



Control Number: 36297



Item Number: 3

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DOCKET NO. 36297

**AGREED NOTICE OF VIOLATION
AND SETTLEMENT AGREEMENT
RELATING TO SOUTHWESTERN
PUBLIC SERVICE COMPANY'S
VIOLATION OF PURA § 38.005 AND
P.U.C. SUBST. R. 25.52, CONCERNING
RELIABILITY AND CONTINUITY OF
SERVICE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Southwestern Public Service Company (SPS) (collectively, Parties) regarding Commission Staff's investigation of SPS for violations of PURA¹ § 38.005 and P.U.C. SUBST. R. 25.52, concerning reliability and continuity of service. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all of the issues in this docket. Commission Staff recommended an administrative penalty of \$48,000. SPS agreed to pay the recommended administrative penalty. The Agreement is approved.

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

I. Findings of Fact

1. SPS is a transmission and distribution utility as defined in PURA § 31.002(19).
2. For reporting year 2005, SPS reported it had nine feeders with a system-average interruption duration index (SAIDI) value in the top 10% of worst feeders for two consecutive years, six feeders with a system-average interruption frequency index

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2008) (PURA).

(SAIFI) value in the top 10% of worst feeders for two consecutive years, nine feeders with a SAIDI value more than 300% greater than system average for two consecutive years, and four feeders with a SAIFI value more than 300% greater than the system average for two consecutive years.

3. For reporting year 2006, SPS reported its system-wide SAIDI value was 25% or more above standard. It had three feeders with a SAIDI value in the top 10% of worst feeders for two consecutive years, five feeders with a SAIFI value in the top 10% of worst feeders for two consecutive years, three feeders with a SAIDI value more than 300% greater than system average for two consecutive years, and one feeder with a SAIFI value more than 300% greater than the system average for two consecutive years.
4. On January 28, 2008, SPS was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
5. SPS fully cooperated with Commission Staff's investigation.
6. SPS acknowledges the violations detailed in this Order.
7. SPS participated in one or more settlement discussions with Commission Staff to resolve this matter.
8. On October 22, 2008, the Parties entered into the Agreement resolving the violations. Commission Staff recommended and SPS agreed to pay an administrative penalty of \$48,000.
9. The Agreement provides for a reasonable resolution of this dispute.
10. The Agreement is in the public interest.

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. SPS is a transmission and distribution utility for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
3. As a transmission and distribution utility, SPS 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. The Agreement referenced in Finding of Fact numbers 8-10 is a report of settlement to the Commission as required by P.U.C. PROC. R. 22:246(g).
5. SPS was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
6. PURA § 38.005(a) provides that "[t]he commission shall implement service quality and reliability standards relating to the delivery of electricity to retail customers by electric utilities and transmission and distribution utilities." Subsection (a) goes on to require the Commission to, by rule, "develop reliability standards, including: (1) the system-average interruption frequency index (SAIFI); (2) the system-average interruption duration index (SAIDI); (3) achievement of average response time for customer service requests or inquiries; or (4) other standards that the commission finds reasonable and appropriate."
7. Pursuant to PURA, the Commission implemented the reliability standards found in P.U.C. SUBST. R. 25.52 which requires each utility to maintain and operate its distribution system so that no distribution feeder with more than 10 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. P.U.C. SUBST. R. 25.52(f)(2)(B)

requires each utility to maintain and operate its distribution system so that no distribution feeder with more than 10 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.

8. SPS violated PURA § 38.005 and P.U.C. SUBST. R. 25.52, for reporting year 2005, when it reported it had nine feeders with a SAIDI value in the top 10% of worst feeders for two consecutive years, six feeders with a SAIFI value in the top 10% of worst feeders for two consecutive years, nine feeders with a SAIDI value more than 300% greater than system average for two consecutive years, and 4 feeders with a SAIFI value more than 300% greater than system average for two consecutive years.
9. SPS violated PURA § 38.005 and P.U.C. SUBST. R. 25.52, for reporting year 2006, when it reported it had three feeders with a SAIDI value in the top 10% of worst feeders for two consecutive years, five feeders with a SAIFI value in the top 10% of worst feeders for two consecutive years, three feeders with a SAIDI value more than 300% greater than system average, and one feeder with a SAIFI value more than 300% greater than system average.
10. P.U.C. PROC. R. 22.246(g)(1)(A),(B) and (C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
11. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

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. SPS shall pay an administrative penalty to the Commission in the amount of \$48,000. SPS shall remit payment of the full amount of the administrative penalty on or before 30 calendar days after the date this Order is signed. Payment of the administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 36297. The check shall be sent to the following address:

Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711
ATTN: Fiscal Services

3. SPS 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 service quality and reliability standards for three or more consecutive years.
4. SPS shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
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. Entry of an order consistent with the Agreement shall not be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.

