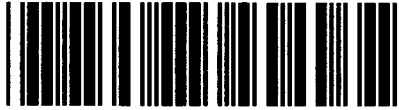




Control Number: 32307



Item Number: 6

Addendum StartPage: 0

**DOCKET NO. 32307**

<b>NOTICE OF VIOLATION BY EL PASO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC COMPANY OF PURA</b>	<b>§</b>	
<b>§ 38.005, RELATING TO ELECTRIC</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SERVICE RELIABILITY MEASURES</b>	<b>§</b>	
<b>AND P.U.C. SUBST. R. 25.52, RELATING</b>	<b>§</b>	
<b>TO RELIABILITY AND CONTINUITY</b>	<b>§</b>	
<b>OF SERVICE</b>	<b>§</b>	

RECEIVED 11:57

**ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(l)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) reached between El Paso Electric Company (EPE or the Company) and the Public Utility Commission of Texas (Commission) Staff (Commission Staff) (collectively, Parties) regarding a Notice of Violation (NOV) that was issued January 19, 2006. The NOV concerned Commission Staff's investigation into EPE's violations of PURA<sup>1</sup> § 38.005, relating to Electric Service Reliability Measures; 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 proceeding. The Agreement is unopposed and provides for a reasonable resolution to the issues in this proceeding. The Agreement is approved.

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

**I. Findings of Fact**

1. Staff reviewed the service quality reports that EPE filed in Docket Nos. 25180, 27270, 29165, and 30613 for the reporting years 2001-2004 to determine whether the Company complied with the service quality and reliability standards mandated by PURA § 38.005 and P.U.C. SUBST. R. 25.52.

---

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

6

2. 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 the Company's feeders for each of those years:

ALAMO 21

CLARDY 2

MANN 10

MILAGRO 17

VISTA 13

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

CLINT 11

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

HORIZON 10

5. 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 the Company's feeders for each of those years:

ALAMO 2

HORIZON 10

MILAGRO 15

6. 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 the Company's feeders for each of those years:

CLINT 11

SIERRA BLANCO 20

SOCORRO 10

7. The following distribution feeder 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 the Company's feeders for each of those years:

RIO GRANDE 13

8. 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 the Company's feeders during each of those years:

ALAMO 21

MANN 10

9. The following distribution feeder 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 the Company's feeders during each of those years:

CLINT 11

10. The following distribution feeder 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 the Company's feeders during each of those years:

HORIZON 10

11. The following distribution feeders with more than 10 customers sustained a SAIFI value for reporting years 2003 and 2004 that was more than 300% greater than the system average of the Company's feeders during each of those years:

ALAMO 21

HORIZON 10

12. The following distribution feeder with more than 10 customers sustained a SAIFI value for reporting years 2002, 2003, and 2004 that was more than 300% greater than the system average of the Company's feeders during each of those years:

CLINT 11

13. On January 19, 2006, Commission Staff filed the NOV relating to the alleged violations of EPE.
14. A copy of the NOV was sent to EPE via certified mail return receipt requested.
15. EPE received the NOV on January 23, 2006.
16. The NOV that was filed and received by EPE included a brief summary of the alleged violation, a statement of the amount of recommended penalties, a description of the Company'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.
17. On June 19, 2006, the Parties entered into an Agreement that resolved all issues in this docket.

## II. Conclusions of Law

1. 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.
2. EPE is an electric utility for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
3. As an electric utility, EPE 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 in compliance with PURA § 15.024 and P.U.C. PROC. R. 22.246.
5. EPE committed 14 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. EPE committed seven 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 these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement attached to this Order as Attachment 1 is approved, and the Parties shall be bound by its terms.
2. EPE shall pay an administrative penalty to the Commission in an amount totaling Twenty-Seven Thousand and No/Dollars (\$27,000.00) before the expiration of 30 calendar days following the date this Order is signed.
3. As provided in the Agreement, the Company shall file an affidavit in this docket no later than the fifth calendar day after the Company remits the payment. This affidavit shall attest to payment of the administrative penalty imposed by the Parties' Agreement and this Order.
4. The imposition of this administrative penalty and the Company's compliance with all of the terms and conditions set forth in the Agreement and this Order resolve all matters arising out of the allegations described here.
5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Neither should the entry of an order consistent with the Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.


7. 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 20th day of July 2006.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
**PAUL HUDSON, CHAIRMAN**

  
\_\_\_\_\_  
**JULIE PARSLEY, COMMISSIONER**

  
\_\_\_\_\_  
**BARRY T. SMITHERMAN, COMMISSIONER**



## DOCKET NO. 32307

<b>NOTICE OF VIOLATION BY EL PASO ELECTRIC COMPANY 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</b>	§ § § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
---	--------------------------------------	--

**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

NOW COME El Paso Electric Company (EPE or the Company) and the Staff of the Public Utility Commission of Texas (Staff) (collectively the Parties), who hereby enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves the Notice of Violation (NOV) issued in this docket regarding alleged violations of PURA § 38.005,<sup>1</sup> relating to Electric Service Reliability Measures; and P.U.C. SUBST. R. 25.52, relating to Reliability and Continuity of Service.<sup>2</sup>

In consideration of the background, recitals, mutual covenants and commitments set forth below, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby stipulate and agree as follows:

**BACKGROUND & RECITALS**

1. EPE is an electric utility for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
2. PURA § 38.005 and P.U.C. SUBST. R. 25.52 establish service quality and reliability standards that electric utilities and transmission and distribution utilities must meet.
3. Staff reviewed the service quality reports that EPE filed in Dockets 25180, 27270, 29165, and 30613 for the reporting years 2001-2004 to determine whether the Company

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

<sup>2</sup> 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.

4 8

complied with the service quality and reliability standards established by PURA § 38.005 and P.U.C. SUBST. R. 25.52.

4. The following distribution feeders with more than ten customers sustained a System Average Interruption Duration Index (SAIDI) value for reporting years 2003 and 2004 that was among the highest (worst) 10% of the Company's feeders for each of those years:

ALAMO 21	CLARDY 2	MANN 10
MILAGRO 17	VISTA 13	

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

CLINT 11

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

HORIZON 10

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

ALAMO 21	HORIZON 10	MILAGRO 15
----------	------------	------------

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

CLINT 11                      SIERRA BLANCA 20                      SOCORRO 10

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

RIO GRANDE 13

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

ALAMO 21                      MANN 10

11. The following distribution feeder with more than ten customers sustained a SAIDI value for reporting years 2002, 2003, and 2004 that was more than 300% greater than the system average of the Company's feeders during each of those years:

CLINT 11

12. The following distribution feeder with more than ten customers sustained a SAIDI value for reporting years 2001, 2002, 2003, and 2004 that was more than 300% greater than the system average of the Company's feeders during each of those years:

HORIZON 10

13. The following distribution feeders with more than ten customers sustained a SAIFI value for reporting years 2003 and 2004 that was more than 300% greater than the system average of the Company's feeders during each of those years:

ALAMO 21                      HORIZON 10

14. The following distribution feeders with more than ten customers sustained a SAIFI value for reporting years 2002, 2003, and 2004 that was more than 300% greater than the system average of the Company's feeders during each of those years:

CLINT 11

15. On January 19, 2006, Staff filed the NOV relating to the alleged violations of EPE.  
16. EPE received the NOV on January 23, 2006.  
17. EPE participated in one or more settlement discussions with Staff, the purpose of which was to reach amicable resolution of the allegations in the NOV.  
18. This Agreement resolves the allegations in the NOV.

#### **STIPULATIONS & AGREEMENTS**

1. **Jurisdiction.** EPE admits to the jurisdiction of the Public Utility Commission of Texas (the Commission) over the Parties to this proceeding and the subject matter of this Agreement and to the jurisdiction and authority of the Commission to enter a final order approving this Agreement.
2. **Receipt of NOV.** EPE received a copy of the NOV by certified US mail return receipt requested. The NOV included a brief summary of the violations alleged against the Company, a statement of the amount of recommended penalties, a discussion of the Company'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(c), and a copy of P.U.C. PROC. R. 22.246.

3. **Waiver.** Unless specifically provided for in this Agreement, EPE expressly waives any notice and procedures that might otherwise be authorized or required in this proceeding in the interest of a more timely resolution of this matter.
4. **Considerations.** The Parties desire to compromise and settle the violations alleged in the NOV in order to avoid the time, effort, and expense of litigation before the State Office of Administrative Hearings (SOAH) and the Commission and of any appeals from the Commission's final order or orders deciding this matter.
5. **Amount of Administrative Penalty.** In order to avoid the time, effort, expense and uncertainties of litigation, EPE agrees to resolve the NOV by paying an administrative penalty of Twenty-Seven Thousand and No/Dollars (\$27,000.00).
6. **Details of Payment.** EPE 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 shall reference Docket No. 32307.
7. **Proof of Payment.** No later than the fifth calendar day after the Company remits the payment, the Company shall file an affidavit in this docket attesting that payment has been timely made.
8. **Reliance.** The Parties stipulate and agree that all of the facts and matters stated in this Agreement, including those in the Background & Recitals above, are true, accurate, and correct, and may be relied upon by the Commission in resolving this matter.


9. **Limitation on Agreement.** This Agreement represents a compromise of disputed claims, and the execution of this Agreement does not admit the truth or accuracy of any such disputed claims except as set forth in this Agreement. The Parties acknowledge and 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 other forum. 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 a determination of the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
10. **Final Approval.** The Parties have entered into this Agreement in the interest and spirit of negotiation, settlement, and compromise, and therefore agree that the provisions of this Agreement shall be subject to final approval by the Commission. The Parties, moreover, agree to entry of a final order of the Commission consistent with this Agreement.
11. **Right to Rescind.** 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 its consent from this Agreement, thereby becoming released from its commitments and obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available

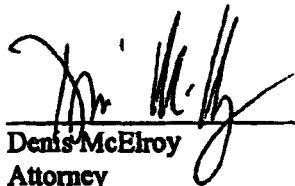
under law. Such a right to rescind must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission signs the final order acting on this Agreement. Failure to provide such notice within the specified time-period shall be deemed and considered a waiver of the right to rescind and, therefore, approval of any material changes to this Agreement made by the Commission.

12. **Resolution of Issues.** This Agreement fully and finally resolves, pursuant to the terms and conditions set forth herein, any and all claims and allegations described in the NOV. Accordingly, the Parties hereby request that the Commission approve this Agreement.
13. **Exclusive Benefit.** The Parties mutually agree that they enter into this Agreement for their exclusive benefit and the benefit of their respective lawful successors. The Parties agree that nothing in this Agreement confers, or shall be construed to confer, any right, privilege or benefit on any person or entity other than the Parties and their respective lawful successors.
14. **Place for Suit.** The Parties stipulate and agree that any suit arising from this Agreement, including but not limited to any action to enforce or interpret this Agreement, shall be brought in Travis County, Texas.
15. **Severability.** The provisions of this Agreement are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreement unenforceable, the remaining provisions shall be valid and enforceable.
16. **Entire Agreement.** This Agreement contains the entire agreement between Staff and the Company as to the matters addressed herein. Moreover, this Agreement supercedes all other written and oral exchanges or negotiations among the Parties or their representatives with regard to the subjects contained herein.

17. **Report to Commission.** This Agreement is also intended to constitute a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
18. **Authority and Multiple Counterparts.** 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. **Assurance.** EPE warrants that it has read the foregoing document carefully, knows the contents thereof, and signs the same as its free act.

**ENTERED & EXECUTED** by the Parties on this 19<sup>th</sup> day of June 2006, by and through their authorized representatives designated below.

  
\_\_\_\_\_  
Mark Strain  
Clark, Thomas & Winters, P.C.  
Attorney for El Paso Electric Company

  
\_\_\_\_\_  
Denis McElroy  
Attorney  
Legal Division  
Public Utility Commission of Texas