

PROJECT NO. 49827

LINE INSPECTION AND SAFETY § PUBLIC UTILITY COMMISSION
RULEMAKING TO IMPLEMENT §
HOUSE BILL 4150 § OF TEXAS

**ORDER ADOPTING NEW 16 TEXAS ADMINISTRATIVE CODE §25.97
AS APPROVED AT THE FEBRUARY 14, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.97, relating to Line Inspection and Safety, without changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 Tex. Reg. 7272 (2019)). The new rule will implement the safety reporting provisions in Public Utility Regulatory Act (PURA) §38.102, which was enacted by the 86th Texas Legislature in House Bill 4150 (HB 4150). HB 4150 also added §§35.010 and 36.066, and amended §38.004. These changes to PURA became effective on September 1, 2019. This new rule is adopted under Project Number 49827.

The commission received written initial comments on the new rule from Texas Electric Cooperatives, Inc. (TEC); Texas Public Power Association (TPPA); Oncor Electric Delivery Company LLC (Oncor); Texas-New Mexico Power Company (TNMP); AEP Texas Inc., Southwestern Electric Power Company, and Electric Transmission Texas, LLC (collectively, AEP Companies); and El Paso Electric Company (EPE). Written reply comments were received from TEC.

There was no request for a public hearing.

General Comments on the Rulemaking***Comments on the Inclusion of Regulatory Asset Language in PURA §§35.010 and 36.066***

Every commenter favored the inclusion of language addressing new PURA §§35.010 and 36.066, which authorize affected entities to record the expenses associated with compliance with §38.102 as a regulatory asset for later recovery in rates established by the commission. Commenters requested clarification regarding items eligible for expense recovery and which rate mechanisms are the appropriate vehicle in which to request recovery. TEC suggested that this clarification could be provided in this rule or in a subsequent rulemaking.

Commission Response

The commission declines to address cost recovery in this rulemaking. The statutory provisions provide sufficient authority for electric utilities, electric cooperatives, and municipally owned utilities to record and recover the costs incurred to comply with the new reporting requirements. The commission may address these provisions of PURA in a future rulemaking.

Comments on the Inclusion of Liability Language in PURA 38.102(h)

Oncor and EPE requested that the rule include language addressing PURA §38.102(h) regarding the inadmissibility of the reports provided under 16 TAC §25.97 in criminal or civil proceedings against a reporting utility or the entity's employees, directors, or officers.

Commission Response

The commission declines to adopt the suggested change. PURA § 38.102(h) clearly states the limitations on the use of information reported to the commission as a result of HB 4150 in civil or criminal proceedings. This language is not needed in a commission rule, because it does not apply to commission proceedings and does not concern matters subject to the commission's jurisdiction.

Comments on Due Dates for the Initial Reports

The proposed rule requires affected entities to begin filing three new reports with the commission – an Employee Training Report, a Five-Year Report, and an Annual Report. EPE commented that all three reports required by the proposed rule, which are to be filed initially by May 1, 2020, should go no further back than September 1, 2019.

Five-year Reports

AEP Companies pointed out that utilities cannot report on a five-year period from September 1, 2019 to December 31, 2019 and commented that the first full five-year period since the passage of HB 4150 would not end until December 31, 2024. They suggested that the first five-year report be prospective only and stated that the five-year report should not address §25.97(e)(1)(A) until May 1, 2025. TNMP commented that the first report should be due May 1, 2026 or that the May 1, 2020 report should be prospective only. TPPA sought clarification that the first five-year report is prospective only and does not include the preceding five-year period before the legislation became law. Similarly, TEC recommended that the initial five-year report to be filed on May 1,

2020 be prospective only. Both AEP Companies and TEC offered language to alter §25.97(e)(2) consistent with their comments.

Annual Reports

TEC and TPPA suggested that language was needed to clarify the timing of the initial report. Both commenters suggested that the initial annual report not be due until May 1, 2021, because an annual report filed May 1, 2020 would be limited, only covering the last third of 2019. TEC also stated that the later deadline would ensure that affected entities were able to put processes in place to track the desired information.

Commission Response

The commission declines to make changes in response to these comments. HB 4150 states that affected entities are, "...not required to submit the report until May 1, 2020." The commission finds that it has the discretion to set a deadline for those reports on or after May 1, 2020. Because of the importance of safety in electric utility operations, the commission concludes that the initial reports should be due May 1, 2020.

Comments on Specific Parts of the Rule

Comments on §25.97(d)(1) (Employee Training Report)

The proposed section requires affected entities to file reports summarizing hazard recognition and National Electrical Safety Code related training programs. EPE commented that additional clarification could be helpful to narrow the type of training programs about which the commission

wishes to receive information. EPE suggested that such programs be limited only to those training programs related to vertical clearances.

Commission Response

The commission declines to limit the scope of the training programs that must be reported to the commission as recommended by EPE. PURA §38.102(a) requires summary descriptions of training about hazard recognition related to overhead transmission and distribution facilities and about National Electrical Safety Code requirements for construction of electric transmission and distribution lines. New §25.97(d) mirrors the statutory requirements.

Comments on §25.97(e) (Five-Year Report)

The proposed section requires affected entities to file a report every five years stating what percentage of the utility's overhead transmission system was inspected for vertical clearances in the preceding five years, and what percentage of the system is anticipated to be inspected in the next five years. TEC, TNMP, TPPA, AEP Companies, and EPE commented that requirements for the first five-year report should be modified to recognize that all the information required for the report may not be available by May 1, 2020, the proposed due date. TEC, TNMP, TPPA, and AEP Companies suggested that the first five-year report be made prospective only, meaning that affected entities would provide information about future inspection plans under §25.97(e)(1)(B), but not past inspection activities under §25.97(e)(1)(A). TEC stated that although utilities routinely inspect their systems, some utilities may not have been tracking their inspection activities

in a format that would allow them to report information on safety inspections that occurred before the passage of HB 4150.

Commission Response

The commission declines to make changes to the rule as proposed. While some utilities may find it challenging to provide the required information about past safety inspections under §25.97(e)(1)(A) for the first five-year report, the rule requires only that utilities report the percentage of overhead transmission facilities inspected for compliance. Affected utilities should make efforts to accurately report that information. In addition, the form for reporting this information provides space for a utility to explain the basis for the reported percentage, if it chooses to provide an explanation.

Comments on §25.97(f) (Annual Report)

The proposed section requires affected entities annually to file information regarding injuries, fatalities, non-compliance with PURA, and corrective actions associated with the utility's distribution and transmission system. TEC, TPPA, and EPE commented that, because the bill went into effect on September 1, 2019, the first annual report would not cover a full year of time. Rather, it would cover only the time period from September 1, 2019 to December 31, 2019. Additionally, TPPA commented that clarification was necessary regarding the types of vertical clearances covered in §25.97(f)(1), specifically whether the language meant vertical clearances only over waterways, and whether the language in §25.97(f)(2) applies only to noncompliance with regard to vertical clearances.

Commission Response

The commission acknowledges the effective date of HB 4150, but declines to make changes to the rule as proposed. Affected utilities should make an accurate initial annual report or provide a detailed explanation of the inability to do so and be prepared to provide additional explanation upon request by the commission. With regard to the clarification sought by TPPA, the commission responds that while PURA §38.004(b) addresses clearances over lakes, §38.004(a) is not limited to the type of surface being traversed and applies more generally. Further, concerning the language in §25.97(f)(2), due to the importance of safety and safety reporting, the commission concludes that the broader interpretation - all types of clearances provided for in the National Electrical Safety Code - is appropriate.

All comments, including any not specifically referenced herein, were fully considered by the commission.

Cross Reference to Statutes: Public Utility Regulatory Act (PURA) §38.102.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that new 16 TAC §25.97, relating to Line Inspection and Safety, be hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the _____ day of February 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER