

**PROJECT NO. 39125**

<b>RULEMAKING AND FORM</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMENDMENTS FOR ELECTRIC</b>	<b>§</b>	
<b>TRANSMISSION CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>APPLICATIONS</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENTS TO §25.101  
AS APPROVED AT THE APRIL 29, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.101, relating to Certification Criteria with no changes to the proposed text as published in the March 11, 2011 issue of the *Texas Register* (36 TexReg 1639). The amendments change the reference to routes from “preferred and alternate routes” to “alternative routes,” for a proposed transmission line for which a certificate of convenience and necessity is sought by a utility. These amendments are adopted under Project Number 39125.

The commission received comments on the proposed amendments in this project from Southwestern Public Service Company (SPS); Office of Public Utility Counsel (OPUC); and Lower Colorado River Authority Transmission Service Company (LCRA TSC). In addition, 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 (together the Joint Commenters) filed comments together. The commission did not receive any reply comments. A public hearing on the amendments was not requested.

*Summary of Comments*

SPS, OPUC, LCRA TSC, and Joint Commenters supported the amendments as an improvement to the existing rule, and indicated that the amendments will help alleviate landowner confusion and increase landowner participation in the certificate of convenience and necessity (CCN) proceedings. STEC did not offer comments but stated that it did not oppose the proposed amendments to §25.101.

*Commission Response*

**The commission adopts the amendments to §25.101 as originally proposed.**

These amendments are 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; and PURA §§37.053-37.057, which provide the commission authority over applications for certificates of convenience and necessity.

Cross Reference to Statutes: PURA §14.002 and §§37.053-37.057.

**§25.101. Certification Criteria.**

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) **Construction and/or extension** — Shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way shall not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction and/or extension is necessary for the service, accommodation, convenience, or safety of the public.
  - (2) **Generating unit** — Any electric generating facility. This section does not apply to any generating unit that is less than ten megawatts and is built for experimental purposes only, and not for purposes of commercial operation.
  - (3) **Habitable structures** — Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.
  - (4) **Prudent avoidance** — The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.
- (b) Certificates of convenience and necessity for new service areas and facilities. Except for certificates granted under subsection (e) of this section, the commission may grant an

application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission shall render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

- (1) **Change in service area.** Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated.
  - (A) Uncontested applications: An application for a certificate under this paragraph shall be approved administratively within 80 days from the date of filing a complete application if:
    - (i) no motion to intervene has been filed or the application is uncontested;
    - (ii) all owners of land that is affected by the change in service area and all customers in the service area being changed have been given direct mail notice of the application; and
    - (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements,

including, but not limited to, the provision of proper notice of the application.

(B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions shall be approved administratively within 45 days of the filing of the application provided that:

- (i) all utilities whose certificated service area is affected agree to the change;
- (ii) all customers within the affected area have given prior consent; and
- (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(2) **New generating unit.** A new electric generating unit constructed, owned, or operated by a bundled electric utility.

(3) New electric transmission line. All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports).

(A) Need: In determining the need for a proposed transmission line, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a reliable and adequate

network and to facilitate robust wholesale competition. The commission shall give great weight to:

- (i) the recommendation of an organization that meets the requirements of PURA §39.151; and/or
- (ii) written documentation that the proposed facility is needed for the purpose of interconnecting a new transmission service customer.

(B) Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

- (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the routes parallel existing compatible rights-of-way;
- (iii) whether the routes parallel property lines or other natural or cultural features; and

- (iv) whether the routes conform with the policy of prudent avoidance.
- (C) Uncontested transmission lines: An application for a certificate for a transmission line shall be approved administratively within 80 days from the date of filing a complete application if:
- (i) no motion to intervene has been filed or the application is uncontested; and
  - (ii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.
- (D) Projects deemed critical to reliability. Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.
- (c) **Projects or activities not requiring a certificate.** A certificate, or certificate amendment, is not required for the following:
- (1) A contiguous extension of those facilities described in PURA §37.052;
  - (2) A new electric high voltage switching station, or substation;

- (3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies shall proceed without delay or prior approval of the commission and shall be reported to the commission in accordance with §25.83 of this title.
- (4) The construction or upgrading of distribution facilities within the electric utility's service area.
- (5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs shall be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:
  - (A) The modification or extension of an existing transmission line solely to provide service to a substation or metering point provided that:
    - (i) an extension to a substation or metering point does not exceed one mile; and
    - (ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.
  - (B) The rebuilding, replacement, or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater

than 230 kV; bundling of conductors or reconductoring of an existing transmission facility, provided that:

- (i) no additional right-of-way is required; or
- (ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.

(C) The installation, on an existing transmission line, of an additional circuit not previously certificated, provided that:

- (i) the additional circuit is not greater than 230 kV; and
- (ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(D) The relocation of all or part of an existing transmission facility due to a request for relocation, provided that:

- (i) the relocation is to be done at the expense of the requesting party;  
and
- (ii) the relocation is solely on a right-of-way provided by the requesting party.

(E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.

(F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to,

highway transportation, airport construction, public safety, or air and water quality, provided that:

- (i) all landowners of property crossed by the electric facilities have given prior written consent; and
- (ii) the relocation, alteration, or reconstruction is responsive to the governmental request.

(d) **Standards of construction and operation.** In determining standard practice, the commission shall be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

(1) The standards of construction shall apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.

(2) For electric transmission line construction requiring the acquisition of new rights-of-way, electric utilities must include in the easement agreement, at a minimum, a provision prohibiting the new construction of any above-ground structures within the right-of-way. New construction of structures shall not include necessary

repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures. Utilities may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.

- (3) Measures shall be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures shall be adapted to the specifics of each project and may include such requirements as:
  - (A) selective clearing of the right-of-way to minimize the amount of flora and fauna disturbed;
  - (B) implementation of erosion control measures;
  - (C) reclamation of construction sites with native species of grasses, forbs, and shrubs; and
  - (D) returning site to its original contours and grades.
  
- (e) **Certificates of convenience and necessity for existing service areas and facilities.** For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1, 1975, unless found

by the commission to be otherwise, the following provisions shall prevail for certification purposes:

- (1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.
- (2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.
- (3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

- (f) **Transferability of certificates.** Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission.
  
- (g) **Certification forms.** All applications for certificates of convenience and necessity shall be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

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 §25.101 relating to Certification Criteria is hereby adopted with no changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS this the \_\_\_\_\_ day of MAY 2011.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**