



Control Number: 32018



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PUC DOCKET NO. 32018
SOAH DOCKET NO. 473-06-0721

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NOTICE OF VIOLATION BY TXU §
ELECTRIC DELIVERY OF PURA §
§ 38.005, RELATING TO ELECTRIC §
SERVICE RELIABILITY MEASURES, §
AND P.U.C. SUBST. R. 25.52, RELATING §
TO RELIABILITY AND CONTINUITY §
OF SERVICE §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

Pursuant P.U.C. PROC. R. 22.246(g)(2), this Order approves the Settlement Agreement (Agreement) between the Commission Staff of the Public Utility Commission of Texas (Commission) and TXU Electric Delivery Company (TXU Electric Delivery) (collectively, Parties) regarding the Notice of Violation (NOV) that was issued November 8, 2005. The NOV concerned Commission Staff's investigation into TXU Electric Delivery's violations of PURA¹ § 38.005, relating to Electric Service Reliability and P.U.C. SUBST. R. 25.52, relating to Reliability and Continuity of Service. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. The Agreement is unopposed and provides for a reasonable resolution to the issues in this docket. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. On November 8, 2005, Commission Staff filed an NOV relating to the violations of TXU Electric Delivery with a recommended penalty of \$335,000.00 for alleged violations of the service quality standards.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 1998 & Supp. 2006) (PURA).

2. A copy of the NOV was sent to TXU Electric Delivery via certified mail return receipt requested.
3. TXU Electric Delivery received its NOV on November 14, 2005.
4. The NOV that was filed and received by TXU Electric Delivery included a brief summary of the violations, a statement of the amount of recommended penalties, a description of TXU Electric Delivery's options under P.U.C. PROC. R. 22.246 for responding to the NOV, a copy of the report issued to the Commission pursuant to P.U.C. PROC. R. 22.246(e), and a copy of P.U.C. PROC. R. 22.246.
5. On November 23, 2005, TXU Electric Delivery filed an initial response to the NOV denying the allegations and requested a settlement conference.
6. On December 5, 2005, the matter was referred to the State Office of Administrative Hearings.
7. The Commission issued its Preliminary Order on January 17, 2006.
8. On February 14, 2006, Commission Staff requested that the Administrative Law Judge (ALJ) certify certain questions to the Commission. On March 9, 2006, the ALJ certified the following questions to the Commission:
 - a. Does a utility commit a violation if it fails to meet the service quality standards set forth in PURA § 38.005(b) and P.U.C. SUBST. R. 25.52(f)?
 - b. Should a demonstration that a utility has undertaken "all reasonable efforts to prevent interruptions of service" or that compliance with the statutory/regulatory standards is economically infeasible be taken into account in determining whether a utility has committed a violation or should such information be considered among the factors taken into account in determining the amount of an administrative penalty under PURA § 15.023 and P.U.C. PROC. R. 22.246.

9. On April 7, 2006, the Commission issued its Order on Certified Issues concluding that: (1) "if TXU has failed to meet the service reliability standards of PURA § 38.005(b) and P.U.C. SUBST. R. 25.52(f), then it has committed a violation of PURA and the Commission's substantive rules;" and (2) "TXU's efforts to meet applicable service reliability standards, or the economic infeasibility of meeting those standards, may be considered in assessing administrative penalties under PURA § 15.023 and P.U.C. PROC. R. 22.246."
10. On April 25, 2006, Commission Staff filed its First Motion for Partial Summary Disposition seeking a decision from the ALJ that: (1) notice to TXU Electric Delivery was sufficient; and (2) TXU Electric Delivery committed 145 violations of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
11. On May 2, 2006, TXU Electric Delivery filed its Response to Staff's First Motion for Partial Summary Disposition indicating that it did not oppose Commission Staff's motion.
12. On May 19, 2006, Commission Staff filed its Proposed Agreed Findings of Fact and Conclusions of Law.
13. On June 14, 2006, the ALJ granted Commission Staff's First Motion for Partial Summary Disposition and entered Order No. 8, Interim Order Granting Motion for Partial Summary Decision.
14. On June 26, 2006, the ALJ entered Order No. 9 establishing a new hearing date on November 14, 2006.
15. On July 13, 2006, Commission Staff filed the direct testimony of Michael J. Lee and Brian T. Almon.

16. On September 11, 2006, TXU Electric Delivery filed its Response to Order No. 12 and Joint Motion to Abate stating that Commission Staff and TXU Electric Delivery wanted to abate the proceeding and pursue additional negotiations. The ALJ granted the Joint Motion to Abate in Order No. 13 on September 13, 2006.

Review of Service Quality Reports

17. Commission Staff reviewed the service quality reports that TXU Electric Delivery and ONCOR Electric Delivery company filed in Project Nos. 25180, 27270, 29165, and 30613 for the reporting years 2001-2004 to determine whether TXU Electric Delivery complied with the deadline in P.U.C. SUBST. R. 25.81 and the service quality and reliability standards established by PURA § 38.005 and P.U.C. SUBST. R. 25.52.
18. The following distribution feeders with more than 10 customers sustained a System Average Interruption Duration Index (SAIDI) value for reporting years 2003 and 2004 that was among the highest (worst) 10% of TXU Electric Delivery's feeders for those years:

ABRRD 0002	ABRRD 0005	ARPMN 4149
BOWEN 3192	BRGPR 1103	BRKTN 1201
CAMRN 1203	CDHCR 2055	CNI45 1202
CRSSN 7911	DHIDE 2811	EDWDS 5921
ELMAR 3211	EMPCT 0003	FRFWS 3004
FRMBG1702	GRLRD 0004	ITALY 2101
KYSTN 1021	LMESA 2833	LOMAL 0015
MDTHN 1702	MEXIA 3016	MKNNY 1251
MNRVA 1301	MSHLN 0003	MSLMN 4009
OVRTN 4019	OVRTN 4037	PEGAS 2321
PLDAV 4211	QNLAN 1202	RECCR 0002
ROANW 9511	TROY 1013	TRSES 1201
TRSES 1202	TYLNE 1624	TYLNW 1910
VALVW 1802	WALST 0009	WATCO 2602
WGROB 8421		

19. The following distribution feeders with more than 10 customers sustained a SAIDI value for reporting years 2002, 2003, and 2004 that was among the highest (worst) 10% of TXU Electric Delivery's feeders for those years:

CDMIL 2401	COYAN 6321	DHIDE 2821
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GLSCK 2411
KMPSO 2400

JKWST 4035
MASON 3421

JKWST 4178
TSLVL 4001

20. The following distribution feeders with more than 10 customers sustained a SAIDI value for reporting years 2001, 2002, 2003, and 2004 that was among the highest (worst) 10% of TXU Electric Delivery's feeders for those years:

BEAST 4090
CRANE 0321
INDIA 2501
LUFKN 1206
SANSM 3922
TYLGE 1314

BLPOD 1201
ELCTR 1221
JKSNR 4111
NCWDN 1121
SBEAN 6011

CHRNO 1203
HNTNG 1301
JKWST 4033
RUSK 3057
THSES 2402

21. The following distribution feeders with more than 10 customers sustained a System Average Interruption Frequency Index (SAIFI) value for reporting years 2003 and 2004 that was among the highest (worst) 10% of TXU Electric Delivery's feeders for those years:

AMMFG 5631
BOWEN 3192
CLLVL 0001
COMSO 1403
EZACH 0006
ITALY 2101
LKMNT 0008
MSLMN 4009
PWEST 1303
REYST 4051
RWALL 1203
TRPMN 4094
WATCO 2602

BEAST 4084
BRKTN 1201
CNI45 1202
EDWDS 5921
GAVSW 0009
JKSNR 4111
MASON 3421
NCDCH 1201
QNLAN 1202
ROANW 9511
SANSM 3922
VGCRK 8041
WSTHL 3621

BNTDR 0002
BRNSO 1806
CNTRY 2831
ELMAR 3211
HMTRD 0001
LFSTH 1407
MEXIA 3016
OVRTN 4037
RECCR 0002
RWALL 1201
TATSP 4323
WALST 0009

22. The following distribution feeders with more than 10 customers sustained a SAIFI value for reporting years 2002, 2003, and 2004 that was among the highest (worst) 10% of TXU Electric Delivery's feeders for those years:

BNTDR 0003
HNTNG 1301
MAPLE 0007
PRCRK 0002

FRFWS 3004
JKSES 3028
MDTHN 1702
TRPMN 4001

HKBRY 1104
JKWST 4178
MKNSW 2604
TYSTH 1201

WHTRK 0007

WKATY 1718

WMRLD 0008

23. The following distribution feeders with more than 10 customers sustained a SAIFI value for reporting years 2001, 2002, 2003, and 2004 that was among the highest (worst) 10% of TXU Electric Delivery's feeders for those years:

BEAST 4090
INDIA 2501

CNANG 1806
RUSK 3057

CRANE 0321
THSES 2402

24. The following distribution feeders with more than 10 customers sustained a SAIDI value for reporting years 2003 and 2004 that was more than 300% greater than the system average of TXU Electric Delivery's feeders during those years:

ARPMN 4149
ELMAR 3211
NCWDN 1121

BRGPR 1103
FRMBG 1702
PEGAS 2321

EDWDS 5921
MDTHN 1702

25. The following distribution feeders with more than 10 customers sustained a SAIDI value for reporting years 2002, 2003, and 2004 that was more than 300% greater than the system average of TXU Electric Delivery's feeders during those years:

GLSCK 2411

JKWST 4178

MASON 3421

26. The following distribution feeders with more than 10 customers sustained a SAIDI value for reporting years 2001, 2002, 2003, and 2004 that was more than 300% greater than the system average of TXU Electric Delivery's feeders during those years:

CRANE 0321

HNTNG 1301

INDIA 2501

27. The following distribution feeders with more than 10 customers sustained a SAIDI value for reporting years 2003 and 2004 that was more than 300% greater than the system average of TXU Electric Delivery's feeders during those years:

CLLVL 0001
RECCR 0002

EZACH 0006

HKBRY 1104

Settlement Agreement

28. The Agreement provides for a procedure whereby in the event Commission Staff wishes to pursue an enforcement action against TXU Electric Delivery for service quality violations, prior to filing an NOV, Commission Staff and TXU Electric Delivery will participate in an exchange of information and engage in good faith negotiations in an attempt to resolve the dispute.
29. The Agreement requires that TXU Electric Delivery pay a \$100,000.00 administrative penalty in settlement of the NOV. Additionally, TXU Electric Delivery will expend \$125,000.00 to energy efficiency initiatives for residential consumers in areas served by underperforming feeders.
30. The Agreement resolves all claims in the NOV.
31. The Agreement provides for a reasonable resolution of this dispute.
32. The Agreement is in the public interest.

II. Conclusions of Law

1. TXU Electric Delivery is an electric utility for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.003, 14.051, 15.023, 15.024, and 38.005.
3. As an electric utility, TXU Electric Delivery is required to comply with the service quality and reliability standards established by PURA § 38.005 and P.U.C. SUBST. R. 25.52.
4. Notice of the NOV was provided to TXU Electric Delivery in compliance with PURA § 15.024 and P.U.C. PROC. R. 22.246.

5. TXU Electric Delivery committed 127 violations of PURA § 38.005(b) and P.U.C. SUBST. R. 25.52(f)(2)(A), which require electric utilities and transmission and distribution utilities to maintain and operate their distribution systems so that no distribution feeder with 10 or more customers sustains a SAIDI or SAIFI value for a reporting year that is among the highest (worst) 10% of that utility's feeders for any two consecutive reporting years.
6. TXU Electric Delivery committed 18 violations of PURA § 38.005(b) and P.U.C. SUBST. R. 25.52(f)(2)(B), which require electric utilities and transmission and distribution utilities to maintain and operate their distribution systems so that no distribution feeder with 10 or more customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

III. Ordering Paragraphs

In accordance with the above-listed findings of fact and conclusions of law, the Commission orders as follows:

1. The Agreement attached to this Order as Attachment 1 is approved, and the Parties shall be bound by its terms.
2. TXU Electric Delivery shall pay an administrative penalty to the Commission in an amount totaling One Hundred Thousand and No Dollars (\$100,000.00) before the expiration of 30 calendar days from the date this Order is signed. Payment shall be made in the form of a check or wire transfer payable to the Public Utility Commission of Texas, and addressed to the Commission's Fiscal Services, and shall reference the docket number of this proceeding.
3. As provided in the Agreement, TXU Electric Delivery shall file an affidavit in this docket not later than the fifth calendar day after TXU Electric Delivery remits the payment. This affidavit shall attest to payment of the administrative penalty imposed by the Parties' Agreement and this Order.

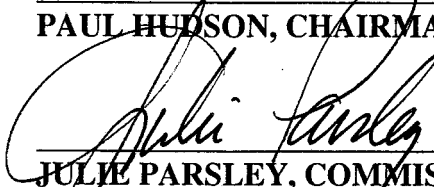
4. TXU Electric Delivery shall expend One Hundred Twenty-Five Thousand and No Dollars (\$125,000.00) on energy efficiency initiatives for residential consumers in the areas served by underperforming feeders in accordance with the terms of the Agreement.
5. TXU Electric Delivery shall make efforts to improve the performance and reliability of all of its feeders. In particular, these efforts shall focus on feeders that have violated quality and reliability standards for three or more consecutive years.
6. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised in the NOV.
7. Entry of this Order does not indicate the Commission's endorsement or approval of any principal or methodology that may underlie the Agreement. Neither should the entry of this Order consistent with the Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
8. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 5th day of December 2006.

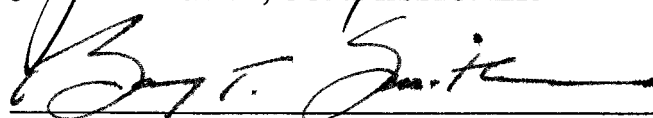
PUBLIC UTILITY COMMISSION OF TEXAS



PAUL HUDSON, CHAIRMAN



JULIE PARSLEY, COMMISSIONER



BARRY T. SMITHERMAN, COMMISSIONER

SOAH DOCKET NO. 473-06-0721
PUC DOCKET NO. 32018

<p>NOTICE OF VIOLATION BY TXU ELECTRIC DELIVERY OF PURA § 38.005, RELATING TO ELECTRIC SERVICE RELIABILITY MEASURES, AND P.U.C. SUBST. R. 25.52, RELATING TO RELIABILITY AND CONTINUITY OF SERVICE.</p>	<p>§ § § § § § § § § §</p>	<p>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</p>
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SETTLEMENT AGREEMENT

Staff of the Public Utility Commission of Texas ("Staff") and TXU Electric Delivery (together, "Parties") enter into this Settlement Agreement ("Agreement"). This Agreement resolves the Notice of Violation ("NOV") issued in Docket No. 32018 regarding violations of PURA § 38.005,¹ relating to Electric Service Reliability Measures and P.U.C. SUBST. R. 25.52, relating to Reliability and Continuity of Service.²

The Parties hereby agree as follows:

1. Prior to filing an NOV alleging quality of service violations by TXU Electric Delivery, the Staff agrees to provide to TXU Electric Delivery, in writing, the identity of the specific feeders the Staff believes may be in violation and a request for any additional information concerning those feeders that Staff believes relevant. Within thirty (30) days of its receipt of the Staff's submittal regarding the alleged violations, TXU Electric Delivery shall provide the Staff, in writing, the information requested by Staff, and any other such factual information as TXU Electric Delivery deems appropriate for the Staff's consideration to aid in the Staff's determination as to whether and in what manner to proceed with an enforcement action against TXU Electric Delivery. TXU Electric Delivery agrees that it will not, in any subsequent enforcement action pertaining to service quality, object to or otherwise challenge the admissibility of any factual information that it provides to Staff pursuant to this paragraph. Staff agrees to review the submitted information on a schedule to be developed by Staff after receipt

¹ Public Utility Regulatory Act, TEX. UTIL. CODE §§ 11.001-66.017 (Vernon 1998 & Supp. 2005) (PURA).

² The rules of the Public Utility Commission of Texas are found in Title 16 of the Texas Administrative Code and referred to herein as either Procedural or Substantive.

of the information. Appropriate personnel from Staff and TXU Electric Delivery shall meet in person and confer in good faith, to review and evaluate the feeders at issue, and the information submitted by TXU Electric Delivery, in an effort to settle the issues in dispute regarding the quality of service issues. The evaluation process should consider, but will not be limited to the following:

- The causes for the underperformance of the identified feeders and to what extent those causes were beyond the control of TXU Electric Delivery.
- Efforts by TXU Electric Delivery to correct the violation including the time for the utility to take remedial action, the time for that action to be reflected in reliability statistics, and improvement that results from those efforts.
- The costs of the actions required to ensure that the feeder does not appear on the 10% list in relation to the benefit to the end use customer.
- Whether or not the customers in the area served by the feeder have been provided monetary or other compensation for the relatively lower level of reliability received.
- Improvements to System SAIDI and SAIFI in the reporting year, as a measure of the quality of TXU Electric Delivery's maintenance program.

