

PROJECT NO. 39518

RULEMAKING RELATED TO	§	
IMPLEMENTATION OF SB 855,	§	PUBLIC UTILITY COMMISSION
AMENDING PROC. R. 22.52,	§	
RELATING TO NOTICE IN	§	OF TEXAS
LICENSING PROCEEDINGS	§	

**ORDER ADOPTING AMENDMENT TO §22.52
AS APPROVED AT THE OCTOBER 27, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §22.52, relating to notice in licensing proceedings with no changes to the proposed text as published in the July 22, 2011 issue of the *Texas Register* (36 TexReg 4621). The amendment will add the requirement that notice for an application for a certificate of convenience and necessity (CCN) related to electric service be provided to the Office of Public Utility Counsel (OPUC), pursuant to Senate Bill 855 of the 82nd Legislature, Regular Session in 2011 (SB 855). The amendment is adopted under Project Number 39518.

The commission received comments in support of the proposed amendment from the Joint Commenters, which was composed of Oncor Electric Delivery Company, LLC; Electric Transmission Texas, LLC; Lone Star Transmission, LLC; Cross Texas Transmission, LLC; Southwestern Electric Power Company; AEP Texas Central Company; AEP Texas North Company; and Wind Energy Transmission Texas, LLC. The Joint Commenters did not recommend any changes to the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to

adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §14.052 and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules; and specifically, SB 855 §2 (to be codified as PURA §37.054), which requires that notice of a CCN application related to electric service be provided to OPUC.

Cross Reference to Statutes: PURA §§14.002 and 14.052, APA §2001.004, and SB 855 §2 (to be codified as PURA §37.054).

§22.52. Notice in Licensing Proceedings

- (a) **Notice in electric licensing proceedings.** In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:
- (1) Applicant shall publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by the Central Records Division. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.
 - (A) The notice shall include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice shall state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed pursuant to

the Public Utility Regulatory Act §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.

- (B) The notice shall describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice shall include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.
- (C) The notice shall state a location where a detailed routing map may be reviewed. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.
- (D) Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published,

the county or counties in which the newspaper(s) is or are of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

- (E) The applicant shall provide a copy of each environmental impact study and/or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD shall be provided in the form of an affidavit to the commission, which shall specify the date the information was mailed or otherwise provided to TPWD, and shall provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.
- (2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. In addition, the applicant shall, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, and the Office of Public Utility Counsel shall

specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

- (3) Applicant shall, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.
 - (A) The notice must contain all information required in paragraph (1) of this subsection and shall include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.
 - (B) The notice must include a map as described in paragraph (1)(C) of this subsection.

- (C) Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice.\
- (D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.
- (E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately advise the commission by written pleading and shall provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has fifteen days from the date of delivery to intervene. The utility shall immediately file a supplemental affidavit of notice with the commission.

- (4) The utility shall hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting shall be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility shall not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes.
 - (5) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.
 - (6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's staff.
 - (7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail shall include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."
- (b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or

applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

- (1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; the dates upon which the notice was published and a copy of

the notice as published. Proof of publication shall be submitted to the commission as soon as available.

- (2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.
- (3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of

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 §25.93, relating to Quarterly Wholesale Electricity Transaction Information is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 28TH DAY OF OCTOBER 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER