PROJECT NO. 25515

ELECTRIC UTILITY CCN RULEMAKING AND FORM CHANGES	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENTS TO §25.83 AND §25.102, REPEAL OF §25.101, AND NEW §25.101 AS APPROVED AT THE SEPTEMBER 25, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.83 relating to Construction Reports, new §25.101 relating to Certification Criteria, and amendments to §25.102 relating to Coastal Management Program with changes to the proposed text as published in the July 26, 2002 *Texas Register* (27 TexReg 6601). The commission adopts the repeal of existing §25.101 relating to Certification Criteria with no changes as proposed in the July 26, 2002 *Texas Register* (27 TexReg 6601). The amendments and new rule facilitate landowner participation in the commission's processes related to certification, amend current rules to reflect recent changes in the electric industry, and update transmission construction reporting. Certification is the process for considering applications to change service area boundaries or to build new electric facilities, primarily electric transmission lines. This repeal, new section and amendments are adopted under Project Number 25515.

A public hearing on the amendments and proposed section was held at commission offices on September 4, 2002 at 1:30 pm. Representatives from Ridge Energy Storage and Grid Services L.P. (Ridge); Gulf Coast Power Connect; Inc. (GCPC) Texas Ratepayers' Organization to Save Energy (Texas Rose); Henry Miller and Robert Hammack filing as "A Couple of Texas Landowners"; CenterPoint Energy Houston Electric (CenterPoint); LCRA Transmission Services Corporation

(LCRA); Oncor Electric Delivery Company (Oncor) Entergy Gulf States, Inc. (EGSI); Xcel Energy Services, Inc. (Xcel); East Texas Electric Cooperative, Inc. (ETEC); and FPL Energy, GE Wind Energy, LLC Renewable Energy Systems, and the Texas Renewable Energy Industries Association (Texas Wind Generators) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendments and new section from Ridge, GCPC, Texas Rose, A Couple of Texas Landowners, CenterPoint, LCRA, Oncor, EGSI, Xcel, ETEC, Texas Wind Generators, Public Citizen, Performance Energy Solutions, Inc. (PES), Pedernales Electric Cooperative, Inc. (PEC), El Paso Electric Company (EPE), American Electric Power Company (AEP), Brazos Electric Power Cooperative, Inc. (Brazos), Texas Electric Cooperatives, Inc. (TEC), South Texas Electric Cooperative (STEC), and Cielo Wind Power (Cielo).

In response to questions from the commission staff during the public hearing, Xcel, EPE, Oncor, and LCRA made informational filings identifying transmission line applications that are under development and are expected to be filed before January 1, 2003. These parties also filed written comments requesting that the effective date of the amendments and new rule be postponed so that the additional requirements of the proposed changes do not delay applications that are close to being filed. These parties indicated that substantial efforts and costs have already been incurred in the preparation of applications for a certificate of convenience and necessity (CCN), and to impose additional requirements would unduly delay and increase the cost of the projects.

The commission agrees and delays the effective date of the adopted amendments, repeal and new section until January 1, 2003.

The commission requested comments on three specific 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

Oncor, EGSI, LCRA, Brazos, CenterPoint, AEP, and TEC commented that the use of single-pole structures should be considered on a case-by-case basis and that the commission should not mandate single pole or any other structure for all cases because topography and other conditions vary. EGSI, LCRA, and CenterPoint further argued that the transmission service provider (TSP) is best equipped to make the judgment.

STEC and A Couple of Texas Landowners argued that the commission should encourage and require the use of single-pole structures on new and upgraded transmission lines. STEC urged that the policy apply to all 345 kV lines in both urban and rural areas. These commenters noted that the benefits of single-pole structures include cost savings on a smaller easement, benefits to landowners, the environment, aesthetics, agricultural operation, and lower repair costs. A Couple of Texas Landowners

did state that the commission might consider exceptions to the requirement of single-pole construction if an applicant demonstrates that another type of structure is overwhelmingly a better choice for a specific, unique portion of a new transmission line.

Regarding costs, A Couple of Texas Landowners warned the commission to be cognizant of the fact that single-pole structures vary in height, diameter, cross-arms, and materials composition (for example, concrete, steel, other metals, wood, and mixes of steel and wood), and so the cost-benefit analyses must compare appropriate structures.

LCRA commented that monopoles (single-pole structures) are usually not the most economical design. TEC included a cost comparison from a recent study prepared by C. H. Guernsey & Company for a proposed transmission line. TEC indicated that for most typical transmission lines operated at voltages greater than 69 kV, monopoles are not as economic as H-frame and other structures; however, for 69 kV transmission lines, single-pole structures are approximately $10,000 per mile less expensive than H-frame structures. TEC noted that as the voltage increases the disparity in cost between single pole and H-frame structures increases, with H-frame structures being significantly less expensive. LCRA noted that the most economic structure choice is made by considering many factors such as right-of-way procurement, structure, transportation, installation, and maintenance costs. If right-of-way cost is low, the most economic choice may be lattice towers – fewer and taller structures, longer spans, and wider easements; however, if right-of-way procurement cost is high, monopole structures may be the best economic choice – more structures, shorter spans, narrower easements. If right-of-way access is an

issue, H-frame or lattice structures may be the best economic choice because smaller, lighter structure components can be more economically transported to the site. If there are disparate distances from the site and the nearest structure manufacturing facilities, differing transportation charges can significantly affect the analyses and ultimate choice of structure type.

The commission finds that the use of single-pole structures should be based on the overall public interest and the particular facts and circumstances of each case, and therefore declines to mandate the use single-pole structures in all new transmission lines. The commission agrees with TEC that the weight given to aesthetics, economics, and other factors may vary considerably, depending on the area of the state in which the transmission line is to be constructed. For example, in densely populated urban areas, single pole structures may be desired to conserve right-of-way and minimize visual obstructions. By contrast, in parts of West Texas where the population is sparse there may be less concern for the appearance of the transmission line and more concern for the economic impact associated with having to construct more expensive facilities to transmit electricity long distances. Furthermore, the commission acknowledges that the cost-benefit analysis will vary based upon the individual circumstances of each situation.

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.

Many commenters noted that the commission should encourage innovative uses of technology in solving transmission constraints, but only where practical and cost effective. A Couple Texas Landowners, Public Citizen, and Ridge commented that the commission should encourage the use of alternative technologies in lieu of transmission construction. AEP, TEC, and Brazos were concerned about the cost to ratepayers and AEP commented that the commission should not encourage use of technologies that have not proven to be economically or operationally feasible. Ridge likewise commented that comparisons between the alternative technologies and transmission line construction should include total costs, timeframes, capacity factors, right-of-way issues, and overall system benefits.

Oncor and EGSI noted that they do not oppose alternate technologies in lieu of transmission construction and noted that transmission service providers (TSPs) currently consider some alternatives. Oncor noted that TSPs have installed power flow and voltage control technologies in the Rio Grande Valley, West Texas, and North Texas as an alternative to building new lines when that seems to be the best solution. EGSI noted that it has been exploring and using alternate technologies, including Distribution – Supermagnet Energy Storage (D-SMES) devices, series capacitor banks and Dynamic Line Rating (DLR) equipment. EGSI warned that these, and some other solutions, are often only temporary mitigation measures and do not preclude the ultimate need for a transmission solution. CenterPoint noted that it has extensively utilized high-temperature conductors to increase the capacity of existing transmission facilities, while not in lieu of transmission line construction. AEP noted that the current CCN process provides a venue for explaining alternatives to the transmission project.

CenterPoint argued that the commission should not require TSPs to address distributed generation, demand-side management or other technologies such as compressed air storage, in CCN applications and Oncor noted that inclusion of language addressing such "technologies" is premature. LCRA added that the encouragement of alternative technologies should not be substituted for statutory considerations.

CenterPoint and Oncor noted that unbundled TSPs are forbidden from employing distributed generation and implementing energy efficiency programs. Ridge likewise commented that large scale power storage does not easily fit within the jurisdictional compartments of the unbundled electric industry.

The commission finds that practical, cost-effective, and innovative technologies have been and should in the future be used as alternatives to transmission construction. Transmission service providers have installed power flow and voltage control technologies in the Rio Grande Valley, West Texas, and North Texas when they proved to be reliable and economic alternatives to the construction of new transmission lines. Similarly, Entergy installed a super magnetic energy storage device (D-SMES) in the Woodlands as the lowest-cost, most effective, and quickest solution available to meet the needs of growing urban area where there was community opposition to the construction of a new 138-kilovolt transmission line.

In addition, the commission's current standard proposed order for transmission cases requires the consideration of transmission alternatives. The Order requires that transmission providers consider

distribution alternatives to transmission construction and the commission has denied a CCN where the transmission owner failed to make a showing that alternatives had been considered.

Transmission utilities should address whether alternative transmission technologies are reasonably available to remove the need for transmission facilities. The commission notes that its current process is flexible enough to permit consideration of alternative technologies. The current CCN application form requests information regarding alternatives to the project and the CCN process provides a sufficient venue for exploring alternatives.

3. What, if any, additional provisions should be added to the proposed rules to ensure the state's renewable mandates are met?

LCRA, Brazos, AEP, Texas Wind Generators, and A Couple Texas Landowners commented on additional provisions to ensure the State's renewable mandates are met. LCRA and Brazos commented that allowing the addition of a second circuit regardless of previous certification would help significantly in this area. AEP recommended that transmission projects associated with integrating renewable projects greater than 20 MW into the transmission grid should be considered as critical in order to meet the state's renewable mandates until enough renewable energy exists to satisfy that mandate. AEP suggested that the CCNs in these instances should be approved or denied within 180 days. Oncor supported the encouragement of all projects that contribute toward attaining the mandate, including any sales or transfers of facilities that would enhance critical infrastructure. EGSI commented that the facility

connection needs of renewables should be determined by the TSP and that those requirements should be comparable to those for other types of generation requesting connection.

Texas Wind Generators recommended that two additional provisions be added to the proposed rule to ensure the state's renewable mandates are met. Texas Wind Generators suggested adding criteria for the determination of need and expedited consideration of CCN applications that eliminate transmission constraints impairing the fulfillment of the state's renewable mandates.

A Couple Texas Landowners noted that additional language should be added only for the use of alternate technologies in lieu of transmission construction. They note that wind power is "competitive" and lines to accommodate a competitive industry's desire to market its power should not allow expeditious processing of large transmission lines to the detriment of Texas citizens' private property.

Though the commission recognizes that wind generation, specifically in west Texas, is limited by transmission constraints, the commission believes that the state's renewable mandates are achievable. As Texas Wind Generators mentioned in its comments, Texas is three years ahead of schedule in meeting the legislature's goal for renewable generation capacity. The commission does not agree that it is necessary to process CCN applications for renewable related projects in 180 days to accomplish the goals for renewable energy established by the legislature. One of the challenges that the commission has confronted in recent years has been how to facilitate landowner participation in licensing and routing of transmission lines, while meeting the need for new transmission facilities. This project was intended to

address this challenge by providing better information to landowners on how the CCN process works and how they can participate in it, and improving landowner notice of proposed transmission lines that might affect them. Shortening the time for processing a CCN is appropriate if there are strong reasons for doing so, but it must be recognized that shortening the time will make it more difficult for landowners to understand their options and exercise them effectively. The commission concludes that there are not compelling reasons for shortening the time for processing CCNs to meet the renewable mandate. The commission believes that the certification process is not the reason that there is a disparity in the time it takes to construct wind generation and the time it takes to construct transmission lines. Planning a transmission line route can take a year or longer, obtaining a certificate can take as much as a year, and construction can take a year or, for a major line, as much as two years. Considering that several hundred megawatts of wind generation can be installed in as little as six months; shortening by six months what may be more than a four-year process to complete a transmission line, at the expense of landowners' involvement, is not warranted.

The commission notes that demonstrating need for transmission projects based on testimony and studies without an interconnection agreement, as suggested by Texas Wind Generators, is not prohibited by current rule. However, planning, designing, routing, and certification can be costly for major transmission line projects, not to mention the cost of construction; and to do so without a definitive indication of the need for the facility — usually an interconnection agreement — places a significant financial risk on the transmission service provider. The commission has established Project Number 25819, *PUC Proceeding to Address Transmission Constraints Affecting West Texas Wind Power*

Generators, to explore administrative and legislative solutions to address the specific issues related to wind generation and associated transmission constraints, and for the reasons stated above, declines to adopt the suggested amendments in this rulemaking. In that proceeding, the commission should evaluate whether a determination of need for a proposed transmission line may be based on testimony and studies evidencing the potential for new generating capacity based on wind power resources in an area, whether or not an interconnection agreement for a specific wind power project that the line would serve has been already executed. The commission may consider subsequent changes to the rule to accommodate concerns of wind generators.

Substantive Rule §25.83 – Transmission Construction Reports.

Brazos, CenterPoint, LCRA, TEC, and Xcel suggested that the commission not require a pre-construction report, particularly for projects that require the filling of a CCN application. Commenters argued that the information that is required in the pre-construction report is already available to the commission and the public in the CCN application, and to include it in a preconstruction report is redundant and burdensome. AEP recommended that the current procedures of reporting construction on a monthly basis be retained. This position was echoed by CenterPoint and others at the public hearing. CenterPoint also estimated that the requirement to file pre-construction reports would increase the costs of reporting by up to $30,000 per year, and the change from monthly to quarterly reports would not reduce the cost because it would still be necessary to internally track construction on a monthly basis.

The commission agrees with the comments. The pre-construction report is only necessary if the monthly reporting is changed to quarterly reporting. The requirement for a pre-construction report will not be adopted, and the commission will retain the current requirement for construction reports to be filed monthly.

EGSI requested clarification on the types of projects that were required to be reported. EGSI commented that the projects reported in the past have been: (a) projects that require a CCN; (b) projects that do not require a CCN as identified in commission rule §25.101; and (c) other transmission related projects costing $250,000 or more. EGSI and Brazos both requested that the $250,000 threshold be raised to $500,000. EPE added that a similar threshold should be included for the reporting of emergency repairs.

The commission agrees that the rule should explicitly define the types of projects that are to be reported in the monthly transmission construction report, and incorporates the suggestion of EGSI. The commission agrees that the reporting of emergency repairs should be limited to those greater than $250,000, but declines to increase that threshold. The $250,000 threshold for reporting applies to a limited number of "other" projects not specifically identified in §25.101, such as the installation of interval meters or SCADA equipment. The commission review of recent monthly construction reports does not show that reporting "other" projects is common and there is no demonstrated need to increase the threshold.

Brazos and AEP suggested that it would be sufficient to file an affidavit stating that landowner consent had been obtained instead of filing copies of the landowner consent.

The commission agrees and adopts this suggestion in the amended rule.

Brazos, EGSI, Oncor, TEC, PEC, and LCRA indicated that requiring notice to all landowners within 500 feet of projects that required additional right-of-way but that did not require a CCN was not reasonable. EGSI added that this requirement was more burdensome than in a CCN application and recommends limiting notice to landowners with habitable structures as required by Procedural Rule §22.52, Notice in Licensing Proceedings.

The commission agrees with these comments and amends the rule to reflect the notice that is required in Procedural Rule §22.52.

§25.101 – Certification Criteria.

§25.101(a)(2).

AEP, Oncor, EGSI, LCRA, Brazos, PEC, CenterPoint, EPE, TEC, and ETEC all expressed concern over changing the definition of directly affected land to include land with habitable structures within 500

feet. These commenters urged the commission to retain the current 200 feet distance and cited increased costs in identifying the additional landowners, particularly in urban areas, and increased litigation expense as reasons not to expand the definition. A Couple of Texas Landowners suggested that the 500 feet distance should be expanded to 2000 feet. LCRA stated that it supports the commission's efforts to promote active, informed public participation in CCN proceedings, but the commission should not do so merely by increasing the number of people eligible to participate in a CCN docket.

CenterPoint argued that the definition should reference "directly affected landowner" instead of "directly affected land." CenterPoint expressed concern that there are legal implications to designating the "land" as directly affected. By the commission in essence pre-determining that the "land" is directly affected, there could be impacts on the liability for the costs of easements. The commission would be providing a *prima facie* case for the landowner of reverse condemnation.

EPE suggested that the 500 feet definition be applied only to higher voltage projects such as those greater than 345 kV transmission lines.

The commission agrees with A Couple of Texas Landowners that the corridor should be expanded beyond 200 feet from the centerline; however, the commission does not believe that an increase to 2000 feet is justifiable. The commission also agrees with the majority of the commenters that expanding the definition of directly affected land to include land with habitable structures within 500 feet is not

warranted for all transmission projects. The commission agrees with the suggestion of EPE to limit the 500 feet definition to higher voltages; however, the commission believes that the "higher voltages" should include 345 kV lines. Accordingly, the commission describes "directly affected land" to include land with a habitable structure 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. In this rule, the commission does not intend to pre-determine whether land is or is not directly affected, and does not intend to provide a *prima facie* case of reverse condemnation for any landowner. Instead of adopting a definition of "directly affected land" in this rule, the commission uses the description of land as discussed above in the language of the rule.

§25.101(a)(5).

AEP, EGSI, and CenterPoint commented on the definition of "prudent avoidance" and urged the commission not to deviate from the definition established in Docket Number 9305, *Application of Central Power and Light for a CCN for a Proposed 345kV Transmission Line in Nueces, San Patricio, Bee, and Goliad Counties.* In that docket, the commission defined the term "prudent avoidance" as "the limiting of exposures to electric and magnetic fields that can be avoided with small investments of money and effort." In addition, the commission recognized a "small" investment of money as "spending amounts as high as a few thousand dollars." Commenters noted that the definition in the published rule changed the word "small" to "reasonable," and CenterPoint recommended using the word "minimal." AEP suggested that using "reasonable" opened the door for arguments on spending far in

excess of a few thousand dollars. A Couple of Texas Landowners suggested either eliminating the definition, or adopting the language from case law.

The commission recognized a "small" investment of money as "a few thousand dollars" in Docket Number 9305 in 1992. As many commenters noted in discussions of other portions of the rule, the costs associated with the construction of transmission lines has increased over the years. The commission believes that it is not reasonable to establish a fixed dollar amount to define a "small" investment considering the increases in overall costs over time and the variability in the cost of projects. The least expensive route between any two points is likely to be a straight line; however, the commission considers it "reasonable" that a transmission line be routed around a community or a subdivision even at great expense. The commission believes that the amount of money expended to limit exposures to electric and magnetic fields should be considered on a case-by-case basis, and should be "reasonable."

§25.101(b)(3)(A).

AEP argues that if a transmission project is recommended by an independent organization established under PURA §39.151 that the recommendation should create a rebuttable presumption of the need for the facility and the recommendation would be treated as dispositive of the question of need. AEP argues that this position is derived from PURA §39.151(a)(2) that states that the independent organization shall "ensure the reliability and adequacy of the regional electrical network."

The commission does not agree that the statutory requirement in PURA §39.151(a)(2) of an independent organization to "ensure the reliability and adequacy of the regional electrical network" supercedes the commission's statutory responsibility under PURA §37.056(a) to determine whether there is a need for a project. This section states that the commission "may approve an application and grant a certificate only if the *commission* finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public." The commission declines to adopt AEP's proposed amendment to the rule.

§25.101(b)(3)(B)

Brazos commented that the use of the term "alternate routes" is confusing and that all routes, including the preferred route should be judged by the criteria listed in §25.101(b)(3)(B).

The commission intends that the factors listed in §25.101(b)(3)(B) should apply to all routes that are filed in the CCN application. To avoid confusion, the language of the rule has been changed to reflect this intention.

§25.101(b)(3)(B)(iv).

CenterPoint argued that the rule should not refer to the "policy" of prudent avoidance because the commission does not establish a policy within the rules and such a policy has never been codified by the

commission. CenterPoint suggested that the wording of the rule be altered to eliminate the word "policy."

The commission notes that Docket Number 9305 recognizes a "*de facto*" policy of prudent avoidance, and this "policy" has been referred to by orders of the commission for more than ten years. The case law of commission transmission line cases has established the "policy" of prudent avoidance. In addition, the proposed rule has permitted the public to comment on whether to include this policy in the commission's substantive rules. In the interest of making the policy more accessible to interested persons, the commission is adopting the rule as proposed.

§25.101(b)(3)(C)(ii).

CenterPoint and AEP suggested that it should not be necessary for a §39.151 organization to recommend a project in order for the project to be considered as uncontested. AEP noted that not all projects are submitted to a full review by the §39.151 organization and this provision eliminates these projects from consideration as uncontested. CenterPoint added that a project should be considered uncontested if (1) there is no motion to intervene and (2) the commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements.

The commission agrees, and the requirement that a §39.151 organization recommend a project in order for the project to be considered uncontested is deleted.

§25.101(b)(3)(D).

CenterPoint suggested that projects for the interconnection of new transmission service customers be eligible for expedited consideration and the commission process these applications within 180 days.

The commission believes that including projects for the interconnection of new transmission service customers as eligible for expedited consideration would greatly expand the number of applications that must be considered within 180 days. The commission believes that this change is unwarranted, and notes that no commenters provided compelling reasons for such a change. The commission declines to adopt the proposal.

§25.101(c)(5)(A)

LCRA commented that the current rule's "2-span" limit, while usually workable, is vague and subject to different applications depending on the length of the spans involved. LCRA agreed that the one-mile limit is clearer and easier to interpret. CenterPoint recommended that the rule be amended to allow for extensions without a limit on distance as long as all landowners whose property is crossed by the transmission facilities have given prior written consent. In the alternative, CenterPoint recommended that when transmission service customers own property contiguous with existing transmission corridors

and there is sufficient acreage to extend a transmission line to a new substation, an exemption should be allowed even though the facilities would be over a mile in length.

The commission believes that CenterPoint's recommended amendment has very limited application and declines to adopt the suggestion.

§25.101(c)(5)(C).

LCRA strongly disagreed that the proposed rule's requirement that installation of an additional circuit up to 230 kV on an existing transmission line requires the consent of all landowners crossed by the project. LCRA argued that notice to the landowner should suffice and landowner consent should only be required when additional right-of-way is necessary. Oncor requested clarification that a CCN is not necessary to install an additional circuit to a transmission line that was originally certificated for multiple circuits.

The commission agrees that it is not necessary to obtain a CCN to install an additional circuit on a transmission line that was originally certificated for multiple circuits. While the commission encourages the efficient use of existing rights-of-way by the installation of additional circuits where necessary, the commission does not agree that notice to the landowner is sufficient to install an additional circuit to a line that was not originally certificated for that purpose. The commission notes that the current rule requires a TSP to obtain a CCN to install an additional circuit unless the facility was certificated for

multiple circuits. The proposed rule allows a TSP the opportunity to install additional circuits without obtaining a CCN, but only with the consent of the landowners whose land is crossed by the project. The installation of an additional circuit will likely result in a significant change in the nature of facility, and the commission believes that landowners should agree with the addition or have the opportunity to participate in a CCN proceeding addressing the addition.

§25.101(d)(2).

LCRA commented that any structure within a transmission line right-of-way, whether new or old, habitable or not, could impinge on the National Electrical Safety Code clearance requirements and become an impediment to vehicular traffic and setting up maintenance vehicles. LCRA strongly encouraged the commission to adopt language that does not appear to condone the construction of any structures within utility easements. LCRA added that the term "habitable structure" is defined in §25.101(a)(4). LCRA urged that additional definitional terms should not be included in this section as well.

The commission agrees with the comments and the rule is amended accordingly.

§25.101(d)(3)(A)-(D).

EGSI and Oncor expressed concern about including mitigation measures in the rule. EGSI argued that the measures are confusing and to the extent that they address environmental regulations, are duplicative. Oncor noted that mitigation measures have historically been included in individual CCN orders where appropriate, and that the applicant, landowner, the commission staff, administrative law judge, and ultimately the commission, retain the flexibility to craft the mitigation measures appropriate in each individual situation after consideration of an environmental assessment and specific evidentiary findings. Oncor expressed concern that inclusion of the mitigation measures in the rule will effectively create a rebuttable presumption that such measures are almost always appropriate. Oncor argued that the commission, transmission providers, ratepayers, and directly affected landowners are better served by deleting the proposed amendment and continuing the commission's current practice of addressing individual mitigation measures on a case-by-case basis. EGSI suggested amending the language to recognize that mitigation measures shall be in accordance with all existing environmental regulations.

The commission disagrees that the mitigation measures should be deleted. The mitigation measures listed in the rule are general examples of the types of mitigation measures typically required by commission orders. The list is neither intended to be all inclusive of the measures that the commission may impose in any particular order, nor is it intended to be conclusive. The rule clearly states that mitigation measures shall be applied *when appropriate* and *shall be adapted to the specifics of each project*. The commission does not believe that it is necessary to state that all mitigation measures shall be in accordance with existing environmental regulations.

§25.102 - Coastal Management.

CenterPoint commented that the proposed amendment still includes the term "electric utility" and recommended that it be deleted and replaced by transmission service provider.

The commission notes that not all utilities in the state have unbundled. Specifically, Entergy Gulf States Inc. is still operating as an integrated utility, and provides service in areas that are affected by this section. The commission declines to adopt the suggested deletions; however, the commission adds the term "transmission service provider" to the portion of the rule that previously referred only to "electric utility."

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

These amendments, new section, and repeal are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the 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 establishes the commission the authority to grant certificates of convenience and necessity, and 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 and §14.052, §§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. Projects that shall be reported include:

(1) projects that require a Certificate of Convenience and Necessity (CCN) under §25.101(b)(3) of this title;

(2) projects that do not require a CCN as identified in §25.101(c)(3) and (5) of this title; and

(3) other transmission related projects with an estimated cost exceeding $250,000.

(b) **Reporting of projects that require a certificate.** Projects that require a CCN under §25.101(b)(3) of this title shall be included in the next scheduled monthly construction progress report following the filing of a CCN application and in all subsequent construction progress reports until the final project costs have been reported.

(c) **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) **Construction progress report.** Project information shall be filed in a scheduled monthly construction progress report no fewer than 45 days before construction begins and in all subsequent construction progress reports until the final project costs have been reported.

(2) **Consent.** Proof of written consent where required by §25.101(c)(5) of this title, shall be filed with the construction progress report no fewer than 45 days before construction begins. Proof of consent shall be established by an affidavit affirming that written consent was obtained from each required landowner. Construction shall not begin until such affidavit has been received by the commission.

(3) **Notice.** Direct notice shall be provided by first-class mail 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. Notice is required to all landowners whose property is crossed by projects that do not require a CCN under §25.101(c)(5) of this title, except notice is not required to landowners that have provided written consent. For projects that require new or additional rights-of-way, notice is required to all landowners with a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV as identified on

the current county tax rolls. In addition, direct mail notice is required to owners of 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 construction progress report no fewer than 45 days before construction begins. Construction shall not begin until such affidavit has been received by the commission.

(B) In the event that the utility finds that any landowner has not been notified, the utility shall immediately provide notice in the manner required by 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.

(d) **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 with estimated costs exceeding $250,000 have been performed and power has been restored, the affected utility shall file a report describing the work performed and the estimated associated costs. This information shall be included as a project reported in a regularly scheduled construction progress report within 45 days of the

completion of the repair and in all subsequent construction progress reports until the final costs have been reported.

§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) **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.

(3) **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.

(4) **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 among other factors, 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, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's preferred and alternate routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

(i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;

(ii) whether the routes parallel existing compatible rights-of-way;

(iii) whether the routes parallel property lines or other natural or cultural features; and

(iv) whether the 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; and

(ii) 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 defined 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, 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, on an existing transmission line, 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 any above-ground structures within the right-of-way. New construction of 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 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 transmission service provider or 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) **Thresholds for review.** If the proposed facilities exceed the thresholds for referral to the Coastal Coordination Council established in this section, then, in its order approving the

certificate of convenience and necessity, the commission shall describe the proposed facilities and their probable impact on the applicable coastal resources specified in 31 T.A.C. §501.14(a) in the findings of fact and conclusion of law. These findings should also identify the goals and policies applied and an explanation of the basis for the commission's determination that the proposed facilities are consistent with the goals and policies of the Coastal Management Program or why the action does not adversely affect any applicable coastal natural resource specified in 31 T.A.C. §501.14(a).

(1) **Generating facilities.** In accordance with 31 T.A.C. §505.26, certificates for generating facilities subject to subsection (a) of this section may be referred to the Coastal Coordination Council for review pursuant to 31 T.A.C. §505.32 if any part of the generating facilities certificated are located seaward of the Coastal Facility Designation Line as defined in 31 T.A.C. §19.2(a)(21) and within:

(A) coastal historic areas as defined in 31 T.A.C. §501.3(b)(2);

(B) coastal preserve as defined in 31 T.A.C. §501.3(b)(3);

(C) coastal shore areas as defined in 31 T.A.C. §501.3(b)(4);

(D) coastal wetlands as defined in 31 T.A.C. §501.3(b)(5);

(E) critical dune areas as defined in 31 T.A.C. §501.3(b)(6);

(F) critical erosion areas as defined in 31 T.A.C. §501.3(b)(7);

(G) Gulf beaches as defined in 31 T.A.C. §501.3(b)(8);

(H) hard substrate reefs as defined in 31 T.A.C. §501.3(b)(9);

(I) oyster reefs as defined in 31 T.A.C. §501.3(b)(10);

(J) submerged lands as defined in 31 T.A.C. §501.3(b)(12);

(K) submerged aquatic vegetation as defined in 31 T.A.C. §501.3(b)(13); or

(L) tidal sand and mud flats as defined in 31 T.A.C. §501.3(b)(14).

(2) **Transmission facilities.** In accordance with 31 T.A.C. §505.26, certificates for transmission facilities subject to subsection (a) of this section may be referred to the Coastal Coordination Council for review pursuant to 31 T.A.C. §505.32 if any part of the transmission facilities certificated are located within Coastal Barrier Resource System Units or Otherwise Protected Areas seaward of the Coastal Facility Designation Line as defined in 31 T.A.C. §19.2(a)(21) and within:

(A) coastal wetlands as defined in 31 T.A.C. §501.3(b)(5);

(B) critical dune areas as defined in 31 T.A.C. §501.3(b)(6);

(C) Gulf beaches as defined in 31 T.A.C. §501.3(b)(8);

(D) hard substrate reefs as defined in 31 T.A.C. §501.3(b)(9);

(E) oyster reefs as defined in 31 T.A.C. §501.3(b)(10);

(F) special hazard areas as defined in 31 T.A.C. §501.3(b)(11);

(G) submerged aquatic vegetation as defined in 31 T.A.C. §501.3(b)(13); or

(H) tidal sand and mud flats as defined in 31 T.A.C. §501.3(b)(14).

(c) **Register of certificates subject to the Coastal Management Program.** The executive director of the commission or the executive director's designee shall maintain a record of all

certificates subject to the Coastal Management Program and provide a copy of the record to the Coastal Coordination Council on a quarterly basis.

(d) **Notice.**

(1) **Notice of receipt.** When publishing notice of receipt of an application identified by the applicant as subject to the Coastal Management Program, the commission shall include the following statement: "This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies."

(2) **Notice to the Coastal Coordination Council.** The commission shall place the secretary of the Coastal Coordination Council on the service list for any proceeding involving an application subject to the Coastal Management Program.

This agency hereby certifies that the rules, as adopted, have 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 amendments to §25.83 relating to Construction Reports, new §25.101 relating to Certification Criteria, and amendments to §25.102 relating to Coastal Management Program are hereby adopted with changes to the text as proposed. The repeal of existing §25.101 relating to Certification Criteria is hereby adopted without changes as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

_____

Rebecca Klein, Chairman

_____

Brett A. Perlman, Commissioner