

Control Number: 38454



Item Number: 3

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AGREED NOTICE OF VIOLATION AND §
SETTLEMENT AGREEMENT §
RELATING TO EL PASO ELECTRIC §
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
CLERK

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 El Paso Electric Company (El Paso) (collectively, Parties) regarding Commission Staff's investigation of El Paso for violation 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 \$38,000. El Paso 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. El Paso is an electric utility as defined in PURA § 31.002(6).
2. For reporting year 2008, El Paso reported its system-wide System Average Interruption Frequency Index (SAIFI) value exceeded the standard by more than 30% and its system-wide System Average Interruption Duration Index (SAIDI) value exceeded the standard by more than 30%. El Paso had two feeders with a SAIDI value in the top 10% of worst feeders for two consecutive years and four feeders with a SAIFI value in the top 10% of worst feeders for two consecutive years.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11 001-66.016 (Vernon 2007 & Supp. 2009) (PURA).

3. On or about May 4, 2010, El Paso was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about the right to a hearing, and an opportunity to explain its activities.
4. El Paso fully cooperated with Commission Staff's investigation.
5. El Paso acknowledged the violations detailed in this Order.
6. El Paso participated in one or more settlement discussions with Commission Staff to resolve this matter.
7. On July 14, 2010, the Parties entered into the Agreement resolving the violations. Commission Staff recommended and El Paso agreed to pay an administrative penalty of \$38,000.
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. El Paso is an electric utility for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
3. As an electric utility, El Paso 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 is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).

5. El Paso was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about the 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: (a) the system-average interruption frequency index (SAIFI); (b) the system-average interruption duration index (SAIDI); (c) achievement of average response time for customer service requests or inquiries; or (d) 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)(1)(A) and (B), which require each utility to maintain and operate its electric distribution system so that the SAIDI and SAIFI values do not exceed the system-wide standard by more than five percent. During 2008, P.U.C. SUBST. R. 25.52(f)(2)(A) required 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.
8. El Paso violated PURA § 38.005 and P.U.C. SUBST. R. 25.52 in effect during 2008 for reporting year 2008. El Paso reported its system-wide SAIFI value exceeded the standard by more than 30% and its system-wide SAIDI value exceeded the standard by more than 30%. El Paso had two feeders with a SAIDI value in the top 10% of worst feeders for two consecutive years and four feeders with a SAIFI value in the top 10% of worst feeders for two 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 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. El Paso shall pay an administrative penalty to the Commission in the amount of \$38,000. El Paso 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. 38454. The check shall be sent to the following address:

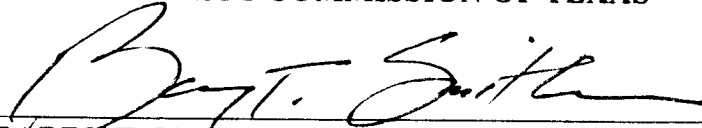
Public Utility Commission of Texas,
P.O. Box 13326,
Austin, Texas 78711
ATTN: Fiscal Services
3. El Paso shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. El Paso shall make efforts to improve the performance and reliability of all of its feeders. In particular, these efforts shall focus on feeders that have violated service quality and reliability standards for 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.

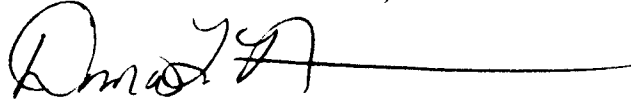
7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

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

PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER

DOCKET NO. 38454

<p>AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO EL PASO ELECTRIC 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 El Paso Electric Company (El Paso 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 2008.

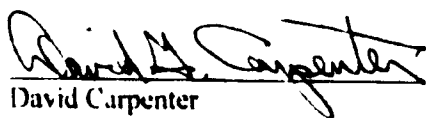
The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommended, and El Paso agrees to pay, an administrative penalty of Thirty Eight Thousand Dollars (\$38,000.00) for El Paso violations described in the attached Proposed Order.
3. El Paso 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, El Paso 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. 2009) (PURA).

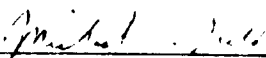
5. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
6. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested 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.



David Carpenter
El Paso Electric Company
P.O. Box 982
El Paso, Texas 79960

Date: 7/12/2010



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

Date: 7/12/2010

