors' jurisdiction and the commission's jurisdiction, the legislature limited the jurisdiction of the commission over electric cooperatives to a few very narrowly drawn areas to be consistent with PURA §41.055 and that specifically, the commission's jurisdiction to require reports from electric cooperatives is limited in PURA § 41.004. TEC asserted that the commission may require reports of cooperative operations to the extent necessary to ensure public safety. TEC commented that the "Implementation Summary" under subsection (g)(2)(B) is not necessary to ensure public safety. TEC argued that PURA §41.004(5)(A), which permits the commission "to require reports of electric cooperative operations only to the extent necessary to ensure public safety," should be narrowly construed and that the meaning of the phrase "only to the extent necessary to ensure public safety" limits the commission in several respects. TEC contended that both the purpose and necessity of reporting must be established. TEC noted that ensuring the public safety does not appear to be the commission's sole purpose.

TEC referred to the preamble of the proposed rule and concluded that it indicated that the purpose of the commission is to gather data to assess the effectiveness of a cooperative's vegetation management efforts. TEC stated that it was not clear if the information was to be provided for any other purpose since none was stated in the preamble. TEC conceded that public safety was mentioned in the preamble language, but there was no showing of how public safety will be affected by the filing of the proposed reports. TEC indicated that cooperatives are concerned that the data proposed to be gathered by the commission will become a tool to assess their operations and specifically mentioned that the data may be used in a later study of all cooperative's vegetation management options or used by the media as a gotcha to assign blame after the fact for outages primarily caused by weather-related events. TEC concluded that in either case the focus of the data will be on the operations of one or more electric cooperatives and that the commission does not have jurisdiction to regulate a cooperative's operations, which are reserved to the cooperative's board of directors under PURA §41.055.

TEC further commented that under PURA §41.005(5)(A) the data to be provided in the proposed report must be necessary to ensure the public safety and the word "necessary" does not allow the commission the latitude to request data that is merely convenient, useful or conducive to the end sought to be achieved. TEC commented that in this case the data would not be necessary to ensure the public safety. TEC explained that the information to be provided in the "Implementation Summary" is not forward looking, but rather looks backward and that information related to the prior year has no direct bearing on the cooperative's operations for the current or future years. TEC also commented that the "Implementation Summary" does not meet the statutory standard of being necessary to ensure public safety because the commission lacks jurisdiction to order changes to an electric cooperative's vegetation management operations. TEC asserted that under PURA §41.055 a cooperative's board of directors has exclusive jurisdiction to manage and operate the electric utility's system, including establishing and enforcing service quality standards and reliability standards. Thus, according to TEC, the commission would be powerless to use the information proposed to be provided as a basis for directing the cooperative to conduct its operations in any particular manner. TEC cited to *Entergy Texas, Inc. v. Public Util. Comm. et al.* which prohibits the commission from imposing "additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions" in support of its claim that the proposed rule imposes additional burdens on electric cooperatives in excess of or inconsistent with the relevant statutory provision, including PURA §38.101 and §41.004(5)(A).

TEC further commented that other statutory provisions stated in the preamble for the proposed rule as a basis for commission jurisdiction are not applicable or otherwise have no merit. TEC commented that PURA §14.001, which gives the commission the general power to regulate and supervise public utilities and §14.002, which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, apply only to electric utilities and not electric cooperatives. Similarly, TEC asserted that PURA §38.005(a) and (e), which relate to electric service reliability measures, apply only to electric utilities and transmission and distribution utilities and an electric cooperative is neither one of those two types of entities. TEC claimed that PURA §41.004, which gives the commission jurisdiction over electric cooperatives to regulate certification to the extent provided in Chapter 37 of PURA, and PURA §37.151, which requires a certificate holder to serve every consumer in the utility's certificated service area and to provide continuous and adequate service in that area, does not provide authority to the commission and does not authorize the commission to supervise the provision of service since that function is specifically left to the board of directors of an electric cooperative in PURA §41.055. TEC commented on several other provisions in PURA to show that the commission does not have the authority to require electric cooperatives to file vegetation management reports, including PURA §§41.003 (Securitization), 41.054 (Service Outside Certificated Service Area), 41.056 (Anticompetitive Actions), 41.058 (Tariffs for Open Access), 41.059 (No Power to Amend Certificates), 41.060 (Customer Service Information), and 41.062 (Allocation of Stranded Investment).

Brazos's comments mirrored TEC's comments in asserting that the commission lacks jurisdiction to require electric cooperatives to file a vegetation management report since that falls squarely within the jurisdiction of an electric cooperative's board of directors to manage and operate an electric cooperatives' utility system under PURA §41.055. Brazos also commented that the information required to be included in a report, in particular detailed budget and actual expense information, exceeds the commission's jurisdiction under PURA §41.004(5) even as it relates to public safety.

Commission Response

Although the commission possesses the legal authority to adopt subsection (g), it declines to do so at this time. Should future circumstances warrant reconsideration, the commission may amend §25.96 to require electric cooperatives to report on their vegetation management activities. Nonetheless, the commission responds to the comments regarding the commission's legal authority to require electric cooperatives to file vegetation management reports.

The commission disagrees with TEC and Brazos and believes that it does have the authority to require an electric cooperative to file a report providing information about its vegetation management practices. The commission disagrees with TEC that PURA §38.101 limits the commission's ability to require electric cooperatives to file vegetation management reports. While that provision, which requires such reports, applies only to electric utilities, and electric cooperatives are not defined as electric utilities under PURA

§31.002(6), that does not negate the statutory authority the commission does have to require cooperatives to file such reports under other statutory provisions, specifically PURA §§37.151, 41.004(2), and 41.004(5)(A) and (B).

Under PURA §41.004(5)(A), the commission has the authority to require reports of electric cooperative operations to the extent necessary to "ensure the public safety." This statutory provision was relied upon in the commission's adoption of §25.53, relating to Electric Service Emergency Operations Plans, on December 19, 2007 in Project Number 34202, *Rulemaking to Repeal P.U.C. SUBST. R. 25.53 and Propose New 25.53 Relating to Electric Service Emergency Operations Plans.* In §25.52(h)(2) and (3), the commission established specific reporting requirements for cooperatives that include descriptions of specific operational activities such as curtailment priorities, procedures for shedding load, rotating blackouts and planned outages, and priorities for restoration of service. In addition, in §25.53(h)(3)(J) and (4), the commission requires a cooperative to conduct an annual preparedness review and to modify its plan as necessary following the review. The vegetation management reports required in the current rulemaking have been tailored to meet the concerns expressed by the cooperatives throughout this rulemaking process, closely align with the requirements imposed in §25.53, and do not exceed the commission's authority to impose reporting requirements that allow the commission and others to discern whether the safety of the public is ensured by electric cooperatives' vegetation management.

The commission disagrees with ETC's comments as summarized in the General Comments section above that this rule is inconsistent with the relevant statutory provisions. PURA §38.001 requires that an electric cooperative furnish service, instrumentalities, and facilities that are safe. Through this rule, the commission endeavors to reduce the risk of wildfires and other public safety hazards that could result from inadequate vegetation management practices. Due to last year's drought, the number of electrical infrastructure-caused wildfires in Texas increased from 571 in 2010 to 2,450 in 2011. The number of acres burned by such wildfires increased from 25,853 in 2010 to 540,747 in 2011. Inadequate vegetation management can cause energized distribution lines to come in contact with vegetation, and that contact can result in the vegetation catching fire, thereby leading to wildfires. In addition, distribution lines that have fallen due to improper vegetation management can kill or seriously injure persons and animals that come into contact with them.

PURA §41.004(2) gives the commission jurisdiction over electric cooperatives "to regulate certification to the extent provided under Chapter 37." In addition, PURA §41.004(5)(B) gives the commission the authority to require reports of electric cooperative operations necessary to "enable the commission to satisfy its responsibilities relating to electric cooperatives under this chapter," including PURA §41.004(2). PURA §37.151 requires a certificate holder to "provide continuous and adequate service." As indicated in the preceding paragraph, inadequate vegetation management practices can result in wildfires and other public safety hazards, which in turn can result in extensive service outages.

Thus, inadequate vegetation management practices can mean that a cooperative is not providing continuous and adequate service.

<u>Section 25.96(g)(2)(A)(ii): Vegetation Management Report</u>

ETC stated that the definition of tree risk management is so broad that cooperatives must mitigate trees outside of their ROWs.

Commission Response

The commission declines to adopt subsection (g) for the reason stated previously.

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

The new rule section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (West 2007 & Supp. 2012) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designed or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §37.151, which requires a certificate holder to provide continuous and adequate service in its area; §38.001, which requires an electric utility and electric cooperative to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §38.005(a) and (e), which require the commission to implement service quality and reliability standards relating to the delivery of electricity to customers by electric utilities and transmission and distribution utilities and allows the commission to require electric utilities and transmission and distribution utilities to supply data to assist the commission in developing reliability standards; §38.101, which requires an electric utility to submit to the commission a report describing the utilities' activities related to vegetation management.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 37.151, 38.001, 38.005(a) and (e), and 38.101.

§25.96. Vegetation Management.

(a) **Application**. This section applies to an electric utility's (utility) distribution assets.

(b) **Definitions**. The following terms when used in this section shall have the following meaning, unless the context indicates otherwise.

(1) **Distribution assets**--The utility's facilities operating at less than 60 kilovolts (kV), excluding substations, underground facilities, and service drops, for which the utility needs to perform vegetation maintenance.

(2) **Right-of-way (ROW)**--Land on which electric lines are located and that the utility has the right to access for the purpose of maintaining its distribution system and managing vegetation.

(3) **Scheduled vegetation maintenance**--The anticipated vegetation management activities a utility expects to conduct during a particular budget cycle, including trimming, spraying, and removal activities.

(4) **Tree risk management**--Planning for, assessing, monitoring, and mitigating structurally unsound trees that could threaten a utility's distribution assets.

(5) **Unscheduled vegetation maintenance**--Responsive vegetation maintenance that can include, but is not limited to, customer-requested and utility-requested maintenance.

(c) **Vegetation management requirements under other provisions**. Compliance with this section fully satisfies the vegetation management planning and reporting requirements of §25.94(c)(2) of this title (relating to Report on Infrastructure Improvement and

Maintenance) and §25.95(e)(2) of this title (relating to Electric Utility Infrastructure Storm Hardening).

(d) **Utility conformance to standards of the industry**. For any mandatory provision of any standard specified in paragraphs (1)-(3) of this subsection to which a utility's vegetation management policies do not conform, the utility shall provide a brief explanation for the deviation in its Vegetation Management Report:

(1) American National Standards Institute (ANSI) Standard Z133.1, *Arboricultural Operations – Pruning*, or successor standard;

(2) ANSI Standard A300 (Part 1) – *Tree, Shrub, and Other Woody Plant Management – Standard Practices (Pruning)*; (Part 7) – *Integrated Vegetation Management a. Utility Rights-of-way practices*; and (Part 9) – *Tree Risk Assessment a. Tree Structure Assessment;* or successor standards; and

(3) National Electrical Safety Code Section 218, or successor standard.

(e) **Vegetation Management Plan**. Each utility shall maintain a Vegetation Management Plan (Plan) that describes the utility's objectives, practices, procedures, and work specifications for its distribution assets. A full copy of the Plan shall be provided to the commission or commission staff within ten days of receipt of the request. A utility shall review and update its Plan by December 31 of each year. The Plan shall include, at a minimum, a description of the utility's:

(1) tree pruning methodology, trimming clearances, and scheduling approach;

(2) methods used to mitigate threats posed by vegetation to applicable distribution assets;

(3) tree risk management program;

(4) participation in continuing education by the utility's internal vegetation management personnel;

(5) estimate of the miles of circuits along which vegetation is to be trimmed or method for planning trimming work for the coming year;

(6) plan to remediate vegetation-caused issues on feeders which are on the worst vegetation-caused performing feeder list for the preceding calendar year's System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI); and

(7) customer education, notification, and outreach practices related to vegetation management.

(f) **Vegetation Management Report**. A utility shall file with the commission by May 1 of each year a Vegetation Management Report (Report) summarizing its Vegetation Management Plan for the current calendar year and its progress in implementing its Plan for the preceding calendar year. The Report filed May 1, 2013 does not need to contain the information required by paragraph (2) of this subsection. The Report shall include, at a minimum, the following components:

(1) A Vegetation Management Plan summary including, at a minimum, a summary of the utility's:

(A) vegetation maintenance goals and the method the utility employs to measure its progress;

(B) trimming clearances and scheduling approach;

(C) plan to remediate vegetation-caused issues on feeders that are on the vegetation-caused, worst performing feeder list for the preceding calendar year's SAIDI and SAIFI;

(D) tree risk management program;

(E) approach to monitoring, preparing for, and responding to adverse environmental conditions such as drought and wildfire danger that may impact its vegetation management policies and practices;

(F) total overhead distribution miles in its system, excluding service drops;

(G) total number of electric points of delivery;

(H) amount of vegetation-related work it plans to accomplish in the current calendar year to achieve its vegetation management goals described in subparagraph (A) of this paragraph; and

(I) vegetation management budget, divided into the categories listed in clauses (i)-(iv) of this subparagraph. The utility should, within the confines of its own budgeting practices, assign subcategories and list them under these categories where appropriate. If a utility does not budget amounts under any specific category, the utility shall provide a brief explanation of why it does not do so. The utility shall title the budget with the dates it covers and provide a total for each category or subcategory.

(i) scheduled vegetation maintenance;

(ii) unscheduled vegetation maintenance;

(iii) tree risk management; and

(iv) emergency and post-storm activities.

(2) An implementation summary for the preceding calendar year including, at a minimum, a description of:

(A) whether the utility met its vegetation maintenance goals and how its goals have changed for the coming calendar year based on the results;

(B) successes and challenges with the utility's strategy, including obstacles faced, such as property owner interference, and methods employed to overcome them;

(C) the progress and obstacles to remediating issues on the vegetation-caused, worst performing feeders list as submitted in the preceding year's Report;

(D) the number of continuing education hours logged for the utility's internal vegetation management personnel, if applicable;

(E) the amount of vegetation management work the utility accomplished to achieve its vegetation management goals described in paragraph (1)(A) of this subsection;

(F) the separate SAIDI and SAIFI scores for vegetation-caused interruptions for each month and as reported for the calendar year in its Service Quality Report filed pursuant to §25.52 of this title (relating to Reliability and Continuity of Service) and §25.81 of this title (relating to Service Quality Reports), at both the feeder and company level;

(G) the vegetation management budget, including, at a minimum:

(i) a single table with columns representing:

(I) the budget for each category and subcategory that the utility provided in the preceding year pursuant to paragraph

(1)(I) of this subsection, with totals for each category and subcategory;

(II) the actual expenditures for each category and subcategory listed pursuant to subclause (I) of this clause, with totals for each category or subcategory;

(III) the percentage of actual expenditures over or under the budget for each category or subcategory listed pursuant to subclause (I) of this clause; and

(IV) the actual expenditures for the preceding reporting year for each category and subcategory listed pursuant to subclause (I) of this clause, with totals for each category or subcategory;

(ii) an explanation of the variation from the preceding year's vegetation management budget where actual expenditures in any category or subcategory fell below 98 percent or increased above 110 percent of the budget for that category;

(iii) the total vegetation management expenditures divided by the number of electric points of delivery on the utility's system, excluding service drops;

(iv) the total vegetation management expenditures, including expenditures from the storm reserve, divided by the number of customers the utility served; and

(v) the vegetation management budget from the utility's last base-rate case.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §25.96, relating to Vegetation Management, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 13th day of DECEMBER 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

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DONNA L. NELSON, CHAIRMAN

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KENNETH W. ANDERSON, JR., COMMISSIONER

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ROLANDO PABLOS, COMMISSIONER

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