



Control Number: 38891



Item Number: 4

Addendum StartPage: 0

**DOCKET NO. 38891**

<b>AGREED NOTICE OF VIOLATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AND SETTLEMENT AGREEMENT</b>	<b>§</b>	
<b>RELATING TO ENTERGY TEXAS,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>INC.'S VIOLATION OF PURA § 38.005</b>	<b>§</b>	
<b>AND P.U.C. SUBST. R. 25.52,</b>	<b>§</b>	
<b>CONCERNING RELIABILITY AND</b>	<b>§</b>	
<b>CONTINUITY OF SERVICE</b>	<b>§</b>	

2009 SEP 17 10 59 AM '09

**ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(l)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff and Entergy Texas, Inc. (ETI) (collectively, Parties) regarding Commission Staff's investigation of ETI for violation of PURA<sup>1</sup> § 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 to PURA § 38.005 in this Agreement are to the prior version of the statute that was in effect in 2008.<sup>2</sup> 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 \$71,000. ETI 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. ETI is a transmission and distribution utility as defined by PURA § 31.002(19).

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

<sup>2</sup> 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, 76<sup>th</sup> Leg., R.S., ch. S 36, 1999 Tex. Sess. Law Serv. 2557 (amended 1999) (current version at TEX. UTIL. CODE ANN. § 38.005 (Vernon Supp. 2009)).

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2. For reporting year 2008, ETI reported that it had 11 feeders with a System Average Interruption Duration Index (SAIDI) value in the top 10% worst feeders for two or more consecutive years, 11 feeders with a System Average Interruption Frequency Index (SAIFI) values in the top 10% of worst feeders for two or more consecutive years and one feeder with a SAIDI value more than 300% greater than the system average for two or more consecutive years.
3. On or about July 30, 2010, ETI 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. ETI fully cooperated with Commission Staff's investigation.
5. ETI acknowledges the violations detailed in this Order.
6. ETI participated in one or more settlement discussions with Commission Staff to resolve this matter.
7. On November 10, 2010, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and ETI agreed to pay, an administrative penalty of \$71,000.
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. ETI is a transmission and distribution utility for purposes of 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, ETI 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. ETI 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. 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."
6. Pursuant to this legislative mandate, the Commission implemented the reliability standards found in P.U.C. SUBST. R. 25.52. 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. Also, P.U.C. SUBST. R. 25.52(f)(2)(B) 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 more than 300% greater than the system average for two consecutive reporting years.

7. ETI violated PURA § 38.005 and the requirements of P.U.C. SUBST. R. 25.52 in effect during 2008, for reporting year 2008: For reporting year 2008, ETI reported it had 11 feeders with a SAIDI value in the top 10% worst feeders for two or more consecutive years, 11 feeders with a SAIFI value in the top 10% worst feeders for two or more consecutive years and one feeder with a SAIDI value more than 300% greater than system average for two or more consecutive years.
8. 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.
9. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
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. ETI shall pay an administrative penalty to the Commission in the amount of \$71,000. ETI 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. 38891.

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. ETI shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. ETI 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 16<sup>th</sup> day of December 2010.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**BARRY T. SMITHERMAN, CHAIRMAN**

  
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**DONNA L. NELSON, COMMISSIONER**

  
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**KENNETH W. ANDERSON, JR., COMMISSIONER**

DOCKET NO. 38891

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

Staff of the Public Utility Commission of Texas (Commission) and Entergy Texas, Inc. (ETI 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 PURA<sup>1</sup> § 38.005 and P.U.C. SUBST. R. 25.52, concerning reliability and continuity of service for reporting year 2008. 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 2008.<sup>2</sup>

**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 ETI agrees to pay, an administrative penalty of Seventy One Thousand Dollars (\$71,000.00) for ETI violations described in the attached Proposed Order.
3. ETI 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.

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


<sup>2</sup> Act of May 27, 1999, 76<sup>th</sup> Leg. R.S., ch S 36, 1999 Tex Sess Law 2557(amended 1999)(current version at TEX. UTIL CODE §§ 38.005 (Vernon Supp. 2009).



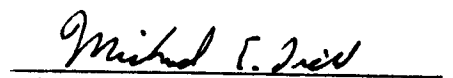
4. This Agreement resolves all claims related to ETI's obligations pursuant to PURA § 38.005 and P.U.C. SUBST. R. 25.52 concerning reliability and continuity of service for reporting year 2008.
5. Unless specifically provided for in this Agreement, ETI waives any notice and procedures that might otherwise be authorized or required in this proceeding.
6. 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.
7. 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.
8. 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.
9. This Agreement is the final and entire agreement between the Parties regarding the alleged violations related to reliability and continuity of service for the year 2008 and supersedes all other communications among the Parties or their representatives regarding its terms.

10. 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.
11. 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.

  
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Jack T. Blakley  
Vice President, Regulatory Affairs  
Entergy Texas, Inc.  
919 Congress Avenue, Suite 840  
Austin, Texas 78701

Date: November 10, 2010

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

Date: 11/10/2010