

Control Number: 39173



Item Number: 4

Addendum StartPage: 0

DOCKET NO. 39173

**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**

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PUBLIC UTILITY COMMISSION
FILING CLERK**

ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and El Paso Electric Company (EPE) (together, Parties) regarding Commission Staff's investigation of EPE 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 issues in this docket. Commission Staff recommended an administrative penalty of \$27,000. EPE 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. EPE is an electric utility as defined in PURA § 31.002(6).
2. For reporting year 2009, EPE reported it had a violation of system-wide System Average Interruption Duration Index (SAIDI) value more than 30% above standard, a system-wide SAIDI annual value more than 30% above standard for two or more years in a row, a system-wide System Average Interruption Frequency Index (SAIFI) value more than 15% above standard, and a system-wide SAIFI value 15% above standard for two or more years in a row.

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

3. On or about December 7, 2010, EPE 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. EPE fully cooperated with Commission Staff's investigation.
5. EPE acknowledges the violations detailed in this Order.
6. EPE participated in one or more settlement discussions with Commission Staff to resolve this matter.
7. On February 15, 2011, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and EPE agreed to pay, an administrative penalty of \$27,000.00.
8. The Agreement provides for a reasonable resolution of this dispute.
9. 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. EPE is a retail electric provider (REP) for purposes of PURA § 38.005 and P.U.C. SUBST. R. 25.52.
3. As a REP, 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. EPE 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) 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."
6. 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(0(1)(A)(B) requires each utility to maintain and operate its electric distribution system so that its SAIFI and SAIDI value shall not exceed its system-wide SAIFI and SAIDI standard by more than 5%.
 7. EPE violated PURA § 38.005 and the requirements of P.U.C. SUBST. R. 25.52 for reporting year 2009. EPE reported it had a violation of system-side SAIDI value more than 30% above standard, a system-wide SAIDI annual value more than 30% above standard for two or more years in a row, a system-wide SAIFI value more than 15% above standard, and a system-wide SAIFI value 15% above standard for two or more years in a row.
 8. 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.
 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. EPE shall pay an administrative penalty to the Commission in the amount of \$27,000.00. EPE 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. 39173. The check shall be sent to the following address:

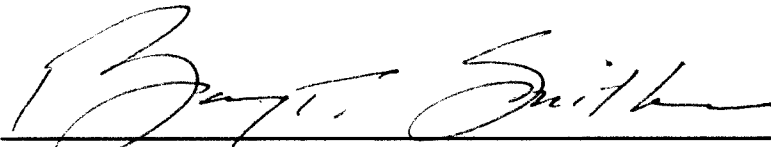
Public Utility Commission of Texas
P.O. Box 13326,
Austin, Texas 78711
ATTN: Fiscal Services

3. EPE shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. EPE agrees to make efforts to improve the performance and reliability of all of its feeders. In particular, those efforts will focus on feeders that have violated service quality and reliability standards for three or more consecutive years and/or maintaining the system-wide standards required by P.U.C. SUBST. R. 25.52 (f)(1)(A) and (B).
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 binding precedent as to the appropriateness of any principle that may underlie the Agreement.

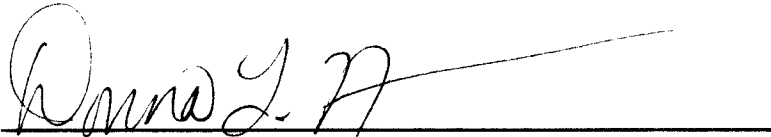
7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 8th day of April 2011.

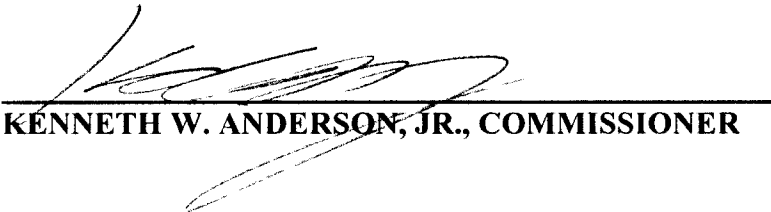
PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER

DOCKET NO. 39173

<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 (EPE 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 2009.

The Parties agree as follows:

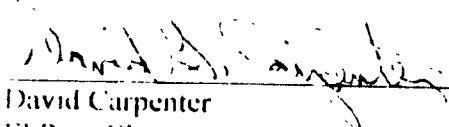
1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommended, and EPE agrees to pay, an administrative penalty of Twenty Seven Thousand Dollars (\$27,000.00) for EPE's violations described in the attached Proposed Order.
3. EPE agrees to make efforts to improve the performance and reliability of all of its feeders. In particular, those efforts will focus on feeders that have violated service quality and reliability standards for three or more consecutive years and/or maintaining the system-wide standards required by P.U.C. SUBST. R. 25.52 (f)(1)(A) and (B).

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

4. This Agreement resolves all claims related to EPE's obligations pursuant to PURA § 38.005 and P.U.C. SUBST. R. 25.52 concerning reliability and continuity of service for reporting year 2009.
5. Unless specifically provided for in this Agreement, EPE 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 2009 and supersedes all other communications among the Parties or their representatives regarding its terms.

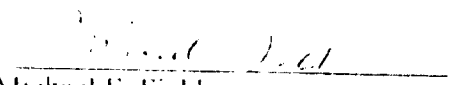
10. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same 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.



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

Date: 2/11/2011



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

Date: 2/11/2011