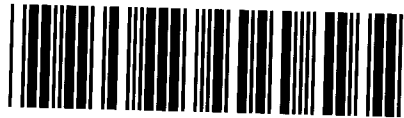


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DOCKET NO. 44853

COMPLAINT OF KENNETH M JASINSKI §  
UNDER PURA § 38.002(1) AGAINST ONCOR §  
ELECTRIC DELIVERY COMPANY LLC §

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**COMPLAINANT'S MOTION TO FILE PUBLIC INTEREST  
REASONS FOR MODIFYING ONCOR'S RULE**

**TO THE HONORABLE STEPHANIE FRAZZELL, ADMINISTRATIVE LAW JUDGE:**

Complainant *pro se*, for himself and for the public interest, respectfully submits this motion to file the numerous public interest reasons why the Commission should act under the Public Utility Regulatory Act of Texas (PURA) §§ 38.002(1) and 38.003(c)(2) to modify, in the manner requested in the Complaint, the Oncor Electric Delivery Company LLC ("Oncor") vegetation management rule or practice known in this contested case as Oncor's New Clearance Rule, defined in Complaint ¶ 36. Complainant believes that a concise presentation of these reasons, which have been either stated or suggested by the pleadings submitted to date in this case, will facilitate a sound understanding of and a prudent decision on the Complaint herein.

**INTRODUCTION**

The legislature's purpose in enacting PURA Subtitle B. Electric Utilities is "to protect the public interest inherent in the rates and services of electric utilities" (PURA § 31.001), which includes Oncor (PURA § 31.002(6)). It is axiomatic that Oncor must furnish electric delivery service that is safe, adequate, efficient, and reasonable (PURA § 38.001), and that the Commission has the general power to regulate and supervise Oncor's business (PURA § 14.001), which includes the power, on its own motion or on complaint and after reasonable notice and hearing, to adopt rules or practices Oncor must follow in furnishing a service. PURA § 38.002(1).

This case concerns the complaint that a service provided by Oncor utilizing Oncor's New

Clearance Rule is unreasonable **as applied to side-trimming** certain trees a minimum of ten feet clearance distance (without a maximum) from Oncor's primary electric lines (conductors). Oncor's New Clearance Rule is not otherwise challenged and no damages are sought in this proceeding.

The Complaint alleges essentially that Oncor's New Clearance Rule is unreasonable under PURA §§ 38.001 and 38.004, and the "Good Utility Practice" provision of Oncor's filed tariff (Section 3.2) **as applied to side-trimming** Complainant's live oak tree (the characteristics of which tree are stated in Complaint ¶ 27). Complainant contends essentially that the **elimination** of Oncor's prior minimum of seven to ten feet rule or practice applicable under Oncor's Former Clearance Rule (defined in Complaint ¶ 22), by increasing under the New Clearance Rule the minimum clearance distance for **side-trimming** to ten feet (over 42%), is excessive and unnecessary for Complainant's type of tree. It is also alleged that the New Clearance Rule as applied does not comply with PURA, National Electric Safety Code (NESC) Section 218.A.1, or "Good Utility Practice" as defined by the Commission at 16 TAC 25.5 (56).

With respect to Oncor's New Clearance Rule, the Complaint requests a Commission order grandfathering Oncor's Former Clearance Rule solely with respect to **side-trimming** Complainant's type of tree. For all other types of trees and for all trimming other than **side-trimming**, therefore, Oncor's New Clearance Rule, as filed, would continue to be Oncor's applicable vegetation management rule or practice. Thus, all Complainant requests is that Oncor properly apply its Former Clearance Rule when it **side-trims** a tree like Complainant's, which is alleged to be non-hazardous and non-interfering with respect to Oncor's nearest primary electric line.

It is with this background that Complainant offers the following public interest reasons for the said limited grandfathering of Oncor's Former Clearance Rule. It is submitted that in this

proceeding, where Oncor has provided no factual support for its elimination of the seven foot clearance possibility, public policy reasons should weigh heavily on the Commission's decision.

#### PUBLIC INTEREST REASONS FOR GRANDFATHERING

1. It is a "Good Utility Practice" to **side-trim** non-hazardous, non-interfering trees a distance of a minimum of seven to ten feet, rather than always a minimum of ten feet, from a primary electric line. Good utility practice requires that Oncor act reasonably based on the specific facts and circumstances applicable at the time. By distinguishing between **side-trimming** and directly-under (or directly-over) tree trimming, Oncor will be less prone to excessively and unnecessarily trim trees, to the public's benefit.
2. Oncor operated under its Former Clearance Rule, so it is not unreasonable or contrary to the public interest to grandfather its use to the **side-trimming** scenario requested by the Complainant. Applied correctly, Oncor's Former Clearance Rule was a reasonable rule, so its continued use in limited circumstances would also be reasonable. The public interest is served by encouraging regulated utilities to serve the best interests of its customers. There is no reason in the record of this proceeding warranting elimination of Oncor's Former Clearance Rule, but there is every reason from a public policy standpoint to require its continued, limited use for certain **side-trimming** only. Among other things, it is good customer service.
3. The grandfathering requested **for side-trimming only** is consistent with Oncor's tariff. Oncor's Former Clearance Rule did not violate its tariff, so its continued, limited use as requested would not be a violation. Rather, such limited use would honor the Good Utility Practice obligation in the tariff.
4. Oncor has an adequate space goal for its tree clearance rules or practices. That goal would be served by the limited **side-trimming** use of Oncor's Former Clearance Rule to certain trees. Applied correctly, Oncor's former seven to ten feet clearance distance met its adequate space goal, so continued use of that distance, especially for **side-trimming** where interference with primary lines is not as problematic, would also meet that goal.
5. There is no evidence that the use of the seven to ten feet clearance distance for **side-trimming** under Oncor's Former Clearance Rule ever adversely affected the reliability of Oncor's electric service. So, the public interest in reliable service would be served by the

continued, limited use of that seven to ten feet range for **side-trimming** non-hazardous, non-interfering trees. There would be no diminution of reliability and the affected customer would be happy. Achieving that dual result is good public policy.

6. The use of Oncor's Former Clearance Rule for **side-trimming** only qualified trees retains Oncor's flexibility in meeting its vegetation management goal. Oncor would still decide whether a tree that qualifies for the seven to ten feet clearance range needs to be **side-trimmed** more than the minimum seven feet from a primary line, using NESC Section 218.A.1 factors properly and Good Utility Practice.
7. The limited grandfathering for **side-trimming** would not violate any law, and would be consistent with the public interest because such grandfathering would be in compliance with PURA § 38.004 and 16 TAC § 25.101(d), especially the latter rule's mandate that Oncor shall maintain its lines "in such manner to best accommodate the public". What better way is there to accommodate the public regarding line vegetation maintenance than by having a safe, reliable and accommodating **side-trimming** clearance practice?
8. The grandfathering relief requested only for **side-trimming** certain trees does not unreasonably constrain Oncor because Oncor would retain its statutory right under PURA § 38.003 (c)(1) to supersede the grandfathered rule, assuming Oncor has at that time a valid basis for doing so.
9. There would be no "parade of horrors" facing Oncor as a result of the requested grandfathering of the Former Clearance Rule for qualified **side-trimming** because few trees would actually be involved, Oncor's arborists are already trained to discriminate amongst trees and correctly apply NESC Section 218.A.1 factors, Oncor's arborists are already paid to do that job, and the less **side-trimming** performed would actually save Oncor and ratepayers money. In contrast, Oncor's New Clearance Rule is not cost effective if it causes excessive and unnecessary side-trimming costs to be incurred. Oncor has not produced any evidence that its Former Clearance Rule was not cost effective.
10. The Commission's tree policy (stated at Complaint ¶ 28) would be promoted by the requested limited grandfathering of Oncor's Former Clearance Rule, and the public interest in protecting and managing trees to maintain their health and prevent problems would be served. Finally, a customer's private property rights would also be protected by the rule modification sought by the Complaint in this proceeding.

## CONCLUSION


Based on these public interest reasons for the limited grandfathering relief requested, Oncor's New Clearance Rule should be modified as requested. **Side-trimming** non-hazardous, non-interfering trees a minimum of seven to ten feet, rather than Oncor's inflexible minimum of ten feet, furthers Texas public policy more than Oncor's New Clearance Rule ever would.

Oncor or Commission Staff may disagree with the reasons expressed herein, but such disagreement could only raise issues for a hearing and could never be dispositive of this case by themselves. Finally, Complainant submits that given the aforesaid public policy reasons for the limited grandfathering of Oncor's Former Clearance Rule, Oncor's New Clearance Rule should be confirmed by the Commission only if it finds Oncor has provided credible evidence that Oncor's New Clearance Rule **applied to side-trimming** non-hazardous, non-interfering trees promotes a substantial public interest.

WHEREFORE, Complainant requests that this motion to file public interest reasons for modifying Oncor's tree-trimming rule or practice **as applied to side-trimming** be granted.

Dated: October 8, 2015

Respectfully submitted,

  
Kenneth M. Jasinski, *pro se*  
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Dallas, Texas 75205  
215-559-0643

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on all parties of record in Docket No. 44853 on this 8<sup>th</sup> day of October, 2015 by first class United States mail, postage prepaid, in accordance with 16 TAC § 22.74.

  
Kenneth M. Jasinski