

There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Eckhoff has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Wednesday, September 4, 2002 at 1:30 p.m., in the Commissioners' Hearing Room.

Comments on the proposed repeal, new section, and amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should be filed in Project Number 25515.

In addition to comments on the proposed rules, the commission requests comments on the following questions.

1. Should the commission require or encourage the use of single-pole structures in all new transmission lines? Please include a discussion of the costs and benefits of using single-pole structures.
2. Should the commission encourage the use of alternate technologies in lieu of transmission line construction? Please include specific language, if any, that should be added to the proposed rules.
3. What, if any, additional provisions should be added to the proposed rules to ensure the state's renewable mandates are met?

In addition to the repeal, new section, and amendments to its Substantive Rules, the commission is proposing to amend its form for the reporting of transmission construction activities under §25.83 and its application for certification of transmission facilities under §25.101. The commission is also requesting comments concerning the amendments to the form and application. Copies of the proposed form and application can be obtained from the commission's Central Records, the commission's Interchange, and the commission's website (www.puc.state.tx.us) under Project Number 25515.

The amendment to §25.83 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.003 which grants the commission the authority to require a public utility to report to the commission information relating to the utility and to establish the form, time and frequency of the reports.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.003 and §§37.051-37.057.

§25.83. Transmission Construction Reports.

- (a) **General.** Each electric utility constructing a facility that requires reporting to the commission under §25.101 of this title (relating to Certification Criteria) shall file the reports on the commission-prescribed forms. The commission may require additional facts or information other than those required in commission forms or this section. Nothing in this section should be construed as a limitation of the commission's authority as set forth in the Public Utility Regulatory Act. All reports required in this section shall be filed in a project established by the commission. ~~Each electric utility constructing a~~

~~facility requiring reporting to the commission under §25.101 of this title (relating to Certification Criteria) shall report to the commission on the commission prescribed preliminary construction report form prior to the commencement of construction.~~

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) **Construction progress report** — A recurring report filed on the commission-prescribed form that contains updated information initially reported in the pre-construction reports. These reports shall be filed for the calendar quarters 15 days after the end of the quarter. Construction progress reports shall be due January 15, April 15, July 15, and October 15 of each year. The initial quarterly construction progress report shall be due on April 15, 2003 for the first quarter of 2003, and shall include information reported in previous monthly construction progress reports.

(2) **Pre-construction report** — Provides pertinent information for all projects that require a certificate of convenience and necessity (CCN) and all transmission related construction not requiring a CCN costing \$250,000 or more. The pre-construction report shall be filed on the commission prescribed form.

- (c) **Reporting of projects that require a certificate.** The following information is required to be reported for projects that require a CCN under §25.101(b)(3) of this title.
- (1) **Pre-construction report.** A pre-construction report shall be filed no later than one month following the filing of a CCN application.
 - (2) **Construction progress report.** Project information shall be updated in the next scheduled quarterly construction progress report following the filing of a pre-construction report and in all subsequent construction progress reports until the final project costs have been reported.
- (d) **Reporting of projects not requiring a certificate.** The following information is required to be reported for projects that do not require a CCN under §25.101(c)(5) of this title.
- (1) **Pre-construction report.** A pre-construction report shall be filed no later than 45 days before construction begins.
 - (2) **Construction progress report.** Project information shall be updated in the next scheduled quarterly construction progress report following the filing of a pre-construction report and in all subsequent construction progress reports until the final project costs have been reported.

- (3) **Consent.** As required by §25.101(c)(5) of this title, copies of the prior written consent of landowners whose property is crossed by transmission facilities' projects shall be filed with the pre-construction report.
- (4) **Notice.** Direct mail notice shall be provided at least 45 days prior to the start of construction of the facilities. Notice is required to all utilities whose certificated service area is crossed by the facilities unless the facilities are being constructed to serve a utility that is singly certificated to the area where the facilities are to be constructed. For projects that require new or additional rights-of-way, direct mail notice is required to all landowners of property within 500 feet of the centerline of the proposed project as identified on the current county tax rolls. In addition, direct mail notice is required to parks and recreation areas within 1,000 feet, and airports within 10,000 feet, of the centerline of the proposed project. The direct mail notice shall include a description of the activities and contact information for both the utility and the commission.
- (A) Proof of notice shall be established by an affidavit affirming that direct mail notice was sent to each required entity. The affidavit affirming notice shall be filed with the pre-construction report. Construction shall not begin until such affidavit has been received by the commission.
- (B) Upon the filing of proof of notice as described in subparagraph (A) of this paragraph, the lack of actual notice to any individual landowner will not, in and of itself, support a finding that the requirements of this

paragraph have not been satisfied. In the event that the utility finds that any landowner has not been notified, the utility shall immediately provide notice in the same form described in subparagraph (A) of this paragraph and shall immediately notify the commission that such supplemental notice has been provided. Construction shall not commence until all issues related to notice have been resolved.

- (e) **Reporting requirements for emergency projects.** The repair or reconstruction of a transmission facility due to emergency situations shall proceed without delay or prior approval of the commission. When emergency repairs have been performed and power has been restored, the affected utility shall file a report, within 30 days, describing the work performed and the estimated associated costs. Final reports detailing associated costs shall be filed within 180 days after completion of the repair or reconstruction. The report shall be filed in a project established by the commission.

The repeal of §25.101 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.003 and §§37.051-37.057.

§25.101. Certification Criteria (Repeal)

New §25.101 and the amendment to §25.102 are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §37.056 which grants the commission authority to grant applications for certificates of convenience and necessity.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.003 and §§37.051-37.057.

§25.101. Certification Criteria.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

- (1) **Construction and/or extension** — Shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way shall not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction and/or extension is necessary for the service, accommodation, convenience, or safety of the public.

- (2) **Directly affected land** — Land with an easement or other property interest that would be obtained over all or any portion of it, or land that contains a habitable structure that would be within 500 feet of the proposed facility.
 - (3) **Generating unit** — Any electric generating facility. This section does not apply to any generating unit that is less than ten megawatts and is built for experimental purposes only, and not for purposes of commercial operation.
 - (4) **Habitable structures** — Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.
 - (5) **Prudent avoidance** — The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.
- (b) **Certificates of convenience and necessity for new service areas and facilities.**
- Except for certificates granted under subsection (e) of this section, the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the

construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission shall render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

- (1) **Change in service area.** Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated.
 - (A) Uncontested applications: An application for a certificate under this paragraph shall be approved administratively within 80 days from the date of filing a complete application if:
 - (i) no motion to intervene has been filed or the application is uncontested;
 - (ii) all owners of land that is affected by the change in service area and all customers in the service area being changed have been given direct mail notice of the application; and
 - (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

- (B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions shall be approved administratively within 45 days of the filing of the application provided that:
- (i) all utilities whose certificated service area is affected agree to the change;
 - (ii) all customers within the affected area have given prior consent; and
 - (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.
- (2) **New generating unit.** A new electric generating unit constructed, owned, or operated by a bundled electric utility.
- (3) **New electric transmission line.** All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports).
- (A) **Need:** In determining the need for a proposed transmission line, the commission shall consider the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate

robust wholesale competition. The commission shall give great weight to:

- (i) the recommendation of an organization that meets the requirements of PURA §39.151; and/or
 - (ii) written documentation that the proposed facility is needed for the purpose of interconnecting a new transmission service customer.
- (B) Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, shall be routed to the extent reasonable to moderate the impact on the affected community and owners of directly affected land unless grid reliability and security dictate otherwise. The following factors shall be considered unless a route is agreed to by the utility and the landowners whose property is crossed by the proposed line, and otherwise conforms to the criteria in PURA §37.056(c):
- (i) whether the alternate routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
 - (ii) whether the alternate routes parallel existing compatible rights-of-way;

- (iii) whether the alternate routes parallel property lines or other natural or cultural features; and
 - (iv) whether the alternate routes conform with the policy of prudent avoidance.
- (C) Uncontested transmission lines: An application for a certificate for a transmission line shall be approved administratively within 80 days from the date of filing a complete application if:
 - (i) no motion to intervene has been filed or the application is uncontested;
 - (ii) the project has been recommended by an independent organization pursuant to PURA §39.151, is located in a power region with an organization that qualifies as an independent organization under PURA §39.151, and is the type of transmission project a PURA §39.151 organization considers and approves; and
 - (iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.
- (D) Projects deemed critical to reliability. Applications for transmission lines which have been formally designated by a PURA §39.151

organization as critical to the reliability of the system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.

(c) **Projects or activities not requiring a certificate.** A certificate, or certificate amendment, is not required for the following:

- (1) A contiguous extension of those facilities described in PURA §37.052;
- (2) A new electric high voltage switching station, or substation;
- (3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies shall proceed without delay or prior approval of the commission and shall be reported to the commission in accordance with §25.83 of this title.
- (4) The construction or upgrading of distribution facilities within the electric utility's service area.
- (5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs

shall be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required.

Routine activities are specifically noted as follows:

- (A) The modification or extension of an existing transmission line solely to provide service to a substation or metering point provided that:
 - (i) an extension to a substation or metering point does not exceed one mile; and
 - (ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

- (B) The rebuilding, replacement, and/or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or reconductoring of an existing transmission facility, provided that:
 - (i) no additional right-of-way is required; or
 - (ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.

- (C) The installation of an additional circuit not previously certificated provided that:
 - (i) the additional circuit is not greater than 230 kV; and

- (ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.
- (D) The relocation of all or part of an existing transmission facility due to a request for relocation provided that:
 - (i) the relocation is to be done at the expense of the requesting party; and
 - (ii) the relocation is solely on a right-of-way provided by the requesting party.
- (E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.
- (F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including but not limited to highway transportation, airport construction, public safety, or air and water quality, provided that:
 - (i) all landowners of property crossed by the electric facilities have given prior written consent; and
 - (ii) the relocation, alteration, or reconstruction is responsive to the governmental request.

- (d) **Standards of construction and operation.** In determining standard practice, the commission shall be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.
- (1) The standards of construction shall apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.
 - (2) For electric transmission line construction requiring the acquisition of new rights-of-way, electric utilities must include in the easement agreement, at a minimum, a provision prohibiting the new construction of habitable structures within the right-of-way. New construction of habitable structures shall not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures. Utilities may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental

agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.

- (3) Measures shall be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures shall be adapted to the specifics of each project and may include such requirements as:
 - (A) selective clearing of the right-of-way to minimize the amount of flora and fauna disturbed;
 - (B) implementation of erosion control measures;
 - (C) reclamation of construction sites with native species of grasses, forbs, and shrubs; and
 - (D) returning site to its original contours and grades.

- (e) **Certificates of convenience and necessity for existing service areas and facilities.** For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1,

1975, unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes:

- (1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.
- (2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.
- (3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

- (f) **Transferability of certificates.** Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission.
- (g) **Certification forms.** All applications for certificates of convenience and necessity shall be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

§25.102. Coastal Management Program.

- (a) **Consistency requirement.** If a transmission service provider or ~~an~~ electric utility's request for a certificate of convenience and necessity includes transmission or generation facilities located, either in whole or in part, within the coastal management program boundary as defined in 31 T.A.C. §503.1, the electric utility shall state in its initial application that: "This application includes facilities located within the coastal management program boundary as defined in 31 T.A.C. §503.1." In addition, the transmission service provider or electric utility shall indicate in its application whether any part of the proposed facilities are seaward of the Coastal Facility Designation Line

as defined in 31 T.A.C. §19.2(a)(21) and identify the type (or types) of Coastal Natural Resource Area (or Areas) using the designations in 31 T.A.C. §501.3(b), that will be impacted by any part of the proposed facilities. The commission may grant a certificate for the construction of generating or transmission facilities within the coastal boundary as defined in 31 T.A.C. §503.1 only when it finds that the proposed facilities are consistent with the applicable goals and policies of the Coastal Management Program specified in 31 T.A.C. §501.14(a), or that the proposed facilities will not have any direct and significant impacts on any of the applicable coastal natural resource areas specified in 31 T.A.C. §501.3(b).

(b) – (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 15th DAY OF JULY 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**