

PROJECT NO. 55153

REVIEW OF 16 TAC §22.52

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PUBLIC UTILITY COMMISSION

OF TEXAS

ORDER ADOPTING AMENDMENTS TO 16 TAC §22.52

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §22.52, relating to Notice in Licensing Proceedings. The commission adopts the rule with changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4231). The amendments will reduce the timeline for intervention in a new transmission facility certificate of convenience and necessity (CCN) proceeding from 45 days after the date the formal application was filed with the commission to 30 days. This modification will facilitate the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility CCNs to 180 days.

The amendments also implement PURA §37.054, as amended by SB 365, enacted by the 88th Texas Legislature (R.S.), by requiring an applicant for a CCN to provide notice of each proposed substation included in the CCN application or amendment to owners of property owners adjacent to the proposed substations.

The commission received comments on the amendments from AEP Texas Inc. (AEP Texas); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); Entergy Texas, Inc., Southwestern Public Service Company, Southwestern Electric Power Company, and El Paso Electric Company (collectively, Joint Utilities); LCRA Transmission Services Corporation

(LCRA TSC); Oncor Electric Delivery Company LLC (Oncor); the Office of Public Utility Counsel (OPUC); and Texas-New Mexico Power Company (TNMP).

§22.52(a)(1)(A) – Reduction of electric licensing proceedings intervention time period

Section 22.52(a)(1)(A) reduces the time period for intervention included in the required notice for electric licensing proceedings from 45 to 30 days.

AEP Texas, CenterPoint, Oncor, TNMP, and LCRA supported the new intervention deadline of 30 days. CenterPoint argued that 30 days is a reasonable and sufficient length of time for these proceedings. CenterPoint noted a similar timeline for distribution cost recovery factor proceedings and argued that a CCN case is nearly always preceded by public meetings and notice of those public meetings in the affected communities.

OPUC argued the proposed intervention deadline is unnecessary and would make intervention impracticable for landowners. OPUC further contended that the proposed reduction is a contradiction with recent commission decisions on notice issues because the commission did not similarly reduce the 45-day intervention period for rate cases during its recent review of §22.51, relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

Commission response

SB 1076 (88R) has reduced new transmission facility CCN proceedings to a timeline of 180 days, which is a departure from the previous one-year timeline. Therefore, the commission

must abbreviate related timelines.

The commission disagrees with OPUC that the intervention deadline reduction is impracticable for landowners. Late intervention by affected persons can be granted by the commission if necessary. The commission further disagrees that the proposed intervention timeline of 30 days for new transmission facility CCN proceedings presents a contradiction in the commission's established notice process and recent rulemakings on this issue. First, recent amendments to §22.51 were limited to minor and conforming changes, therefore substantive rule changes such as reducing the deadline for intervention were not considered. Second, the scope, subject matter, and number of persons affected by a rate case proceeding are not comparable to a CCN proceeding. Therefore, it is reasonable for the commission to require different procedural provisions for the two types of proceedings.

OPUC recommended applying the reduced intervention period to only new transmission facility CCN cases. OPUC alternatively recommended the commission remove the current exemption under subparagraph §22.52(a)(1)(A) and establish a 45-day intervention deadline for all electric CCN cases.

Commission response

The commission agrees with OPUC that the reduced intervention period should only apply to new transmission facility CCN cases and amends the rule accordingly.

§22.52(a)(3) – Clarify property boundaries

The rule requires notice to be delivered to “directly affected” landowners. Proposed §22.52(a)(3) states that land is “directly affected” by a requested CCN if it is adjacent to a property on which a substation proposed to be authorized by the CCN will be located or is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

LCRA noted that the property on which a substation is located is frequently much larger than the portion of that land on which the substation will be located. For example, a 100-acre parcel of land may be purchased for a new substation but only ten acres of the 100-acre parcel are used for the substation site location. LCRA seeks clarification on whether the ten-acre portion of the 100-acre parcel is considered the “property” for the proposed substation or if the entire 100-acre parcel is considered the property for the proposed substation. Further, LCRA proposed to define “property on which a substation proposed to be authorized by a certificate of convenience and necessity is located” to mean “the boundaries of the property to be acquired or licensed by the applicant for the construction and operation of the substation facilities.” LCRA recommends this definition be cited as a new sentence at the conclusion of §22.52(a)(3).

LCRA also provided an attachment to its comments with a labeled map to illustrate the difficulty of determining which properties are adjacent to the property on which the substation is proposed to be located.

Commission response

The commission declines to modify the rule to define “property on which a substation

proposed to be authorized by a certificate of convenience and necessity is located” to mean “the boundaries of the property to be acquired or licensed by the applicant for the construction and operation of the substation facilities” as requested by LCRA. Notice of a proposed substation must be delivered to landowners with property adjacent to the entire legally recognized parcel of land on which the substation is proposed to be located. In terms of the example provided by LCRA, the “property on which a substation...is located” refers to the 100-acre parcel of land, not the ten-acre portion. There is no basis in PURA § 37.054 for subdividing the larger property for notice purposes. Furthermore, allowing the property to be subdivided based on where the substation may be located introduces ambiguity regarding which landowners must be provided notice, and may result in otherwise interested landowners not receiving said notice.

Furthermore, a TDU should resolve ambiguous cases, such as properties that would be adjacent at the corners but for an intervening roadway, in favor of providing notice. For example, on LCRA’s reference map, properties P02, P05, and P14 should each be provided notice of the proposed substation.

AEP Texas, CenterPoint, Oncor, and TNMP recommended clerical and grammatical edits, including the use of future tense instead of past tense. AEP Texas, CenterPoint, and TNMP also recommended refining §22.52(a)(3) to include “for purposes of this paragraph” when referencing directly affected land.

Commission response

The commission agrees with the recommended edits and modifies the rule accordingly.

§22.52(a)(3)(B) – “Public” highway, road, or street

Under proposed §22.52(a)(3)(B), notice of a proposed substation must be provided to owners of land adjacent to a property on which a substation is located, as well as land that is directly across a highway, road, or street that is adjacent to a property on which such a substation is located.

LCRA recommended inserting the word “public” before “highway, road, or street...”. LCRA argued that a landowner may maintain a driveway or other private thoroughfare in the vicinity of a proposed substation, and a dispute could arise about whether the private driveway is a road. This could unintentionally restrict the notice boundary and introduce uncertainty as to whether the TDU complied with the notice requirements.

Commission Response

The commission declines to modify the rule to include “public” to describe types of roadways within the rule as recommended by LCRA, because it is unnecessary. If a private roadway does not run along a property boundary, then the roadway is irrelevant, because the property extends across the private roadway, and notice would still be required for the adjacent property owner. Similarly, if the private roadway does run along a property line, notice is required, because the properties on each side of the private roadway are either adjacent to each other or directly across an adjacent roadway of each other. In either scenario, the analysis is unaffected.

§22.52(a)(3)(B) – Notice to landowners

Section 22.52(a)(3)(B) requires an applicant to mail notice of an electric licensing proceeding to landowners with property adjacent to each proposed substation.

CenterPoint notes proposed §22.52(a)(3)(B) requires the electric licensing applicant to notify itself of any new substations that the applicant may be proposing. CenterPoint argues if the intent of proposed §22.52(a)(3)(B) was to require notice to “the owner of land” rather than “the owner of each proposed substation,” the proposed language does not support this.

Commission Response

The commission agrees with CenterPoint and modifies the rule to require notice be provided to the owner of the land rather than the owner of each proposed substation. The commission also reorders subparagraphs (B) and (C) to ensure it is clear maps are not only required to be included in proceedings with proposed substations.

§22.52(a)(3) and §22.52(a)(3)(B) – Definition of adjacent related to property location

Section 22.52(a)(3) and §22.52(a)(3)(B) each use the phrase “adjacent to a property on which a substation...is located” to indicate which nearby properties are considered directly affected and, therefore, must be provided notice.

TNMP requested the commission define “adjacent” as property “directly bordering” the property of which a proposed substation is located.

Commission Response

The commission agrees with TNMP that “adjacent” should be interpreted as “directly bordering,” but declines to modify the rule, because it is unnecessary. This interpretation is consistent with the plain language meaning of this term.

§22.52(a)(4) – Clerical and grammatical recommendations

Section §22.54(a)(4) expands the list of persons who are entitled to direct mail notice of any public meetings held by the utility prior to the filing of its licensing application if certain criteria are met.

AEP Texas, CenterPoint, Oncor, and TNMP recommend clerical and grammatical edits, including the use of future tense instead of past tense. Further, these commenters recommended including “directly” before the term “across” to describe location relative to a highway, road, or street that is adjacent to a substation.

Commission Response

The commission agrees with the grammatical tense suggestion and clarifies the tense of language used to be consistent with SB 365 (88R). The commission also revises the rule to use “directly across” consistent with its use in statute.

Standard Landowner Notice Forms

Oncor requested the commission amend the standard landowner notice forms, for CCN transmission line cases, to reflect §22.52 amendments.

Commission Response

The commission agrees with Oncor that the forms need to be updated. Commission staff will update the standard landowner notice forms and associated brochures to conform with the adopted rule and post the updated forms on the commission's website on the effective date of the new rule.

"New" Substations

The Joint Utilities requested the commission confirm whether a CCN is required for the construction of new substations. Oncor requested the commission clarify whether the new notice requirement applies to either (1) new substations or (2) both new substations and expanded footprints of existing substations.

Commission Response

The amended rule does not require a CCN for the construction of a new substation. It requires notice to be provided to certain landowners of substations proposed to be authorized by a CCN application. The commission also clarifies that the rule applies to new substations.

The amended rule is adopted under the following provisions of PURA: §§14.002 and 14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than 180 days after the date the application is filed.

Cross reference to statutes: Public Utility Regulatory Act §14.002, §14.052, and §37.057.

§22.52. Notice in Licensing Proceedings.

(a) **Notice in electric licensing proceedings.** In all electric licensing proceedings except minor boundary changes, the applicant must give notice in the following ways:

(1) Applicant must publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice must identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice must include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of

convenience and necessity filed under PURA §39.203(e) or an application for a certificate of convenience and necessity for a new transmission facility subject to PURA §37.057) and that a letter requesting intervention should be received by the commission by that date.

- (B) The notice must describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description must refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice must include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.
- (C) The notice must state a location where a detailed routing map may be reviewed. The map must clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and must reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

- (D) Proof of publication of notice must be in the form of a publisher's affidavit which must specify each newspaper in which the notice was published, the county or counties in which each newspaper is of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.
- (E) The applicant must provide a copy of each environmental impact study or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD must be provided in the form of an affidavit to the commission, which must specify the date the information was mailed or otherwise provided to TPWD, and must provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.
- (2) Applicant must, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, each county government for all counties in which any portion of the proposed facility or requested territory is located, and the Department of Defense Siting Clearinghouse. In addition, the applicant must, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice must contain the information as set out in paragraph (1) of this

subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, the Department of Defense Siting Clearinghouse, and the Office of Public Utility Counsel must specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification to the applicant's proposed route, applicant must provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification must state such entities will have 20 days to intervene.

- (3) Applicant must, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax rolls, who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. For purposes of this paragraph, land is also directly affected if it is adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located or is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

- (A) **Required contents of notice.** The notice must contain all information required in paragraph (1) of this subsection and must include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.
- (B) **Map of route.** The notice must include a map as described in paragraph (1)(C) of this subsection.
- (C) **Notice of proposed substations.** Notice of each substation proposed to be authorized by a certificate of convenience and necessity to each owner of:
- (i) property adjacent to the property on which the proposed substation will be located; and
 - (ii) property located directly across a highway, road, or street that is adjacent to the property on which the proposed substation will be located.
- (D) **Issuance of notice prior to final approval.** Before final approval of any modification in the applicant's proposed route, applicant must provide notice as required under subparagraphs (A) through (C) of this paragraph to all directly affected landowners who have not already received such notice.
- (E) **Proof of notice.** Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county

tax rolls. The proof of notice must include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice must be filed with the commission no later than 20 days after the filing of the application.

(F) **Cure of insufficient notice.** Upon the filing of proof of notice as described in subparagraph (E) 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. If, however, the utility finds that an owner of directly affected land has not received notice, it must immediately advise the commission by written pleading and must provide notice to such landowners by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) through (C) of this paragraph, except that the notice must state that the person has fifteen days from the date of delivery to intervene. The utility must immediately file a supplemental affidavit of notice with the commission.

(4) The utility must hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting must be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, an owner of land within 500 feet of the centerline of a transmission project greater than 230kV, an owner of land adjacent to a property on which a substation proposed

to be authorized by the certificate of convenience and necessity will be located, or an owner of land directly across a highway, road, or street that is adjacent to such a substation. The utility must also provide written notice to the Department of Defense Siting Clearinghouse of the public meeting. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes. In the event that no public meeting is held, the utility must provide written notice to the Department of Defense Siting Clearinghouse of the planned filing of an application prior to completion of the routing study.

- (5) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention and for commission action on the application.
- (6) Upon entry of a final, appealable order by the commission approving an application, the utility must provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection must be provided to the commission's staff.
 - (A) If the owner's land is directly affected by the approved route, the notice must consist of a copy of the final order.
 - (B) If the owner's land is not directly affected by the approved route, the notice must consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.

- (7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail must include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."
- (b) **Notice in telephone licensing proceedings.** In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant must give notice in the following ways:
- (1) Applicants must publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice must identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice must also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989.

The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date.” Proof of publication of notice must be in the form of a publisher’s affidavit, which must specify the newspaper or newspapers in which the notice was published; the county or counties in which the newspaper or newspapers is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.

- (2) Applicant must also mail notice of its application, which must contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant must also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments must be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties must specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.
- (3) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention.

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 §22.52, Notice in Licensing Proceedings, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of November 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER