

Control Number: 38135



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DOCKET NO. 38135

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

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 Public Utility Commission of Texas (Commission) Staff and Oncor Electric Delivery Company (Oncor) (collectively, Parties) regarding Commission Staff's investigation of Oncor for violation of PURA¹ § 38.005 and P.U.C. SUBST. R. 25.52, concerning reliability and continuity of service. PURA § 38.005 was amended in 2009 and all references in this Order to PURA § 38.005 are to the prior version of the statute that was in effect in 2007.² This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of \$197,000. Oncor 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. Oncor is a transmission and distribution utility as defined in PURA § 31.002(19).
2. For reporting year 2007, Oncor reported it had 65 feeders with a System Average Interruption Duration Index (SAIDI) value in the top 10% of worst feeders for two or more consecutive years, 45 feeders with a System Average Interruption Frequency Index

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA).

² Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 36, 1999 Tex. Sess. Law Serv. 2557 (Vernon), amended by Act of May 26, 2009, 81st Leg., R.S., ch. 424, § 1, 2009 Tex. Sess. Law Serv. 1017 (Vernon) (current version at TEX. UTIL. CODE ANN. § 38.005 (Vernon Supp. 2009)).

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(SAIFI) value in the top 10% of worst feeders for two or more consecutive years, 14 feeders with a SAIDI value more than 300% greater than the system average for two or more consecutive years, and three feeders with a SAIFI value more than 300% greater than the system average for two or more consecutive years.

3. On or about September 4, 2009, Oncor 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.
4. Oncor fully cooperated with Commission Staff's investigation.
5. Oncor acknowledged the violations detailed in this Order.
6. Oncor participated in one or more settlement discussions with Commission Staff to resolve this matter.
7. On March 31, 2010, the Parties entered into the Agreement resolving the violations. The Parties filed the Agreement on April 8, 2010. Commission Staff recommended, and Oncor agreed to pay, an administrative penalty of \$197,000.
8. The Agreement provides for a reasonable resolution of this dispute.
9. The Agreement is in the public interest and should be approved.

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. Oncor is a transmission and distribution utility as defined in PURA § 31.002(19) and for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
3. As a transmission and distribution utility, Oncor is required to comply with the service quality and reliability standards established by PURA § 38.005 and P.U.C. SUBST.

R. 25.52. PURA § 38.005 was amended in 2009 and all references in this Order to PURA § 38.005 are to the prior version of the statute that was in effect in 2007.

4. Oncor 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. The Parties agree that the provisions of Paragraph No. 1³ of the Settlement Agreement in *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*, Docket No. 32018, Order (Dec. 5, 2006) have been complied with, or have been waived by the Parties.

³ The provisions read as follows: "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 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."

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) requires 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 this legislative mandate, the Commission implemented the reliability standards found in P.U.C. SUBST. R. 25.52. P.U.C. SUBST. R. 25.52(f)(2)(A) 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 electric distribution system so that no distribution feeder with more than 10 customers sustains a SAIDI or SAIFI value that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.
8. Oncor violated PURA § 38.005 in effect in 2007 and P.U.C. SUBST. R. 25.52, for reporting year 2007, when it reported it had 65 feeders with a SAIDI value in the top 10% of worst feeders for two or more consecutive years, 45 feeders with a SAIFI value in the top 10% of worst feeders for two or more consecutive years, 14 feeders with a SAIDI value more than 300% greater than the system average for two or more consecutive years, and three feeders with a SAIFI value more than 300% greater than the system average for two or more consecutive years.
9. P.U.C. PROC. R. 22.246(g)(1)(A), (B), and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
10. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).

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. Oncor shall pay an administrative penalty to the Commission in the amount of \$197,000. Oncor 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. 38135. 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. Oncor shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. Oncor shall continue to 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 two or more consecutive years.
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 this Order 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 herein, are denied.

SIGNED AT AUSTIN, TEXAS on the 14th day of May 2010.

PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER

DOCKET NO. 38135

<p>AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO ONCOR ELECTRIC DELIVERY COMPANY'S VIOLATION OF PURA § 38.005 AND P.U.C. SUBST. R. 25.52, CONCERNING RELIABILITY AND CONTINUITY OF SERVICE</p>	<p>§ § § § § § § §</p>	<p>PUBLIC UTILITY COMMISSION OF TEXAS</p>
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SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Oncor Electric Delivery Company LLC (Oncor 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 year 2007. PURA § 38.005 was amended in 2009, and all references to PURA § 38.005 in this Agreement are to the prior version of the statute that was in effect in 2007.²

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. Oncor agrees to pay an administrative penalty of One Hundred and Ninety-seven Thousand Dollars (\$197,000.00) for Oncor violations described in the attached Proposed Order.

¹ Public Utility Regulatory Act, TEX. UTIL CODE §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA).


² Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 36, 1999 TEX. SESS. LAW 2557 (current version at TEX. UTIL CODE § 38.005 (Vernon Supp. 2009)).

3. Oncor 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, Oncor waives any notice and procedures that might otherwise be authorized or required in this proceeding.
5. Parties agree that the provisions of Paragraph No. 1 of the Settlement Agreement in Docket No. 32018 have been complied with, or have been waived by the Parties.
6. The Parties stipulate and agree that all the facts and matters stated in this Agreement are true, correct, and accurate and may be relied upon by the Commission in resolving this matter.
7. 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.
8. 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.
9. 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.

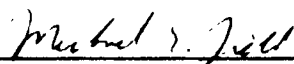
10. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.
11. Each person executing this Agreement represents that he or she has been authorized to sign on behalf 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.
12. 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.



Don Cleverger
Senior Vice President External Affairs
Oncor Electric Delivery Company LLC
1601 Bryan Street
Suite 22-020B
Dallas, TX 75201

Date: 4/6/10



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

Date: 4/6/10