

PROJECT NO. 24101

RULEMAKING CONCERNING	§	PUBLIC UTILITY COMMISSION
TRANSMISSION LINE ROUTING	§	OF TEXAS

**ORDER ADOPTING AN AMENDMENT TO §25.101 AS APPROVED AT THE
SEPTEMBER 19, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.101 relating to Certification Criteria with changes to the proposed text as published in the June 15, 2001 *Texas Register* (26 TexReg 4358). The amendment is necessary to establish criteria for the commission to consider in its evaluation of applications for approval of electric transmission lines. The amendment also removes references to Chapter 23, §25.171, and makes other non-substantive changes. This amendment was adopted under Project Number 24101.

A public hearing on this amendment was held at commission offices at 10:00 a.m. on Tuesday, August 7, 2001. Representatives from the American Electric Power Company (AEP) on behalf of Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company; Brazos Electric Power Cooperative, Inc. (Brazos); East Texas Electric Cooperative, Inc. (ETEC); South Texas Electric Cooperative, Inc. (STEC); Texas Farm Bureau (Farm Bureau); and TXU Electric Company (TXU) attended the hearing and provided comments.

Written comments were received from AEP, Brazos, El Paso Electric Company (El Paso), ETEC, FPL Energy, LLC (FPLE), Lower Colorado River Authority (LCRA), Pedernales

Electric Cooperative (PEC), Reliant Energy HL&P (Reliant), STEC, Southwestern Public Service Company (SPS), Texas Electric Cooperatives, Inc. (TEC), Farm Bureau, TXU, and independent generators; Dynegy Power Corp., Calpine Corporation, and Tenaska Inc., which filed comments jointly.

The commission requested comments on the question: *Should the commission prioritize the standards set out in §25.101(c)(6)(D)?* Brazos was the only party that urged the commission to prioritize the new standards. Brazos also advocated that the commission prioritize the proposed standards with the existing standards in the Public Utility Regulatory Act (PURA) §37.056(c)(4). All other comments that answered the question recommended that the commission *not* prioritize the proposed standards. Most of the comments agreed with STEC that the "relevant criteria that should be used will depend on the circumstances that exist in each case."

The commission concludes that the standards set out in §25.101(c)(6)(D) should not be prioritized, and that they should be evaluated on a case-by-case basis in the context of the standards found in PURA §37.056(c)(4).

Several parties provided comments urging additional amendments to §25.101 (Reliant, FPLE, and SPS). The scope of the changes in this adopted amendment was fairly narrow, and making

broader amendments warrants the opportunity for interested parties to comment. These recommended amendments will be addressed in a subsequent rulemaking project.

Most of the parties agreed with Reliant's statement that recognized that "landowners and land use are important criteria that must be fully considered when proposing new transmission facilities." Utilities generally agreed that the amended certification criteria are already taken into consideration both by utilities and the commission Staff when routing transmission lines (El Paso, AEP, and TXU). LCRA indicated that the spirit of the proposed rule changes is reflected in LCRA Board Policy 601, and STEC stated that the "proposed amendment merely codifies in the Commission's Substantive Rules current Commission policy concerning the routing of transmission lines."

Reliant stated that the "factors singled out in the proposed rulemaking should not carry more weight than the many other factors that statutorily must be considered in siting a transmission project" and urged that the proposed rule amendment not be adopted, and FPLE agreed with this recommendation. STEC and the Farm Bureau supported the adoption of the rule amendment, and Farm Bureau stated that this amendment "is an excellent first step in ensuring that the process properly balances the need of landowners with the need for new transmission lines" (Farm Bureau). Several parties generally supported the rule amendment but recommended modifications or clarifications (AEP, Brazos, ETEC, LCRA, and TXU).

Some utilities were concerned that the amended certification criteria are subjective and will be interpreted as requirements or absolute directives that will take precedence over all other factors in PURA §37.056(c)(4), or will unintentionally introduce inflexibility into the route selection process (Brazos, ETEC, Reliant, SPS, and TXU). Many of the comments recommended specific modifications to the proposed language to lessen some of these concerns. These recommendations are addressed individually below.

Several parties commented that the amended certification criteria should include an evaluation of economic feasibility and costs-effectiveness in the determination of a transmission route (AEP, Brazos, PEC, TEC, and SPS).

The commission agrees that the cost of constructing transmission facilities is a factor that should be considered when selecting a route, and a factor recognizing economic feasibility has been included in the certification criteria in the adopted rule amendment.

Several parties suggested that utilities should not be constrained by the amended certification criteria if the utility and directly affected landowners agree to routes that are otherwise in compliance with the factors in PURA §37.056(c) (STEC, SPS, Farm Bureau, and Reliant).

The commission agrees, and language has been included in the certification criteria in the adopted rule amendment that recognizes that landowners and utilities may agree to routes that

do not adopt the proposed certification criteria, but otherwise conform to the factors established in PURA §37.056(c).

The proposed rule amendment stated that the certification criteria would be applied "where practical." Some utilities expressed concern about the use of the term "practical" (Brazos and ETEC). Brazos suggested that the commission substitute the word "reasonable" and argued that the "reasonable man standard," and its application as a legal standard, has been widely used by the courts and in case law for years. TXU suggested the use of the term "reasonably practical" to support the concept of flexibility.

The commission finds definitions of the term "practical" to include "capable of being put to use or account" and "when something can be done or performed." Definitions of the term "reasonable" include "rational, appropriate, and not extreme or excessive." The commission concludes that the use of the term "reasonable" is more appropriate.

Some utilities suggested that paralleling geographical or cultural features such as existing roadways, waterways, edges of timber, or fence lines or other natural divisions of property could offer the same diminished impact on large tracts of land as paralleling property lines (Brazos, ETEC, and STEC).

The commission agrees and the adopted rule incorporates this concept.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §37.051, which requires an electric utility to obtain certification for electric facilities, and §37.056, which governs the issuance of certificates of convenience and necessity for electric facilities.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and PURA Chapter 37, Subchapter B.

§25.101. Certification Criteria.

- (a) **Definition.** The term "generating unit," when used in this section, shall mean 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.
- (b) **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.
- (c) **Certificates of convenience and necessity for new service areas and facilities.**
- Except for certificates granted under subsection (b) 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. For transmission line certificate applications the commission shall give great weight to the recommendation of the Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) in determining the need for a proposed transmission line.

- (1) 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 may amend or revoke any certificate issued under this section if it finds that the public convenience and necessity requires such amendment or revocation. A certificate, or certificate amendment, is required for the following:

- (A) a change in service area;
- (B) a new electric generating unit;
- (C) a new electric transmission line;
- (D) a qualifying facility which is making or plans to make retail sales of electricity to an end user, unless the end user is also the sole purchaser of the thermal output of the qualifying facility, or unless the qualifying facility generates less than 10 megawatts of electric power by renewable resources, biomass, or waste. As a requisite to certification, the commission shall find that the ratepayers of the electric utility in whose service area the purchasing end user is located will not be substantially adversely impacted as a result of such retail sales.

- (2) A certificate is not required for the following:

- (A) a contiguous extension of those facilities described in the Public Utility Regulatory Act §37.052;
- (B) a new electric high voltage switching station, or substation;

(C) routine activities associated with transmission facilities that are conducted by electric utilities, including wholesale generation and transmission utilities, and as specifically noted following:

- (i) the alteration of an existing transmission line to provide service to a customer-owned substation or metering point, or to an electric utility-owned substation, where that electric utility-owned substation is located within two spans of the existing transmission line, provided that all utilities whose certificated service area is crossed are provided notice at least 30 days prior to the start of construction of the new facility, or the new facility is being constructed to serve a utility certificated in the area where the new facility is to be constructed and all landowners whose property is crossed by the transmission facilities constructed to connect the substation to the existing transmission line have given prior consent;
- (ii) the rebuilding, upgrading, bundling of conductors or reconductoring of an existing transmission facility; or the installation of an additional circuit(s) on facilities that were originally certificated for multiple-circuit capacity, provided no additional right of way is required. Activities described in this clause which occur in the certificated area of another electric

utility require that utility to be provided notice at least 30 days prior to the start of construction of the new facility. However, if the rebuilding, upgrading, bundling of conductors or reconductoring is being done to serve a utility certificated in the area where those activities are to take place, then no such notice is required. However, within multiply-certificated areas, only notice, not consent, is required. For purposes of this section, "upgrading" to a higher voltage shall be limited to 230 kV or less and "rebuilding" work shall be limited to the replacement and/or respacing of structures along an existing route of the transmission line;

- (iii) the relocation of all or part of an existing transmission facility due to a request for relocation to be done at the expense of the requesting party and to be relocated solely on rights-of-way provided by the requesting party. Activities described in this clause which occur in the certificated area of another electric utility require that utility to be provided notice at least 30 days prior to the start of the relocation.
- (iv) the relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing encroachments, provided that all utilities whose certificated

service area is crossed are provided notice at least 30 days prior to the start of the relocation or alteration and all landowners whose property is crossed by such relocation or alteration have given prior consent;

- (v) 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 of highway transportation, airport construction, public safety, or air and water quality, provided that the relocation, alteration or reconstruction is responsive to the governmental request and is within 200 feet of the existing facilities and that any new landowner crossed by the relocation, alteration or reconstruction has given prior consent;
- (vi) nothing contained in clauses (i)-(v) of this subparagraph should be construed as a limitation of the commission's authority as set forth in the Public Utility Regulatory Act. Any activity described in clauses (i)-(v) of this subparagraph must be reported to the commission, on commission prescribed forms, not less than 30 days prior to the commencement of construction, and the commission may require additional facts or call a public hearing thereon to determine whether a

certificate of convenience and necessity is required. For projects that require new or additional rights-of-way direct mail notice is required to landowners of adjacent property within 200 feet of the proposed project, the parks and recreation areas within 1,000 feet, and airports within 10,000 feet, of the proposed project.

- (vii) the repair or reconstruction of a transmission facility due to emergency situations shall proceed without delay or prior approval of the commission. Once 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 associated costs. Final reports detailing associated costs must be filed within 90 days after completion of the repair or reconstruction.

- (D) the construction or upgrading of distribution facilities within the electric utility's service area.

- (3) The term construction and/or extension, as used in this section, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or 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 proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

- (4) The commission shall render a decision approving or denying an application for a certificate required under paragraph (1) of this subsection 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.

- (5) Expedited Approval:

- (A) Uncontested applications: Except for an application for a new transmission line, an application for a certificate under paragraph (1) of this subsection 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; and
 - (ii) the commission staff has determined that the application meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

- (B) Minor boundary or service area exceptions: In the case of minor boundary changes or service area exceptions, such applications shall be approved administratively within 45 days of the filing of the application and may be approved sooner if good cause is shown, provided that all

utilities whose certificated service area is affected agree to the change and all customers within the affected area have given prior consent.

(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) for those projects within ERCOT, the ERCOT ISO has recommended approval of the project if it is the type of transmission project which the ISO considers and approves; and
- (iii) the commission staff has determined that the application 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 the reliability of the ERCOT system: Applications for transmission lines which have been designated by the ERCOT ISO as critical to the reliability of the ERCOT 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 subsection within 180 days of the date of filing a

complete application for such a certificate unless good cause is shown for extending that period. These procedures may be applied to transmission lines located in other reliability councils or administered by other independent system operators provided such councils have a process for designation of critical transmission lines.

- (6) **Standards of construction.** In determining standard practice, the commission will be guided by the provision of the American National Standards Institute, Incorporated, the National Electric 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.

(A) 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.

(B) 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. However, 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 the applicable requirements of the National Electric Safety Code.

(C) For the purposes of subparagraph (B) of this paragraph the term "habitable structures" means those structures normally inhabited by humans on a daily, or regular basis including, but not limited to, single-family dwellings and related structures, apartment buildings, business structures, major additions to the aforementioned types of pre-existing structures, and mobile home parks. However, the phrase "new construction of habitable structures" under subparagraph (B) of this paragraph shall not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures.

(D) A new transmission line shall meet the criteria in the Public Utility Regulatory Act (PURA) §37.056 and considering those criteria, engineering constraints, and costs, shall be routed to the extent reasonable to moderate the impact on the affected community and directly affected landowners unless grid reliability and security dictate otherwise. The following factors shall be considered unless a route is

agreed to by the utility and directly affected landowners and otherwise conform to PURA §37.056:

- (i) whether the preferred and alternate routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the preferred and alternate routes parallel existing compatible rights-of-way; and
- (iii) whether the preferred and alternate routes parallel property lines or other natural or cultural features.

(d) **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.

(e) **Exclusiveness of certificate.** Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another electric utility or utilities, additional certification to any other electric utility or utilities to all or any part of the area heretofore certificated under this section.

- (f) **Certification forms.** The commission shall adopt a form or forms that will facilitate the granting of certificates so that the granting of certificates, both contested and uncontested, will be expedited. Forms may be obtained from central records.

This agency hereby certifies that the rule, as adopted, 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 §25.101, Certification Criteria, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF SEPTEMBER 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Max Yzaguirre

Commissioner Brett A. Perlman

Commissioner Rebecca Klein