Should the parties still be unable to resolve the matters in dispute by settlement, they agree to consider mediation as an option to resolve the dispute before a mutually agreeable mediator with the mediation to occur in Austin, Texas. TXU Electric Delivery shall bear all costs associated with mediation. If mediation is not pursued, or the mediation does not result in a settlement, the Staff may then file an enforcement action regarding the quality of service violation Staff believes were committed by TXU Electric Delivery.

2. For the annual Service Quality Reports filed in 2002 through 2005, covering data for calendar years 2001 through 2004, TXU Electric Delivery agrees to pay a \$100,000.00 administrative penalty in settlement of the NOV. Additionally, TXU Electric Delivery will commit \$125,000.00 to energy efficiency initiatives for residential consumers in areas served by underperforming feeders. If TXU Electric Delivery is unable to fully expend the additional energy efficiency funding within the areas served by the underperforming feeders, TXU Electric Delivery and Staff shall agree on a plan for the expenditure of any remaining funds.

3. TXU Electric Delivery agrees to remit payment of the full amount of the monetary penalty on or before thirty (30) calendar days after the date on which the Commission enters an order approving this Agreement. Payment shall be made in the form of a check or wire transfer payable to the Public Utility Commission of Texas and addressed to the Commission's Fiscal Services, and shall reference Docket No. 32018.

4. No later than the fifth calendar day after TXU Electric Delivery remits payment, TXU Electric Delivery shall file an affidavit in Docket No. 32018 attesting that payment has been timely made.

5. TXU Electric Delivery agrees to make efforts to improve the performance and reliability of its feeders. In particular, these efforts shall focus on feeders that have violated service quality and reliability standards for three or more consecutive years.

6. TXU Electric Delivery and Staff agree that PURA § 38.005(b) requires an appropriate enforcement action. This provision provides Staff discretion concerning the remedies it seeks, and Staff may choose to seek a remedy that does not include a fine.

7. The Parties agree that a Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or in other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

8. The Parties stipulate to the facts contained in the attached Proposed Order, and support approval of the attached Proposed Order by the Commission.

9. The Parties contemplate that this Agreement will be approved, as contemplated by P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

10. This Agreement resolves all claims in the NOV.

11. Unless specifically provided for in this Agreement, TXU Electric Delivery expressly waives any notice and procedures that might otherwise be authorized or required in this proceeding.

12. Notwithstanding the foregoing, in the event any provision of this agreement is inconsistent with future statutes, or rules of the Commission, the statute or rule shall control.

13. Except as provided by paragraph 1 of this agreement, nothing herein shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.

14. The Parties agree that all of the statements in this Agreement are correct, and may be relied upon by the Commission in resolving this docket.

15. This Agreement terminates three years from the date the Agreement is signed unless extended by the mutual agreement of TXU Electric Delivery and Commission Staff; however, notwithstanding such termination, Commission Staff agrees not to file an NOV with respect to

the Service Quality Reports filed with the Commission during the term of this Agreement without first following the procedures set out in this Agreement.

16. This Agreement contains the entire agreement between Staff and TXU Electric Delivery as to the NOV. Moreover, this Agreement supersedes all other written and oral exchanges or negotiations among the Parties or their representatives with regard to the subjects contained herein.

17. The Public Utility Commission of Texas has jurisdiction over the Parties to this proceeding and the subject matter of this Agreement.

18. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Agreement may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.

19. TXU Electric Delivery warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties as of October 20, 2006, by their authorized representatives designated below.

Howard V. Fisher

Howard V. Fisher
Senior Counsel
TXU Electric Delivery

Date: 10-20-06

Jeffrey T. Pender

Jeffrey T. Pender
Attorney
Legal Division
Public Utility Commission of Texas

Date: 10-20-06