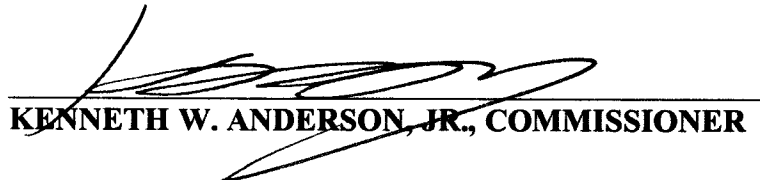
7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS on the 24th day of November 2008.

PUBLIC UTILITY COMMISSION OF TEXAS


BARRY T. SMITHERMAN, CHAIRMAN


DONNA L. NELSON, COMMISSIONER


KENNETH W. ANDERSON, JR., COMMISSIONER

DOCKET NO. 36297

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| AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO SOUTHWESTERN PUBLIC SERVICE COMPANY'S VIOLATION OF PURA § 38.005 AND P.U.C. SUBST. R. 25.52, CONCERNING RELIABILITY AND CONTINUITY OF SERVICE | § § § § § | PUBLIC UTILITY COMMISSION OF TEXAS |
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APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Staff of the Public Utility Commission of Texas (Staff) files this Application for

Approval of Settlement Agreement and would show in support as follows:

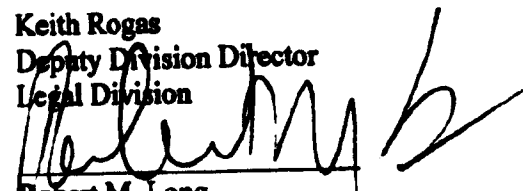
Staff of the Public Utility Commission of Texas (Staff) and Southwestern Public Service Company (SPS or Company), (together, Parties) have entered into a Settlement Agreement and Report to Commission ("Agreement"). The Agreement, attached to this motion, has been signed by representatives of both parties and includes a Proposed Order. This Agreement resolves and concludes an investigation of SPS related to the Commission's substantive rules relating to reliability and continuity of service.

WHEREFORE, Staff respectfully requests that its Application for Approval of Settlement Agreement be granted.

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division


Robert M. Long
Attorney-Legal Division
State Bar No. 12525500
(512) 936-7294
(512) 936-7268 (facsimile)

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the ^{23rd} 22nd day of October, 2008, in accordance with P.U.C. Procedural Rule 22.74.



Robert M Long

DOCKET NO. 36297

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| AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO SOUTHWESTERN PUBLIC SERVICE COMPANY'S VIOLATION OF PURA § 38.005 AND P.U.C. SUBST. R. 25.52, CONCERNING RELIABILITY AND CONTINUITY OF SERVICE | § | PUBLIC UTILITY COMMISSION OF TEXAS |
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SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Southwestern Public Service Company (SPS or Company) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violation of PURA¹ § 38.005 and P.U.C. SUBST. R. 25.52, concerning reliability and continuity of service for reporting years 2005 and 2006.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Staff recommended and SPS agrees to pay an administrative penalty of Forty Eight Thousand Dollars (\$48,000.00) for SPS's violations described in the attached Proposed Order.
3. SPS agrees to make efforts to improve the performance and reliability of all of its feeders. In particular, these efforts will focus on feeders that have violated service quality and reliability standards for three or more consecutive years.
4. Unless specifically provided for in this Agreement, SPS waives any notice and procedures that might otherwise be authorized or required in this proceeding.

¹ Public Utility Regulatory Act, TEX. UTIL CODE §§ 11.001-66.016 (Vernon 2007 & Supp. 2008) (PURA).

5. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.

6. 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 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.

7. The Parties contemplate that this Agreement will be approved pursuant to 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.


8. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.

9. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this


Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

10. The Company warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties by their authorized representatives designated below.


Southwestern Public Service Company
James M. Bagley
P.O. Box 1261
Amarillo, Texas 79105-1261

Date: 10/16/08


Michael E. Field
Director
Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 10/21/08

