



Control Number: 39763



Item Number: 5

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DOCKET NO. 39763

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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PUBLIC UTILITY COMMISSION
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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 Southwestern Public Service Company (SPS) (together, Parties) regarding Commission Staff's investigation of SPS for violation of PURA¹ § 38.005 and P.U.C. SUBST. R. 25.52, concerning reliability and continuity of service. Commission Staff recommended an administrative penalty of \$45,000, which SPS agreed to pay. The Agreement is approved.

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

I. Findings of Fact

1. SPS is an electric utility as defined in PURA § 31.002(6).
2. For reporting year 2010, SPS reported its annual System Average Interruption Duration Index (SAIDI) value exceeded the system-wide standard by more than 30%; its annual SAIDI value was at least 30% above the system-wide standard for two or more years in a row; its annual System Average Interruption Frequency (SAIFI) value was more than 5% above the system-wide standard; and its system-wide SAIFI value was more than 5% above the standard for two or more years in a row. SPS also reported "per feeder" violations having SAIFI values more than 300% greater than the system average for two consecutive years for three single feeders in violation of the rule for the first year.

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

3. On or about June 30, 2011, SPS 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. SPS fully cooperated with Commission Staff's investigation.
5. SPS acknowledges the violations detailed in this Order.
6. SPS participated in one or more settlement discussions with Commission Staff to resolve this matter.
7. On September 13, 2011, the Parties entered into the Agreement resolving the violations Commission Staff recommended, and SPS agreed to pay, an administrative penalty of \$45,000.
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. SPS is an electric utility for purposes of PURA § 31.002(6) and 38.005 as well as P.U.C. SUBST. R. 25.52.
3. As an electric 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. SPS 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.
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(f)(1)(A) and (B) and P.U.C. SUBST. R. 25.52(f)(2). P.U.C. SUBST. R. 25.52(f)(1)(A) and (B) require each utility to maintain and operate its electric distribution system so that its SAIDI and SAIFI standards do not exceed the utility's system-wide SAIFI and SAIDI standards by more than 5%. P.U.C. SUBST. R. 25.52(f)(2) requires each utility to maintain and operate its electric distribution system so that no distribution feeder with ten or more 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.
 7. SPS violated PURA § 38.005 and the requirements of P.U.C. SUBST. R. 25.52 for reporting year 2010. For reporting year 2010, SPS reported its annual SAIDI value exceeded the system-wide standard by more than 30%; its annual SAIDI value was at least 30% above the system-wide standard for two or more years in a row; its annual SAIFI value was more than 5% above the system-wide standard; and its system-wide SAIFI value was more than 5% above the standard for two or more years in a row. SPS reported "per feeder" violations having a SAIDI value more than 300% greater than the system average for two consecutive years for two single feeders in violation of the rule for the first year, four single feeders in violation of the rule two years in a row, and one single feeder in violation of the rule four years in a row. SPS also reported "per feeder" violations having SAIDI value more than 300% greater than the system average for two consecutive years for two single feeders in violation of the rule for the first year, four single feeders in violation of the rule two years in a row, and one single feeder in violation of the rule four years in a row. SPS also reported "per feeder" violations having SAIFI values more than 300% greater than the system average for two consecutive years for three single feeders in violation of the rule for the first year.
 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:

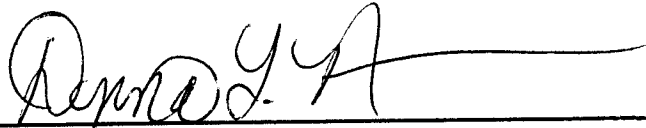
1. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. SPS shall pay an administrative penalty to the Commission in an amount of \$45,000. SPS shall remit payment of the full amount of the administrative penalty on or before 30 calendar 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. 39763. 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 file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. SPS agrees to make efforts to improve the performance and reliability of all of its feeders. In particular, those efforts shall focus on feeders that have violated service quality and reliability standards for two 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) and P.U.C. SUBST. R. 25.52(f)(2).
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 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 the 20th day of October 2011.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER

DOCKET NO. 39763

<p>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</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 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 year 2010.

The Parties agree as follows:

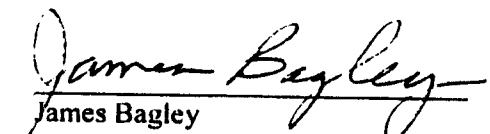
1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommended, and SPS agrees to pay, an administrative penalty of Forty Five Thousand Dollars (\$45,000) for SPS's violations described in the attached Proposed Order.
3. SPS agrees to make efforts to improve the performance and reliability of all of its feeders. In particular, 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).

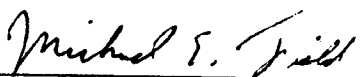
4. This Agreement resolves all claims related to SPS's obligations pursuant to PURA § 38.005 and P.U.C. SUBST. R. 25.52 concerning reliability and continuity of service for reporting year 2010.
5. Unless specifically provided for in this Agreement, SPS waives any notice and procedures that might otherwise 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 2010 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.


James Bagley
Southwestern Public Service Company
601 South Tyler, Suite 2405
Amarillo, Texas 79101

Date: 9/6/2011


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

Date: 9/7/2011