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**SOAH DOCKET NO. 473-05-5029
PUC DOCKET NO. 30617**

**APPLICATION OF CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY
(CCN) FOR A PROPOSED
TRANSMISSION LINE WITHIN
BRAZORIA COUNTY, TEXAS**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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PUBLIC UTILITY COMMISSION
HOUSTON, TEXAS

**ORDER NO. 5
REGARDING ADEQUACY OF ROUTES**

I. Introduction

CenterPoint Energy Houston Electric, LLC (Applicant/CenterPoint) filed an application with the Public Utility Commission (Commission) to amend its certificate of convenience and necessity (CCN) for a 69-kilovolt (kv) transmission line to service a new customer, Freeport LNG Development L.P. (Intervenor/Freeport LNG). The transmission line will extend from the existing Freeport Substation, located at the intersections of SH 288/SH 34 and FM 1495, to Freeport LNG's Quintana (QNTANA) Substation located on Quintana Island, north of County Road 723.¹ The distance between the two substations is approximately four miles and includes portions of the Freeport Harbor Channel and Gulf Intracoastal Waterway (GIWW).

Statements of Position regarding the adequacy of routes were filed by three parties: Commission Staff, Coastal Bend Property Development, LP (Intervenor/Coastal Bend), and the City of Freeport (Intervenor/the City). However, after securing additional information from the Intervenor and CenterPoint, Staff withdrew its request to add additional routes. Staff agreed that CenterPoint's application had a sufficient number of alternative routes for the Commission's consideration.² Therefore, the Administrative Law Judge (ALJ) will only discuss the remaining Statements of Position filed by Coastal Bend and the City.

¹The study area is located in Brazoria County, along the upper Texas Gulf Coast. *Application of CenterPoint Energy Houston Electric, LLC (CenterPoint's Application)* at 3.

²*Commission Staff's Supplemental Statement on Adequacy of Routes*. (June 22, 2005).

On July 6, 2005, ALJ Catherine C. Egan convened a prehearing conference to consider requests to add additional routes for consideration. The following persons or parties appeared and participated: DeAnn Walker, on behalf of the applicant, CenterPoint; Chris Reeder, on behalf of Intervenor ConocoPhillips (Intervenor/Conoco); Mel Eckhoff, on behalf of Intervenor FreePort LNG; Richard Fuller, on behalf of Coastal Bend; Ron Bottoms, City Manager, on behalf of the City; and Shelah Cisneros, Staff Attorney on behalf of the Commission Staff.

As discussed below, after reviewing the Statements of Position, the responses, and considering the arguments, the ALJ finds that: (1) Coastal Bend's Statement of Position was untimely, failed to propose an alternative route, and failed to provide any meaningful reason for its objection to CenterPoint's proposed routes; (2) that the routes proposed by CenterPoint are adequate; and (3) that the City's proposed route was properly rejected by CenterPoint during the route screening process. Therefore, the requests to add additional routes are denied.³

II. Statement of Position Filed by Coastal Bend

The parties were directed in Order No. 4 to file Statements of Position by June 10, 2005, and any Request for a Preliminary Hearing regarding the adequacy of routes by June 22, 2005.⁴ Coastal Bend filed its Request for Limited Preliminary Hearing and Statement of Position on June 30, 2005, after the deadlines for both. Coastal Bend's Statement of Position was vague and failed to identify an alternative route for consideration. In addition, counsel for Coastal Bend did not appear at the hearing to show good cause for his late filings. CenterPoint, Conoco, and Freeport LNG objected to Coastal Bend's late filing and asked that the request for a preliminary hearing be denied.

³ The ALJ reviewed Order No. 10 in *Application of LCRA Transmission Services Corporations to Amend Its Certificate of Convenience and Necessity for a 138KV Transmission Line in Kendall and Bexar Counties*, SOAH Docket No. 473-04-7609 (PUC Docket No. 29684) and agrees with the determinations reached by ALJ Landeros regarding the burden of proof and standard of proof.

⁴Order No. 4 (May 9, 2005)

The ALJ finds that Coastal Bend's Statement of Position and Request for a Preliminary Hearing were untimely filed. Moreover, the Statement of Position did not provide an alternative route to consider, but merely asserted vague and generalized objections to the routes proposed by CenterPoint.⁵ Based on the untimely filed Statement of Position, the untimely Request for Preliminary Hearing, the lack of any meaningful information within the Statement of Position, the ALJ finds that Coastal Bend waived any claim to challenge the adequacy of alternative routes proposed by CenterPoint and denied Coastal Bend's request for a preliminary hearing.

III. The City's Failure to File a Request for Hearing

On June 10, 2005, the City timely filed a Statement of Position requesting that an alternate route, segments B-H-I-J-K, be considered. CenterPoint and Conoco responded objecting to the City's request to add this additional route because this route was previously considered and found undesirable for several reasons.

The City did not request a hearing as required in Order No. 4, but appeared at the prehearing conference. According to Mr. Bottom, the City Manager, he believed that filing of the Statement of Position was sufficient to indicate a desire for a hearing. CenterPoint, Conoco, and Freeport LNG objected to conducting a preliminary hearing regarding the adequacy of routes because the City failed to timely request one, and consequently, they were unprepared for an evidentiary hearing.

Order No. 4 clearly required the parties to request a preliminary hearing on the adequacy of routes, if one was necessary. Therefore, the ALJ denied the City's untimely request for a preliminary hearing. However, the ALJ permitted the parties to present oral argument regarding the City's Statement of Position and the responses.

⁵ Coastal Bend's primary basis for its Statement of Position was that "the very fact that a property owner/developer of a subdivision residential in character is to be permanently a part of a 69kv (initially) electrical overhead transmission line is in and of itself justification for a finding that an inadequate number of alternative routes are contained in the Application." Coastal Bend provided no facts to support this allegation.

IV. The City's Statement of Position

The City noted that all four of CenterPoint's proposed routes run south along portions of FM 1495 (segments D, E, O, and T), the road used to access the beach front property known as Bryan Beach. The City agrees that currently this is not a major residential or recreational area, but asserts that the City recently created a Master Plan that includes the development of Bryan Beach from FM 1495 south to the confluence of the Brazoria River.⁶ Placing transmission lines along FM 1495, the City contends, will make the corridor to the beach unsightly.

According to the City, the shortest route between the existing Freeport Substation and the proposed Quintana Substation, the route it proposes (segments B-H-I-J-K),⁷ should be considered. This route avoids FM 1495 completely. Instead, segment B follows the northern boundary of BASF's Inc.'s property and the eastern waterfront perimeter of the Conoco plant. At Conoco's waterfront, segment B travels alongside the seawall between the plant and the Freeport Harbor Channel Turning Basin (Turning Basin). Using this route, reasons the City, places the transmission line in an industrial area; uses a compatible right-of-way (ROW), a distribution line; avoids disturbing the appearance of the corridor to Bryan Beach; and reduces the impact to residential property and future public recreational areas.

The City further questioned the weight placed on the Port of Freeport's (the Port's) master development plan, asserting that it was given an "inordinate amount of weight." According to the City, the Port's master development plan was treated as though it was a 10-year plan, when it is a 20-year plan. The City admitted that at the time the routing study was being performed, the City did not

⁶ The City's Statement of Position did not include any affidavits, other support documentation, or any portion of the City's master development plan.

⁷ Although not mentioned by the City, segment A needs to be included if this route is to be connected to the Freeport Substation.

have a Master Plan. However, the City argues that nothing in the Port's master development plan justifies not including segments B-H-I-J-K as an alternate route, and requests that this route be added for consideration.

V. The Position of CenterPoint, Conoco, and Freeport LNG

CenterPoint filed this application for a four-mile 69kv transmission line to provide service to a new customer, Freeport LNG, in Brazoria County. Freeport LNG needs this service in place by the beginning of 2007.⁸

Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell) investigated and analyzed the study area, and prepared the Routing Study and Environmental Assessment (the Routing Study) attached to CenterPoint's application. Lisa Barko was Burns & McDonnell's Environment Scientist responsible for investigating, collecting relevant data, and preparing the Routing Study. According to Ms. Barko, the City's proposed route was initially considered, but after its investigation the route was rejected for the reasons explained below. Ultimately, CenterPoint included four alternate routes based upon the Routing Study: the Preferred route⁹ (segments A-D-E-O-T-U-V-W-X); Alternate route no. 1 (segments M-N-U-V-W-X); Alternate route no. 2 (segments A-D-E-O-Z-P'-V-W-X); and, Alternate route 3 (segments A-D-E-F-G-H-S'-W-X).

As noted above, a portion of segment B travels along the seawall between Conoco's plant and the Turning Basin. Ms. Barko explained that during Burns & McDonnell's study, Conoco documented that segment B would run adjacent to pipe racks, in close proximity to Conoco's control room, and through areas that would interfere with Conoco's existing infrastructure. The lines would also pose safety hazards to the cranes and overhead work being conducted by the seawall and

⁸CenterPoint's Application, Attachment 3.

⁹ This is also known as Route 4.

docking facilities.

After the study, segment B was rejected a viable segment for three primary reasons. First, as noted above, the transmission line would interfere with Conoco's waterfront operations by limiting its ongoing waterfront operations and by creating "potential safety issues due to congestion of its facilities in the area."¹⁰ Second, CenterPoint's access to the transmission lines would be restricted because Conoco's plant is a secured facility. Third, the Port's development plans include widening the Turning Basin to allow access for additional break bulk cargo containers and berths. When this occurs, Ms. Barko opined, it may require the relocation of these lines, violating the Coastal Management Program (CMP) goal to encourage the sound management of coastal resources to allow compatible economic development and multiple human uses of the coastal zone. The City's proposed route, she maintains, limits the usefulness of this property for future shipping activities.

As for the City's contention that segment B is a compatible ROW with the existing distribution line; CenterPoint, Conoco, and Freeport LNG disagree. The footprint of a distribution line is significantly different from that of a transmission line. Distribution lines, which are on small wooden poles, can easily accommodate the curve around the edge of Conoco's waterfront property. Christopher Catania, CenterPoint's Senior Engineer in Transmission Operations, clarified in his affidavit that the portions of segment B in curved and industrially-developed areas along the waterfront have an increased degree of uncertainty as to where to place the structures.

In addition, the use of concrete poles, as CenterPoint proposed, may not be feasible along the waterway, explains Mr. Catania. Elevated plant facilities could also increase the height of the transmission conductors. The result is that CenterPoint may have to use self-supporting steel poles ranging in height from 90 feet to 150 feet above ground with steel reinforced concrete foundations. This, in turn, requires a deeper foundation diameter. It would be both difficult and costly to find places for the steel poles among Conoco's existing industrial facilities.

¹⁰CenterPoint's Application, attachment 5 at 3-18.

In summary, segment B requires the transmission facility, a much larger structure, to run close to Conoco's office buildings, control room, and docketing facilities. The transmission lines are not compatible ROWs with the distribution line given the highly-developed industrial area and adjacent docketing facilities around which the transmission line would need to be built. In addition, access to the transmission lines in this area would be seriously limited because of Conoco's security measures. These problems made segment B unacceptable, explained Ms. Barko, particularly since Alternate route 3 is available and is in an industrial area.

Alternate route no. 3 does not interfere with Conoco's office buildings, control room, or docketing peers, but uses segment D extending approximately a quarter mile on FM 1495. It then turns east into the industrial area along County Road 731, using segments E and F. Contrary to the City's assertions, both segments E and F are in industrial areas, avoid residential areas, and do not pose the safety hazards created by segment B. Moreover, Alternate route no. 3 does not interfere with coastal resources.

Ms. Barko also explained that segment J of the City's proposed route was eliminated from consideration for two reasons. First, the Port's development plans indicate that the Port will remove the land upon which the transmission facilities in the area will be located. Second, segment J is in an area of a Civil War historical site.

Conoco challenged the City's assertion that a transmission line would deter tourist, and others, from visiting and using the recreational facilities the City has yet to develop on Bryan Beach. FM 1495 already runs along the side industrial property, with a less than an attractive view. In addition, visitors have to cross the Intracoastal Waterway, which has chemical, coal, and fuel barges on it daily, all industrial activity. Finally, Conoco reiterated that the Commission has not historically considered future land use as a factor for routing transmission lines. Currently, there are no

restaurants, shops, beach facilities in place, it is simply on the “drawing board.”¹¹

Ms. Barko addressed the City’s allegation that the Routing Study placed an inordinate amount of weight on industry and the Port’s concerns. The Port is the largest landowner in the study area and had a master development plan in place during the study. As part of the investigation, Burns & McDonnell requested that the Port give it a copy of the master development plan, and any related information, for consideration.

In contrast, the City did not have a master development plan and merely wrote: “The City of Freeport is attempting to develop Bryan Beach as a destination. These segments would detract from this objective.”¹² When Burns & McDonnell received this information, it requested information about the City’s planned development. According to Ms. Barko, “Mr. Bottom inferred that no plans were available and no plans existed at the time.”¹³ None have yet been received by Burns & McDonnell or CenterPoint.

In closing, and in addition to the above cited reasons, CenterPoint, Conoco, and Freeport LNG impressed upon the ALJ that the delay caused by adding this route, potentially four to five months, would be very adverse to Freeport LNG. Freeport LNG has requested that CenterPoint make power available to it by the beginning of 2007. A delay of three to four months will make meeting this deadline improbable. Therefore, CenterPoint, Conoco, and Freeport LNG asked that the City of Freeport’s request to add as an additional route segments B-H-I-J-K be denied.

¹¹ Preliminary Hearing Tr. at 40 (July 6, 2005).

¹² *CenterPoint’s Response to Statements Regarding Adequacy of Routes*, Attachment B at 15 and Attachment B-1. (June 17, 2005)

¹³ *Id.* at 16.

C. ALJ's Analysis

The Commission's Order of Referral identified the issues to be addressed by SOAH. The first issue addressed in the Commission's order stated:

1. Is CenterPoint Energy Houston Electric, LLC's application to amend its CCN adequate? Does the application contain an adequate number of alternative routes to conduct a proper evaluation? If not, the ALJ shall allow CenterPoint Energy Houston Electric, LLC to amend the application and to provide proper notice to affected landowners; if CenterPoint Energy Houston Electric, LLC chooses not to amend the application, the ALJ may dismiss the case without prejudice.

The applicable question is whether the application contains an adequate number of alternative routes to conduct a proper evaluation, and inherent within that is whether the City's proposed route should be added as an alternative route. This is a four-mile transmission line that is being developed to serve a new customer. Four alternative routes were submitted for consideration, each selected because they included the best segment choices, while presenting different options for consideration. Staff after initially requesting the addition of three other alternate routes, withdrew that request and agree that the four submitted by CenterPoint were adequate to conduct a proper evaluation. The only objection was from the City.

The City proposed an alternate route with segments B-H-I-J-K to avoid placing the transmission facility along FM 1495 leading, or running adjacent, to Bryan Beach, an area the City now wishes to develop. The City contends the four routes proposed in CenterPoint's application detract from the aesthetics of the beach area it wishes to develop. Instead, the City wants to redirect the transmission facility eastwardly, ultimately running along the northern boundary of BASF's property and the waterfront property of Conoco on the Port's Turning Basin.

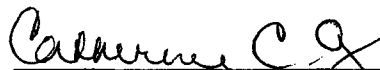
While the City's concern is primarily appearance of the transmission lines along the roadway and its impact on the future development of this area, the City's proposed route immediately impacts

Conoco's operations, poses serious safety hazards, interferes with the goals and policies of the CMP, and the Port's development plans that were in place at the time of this study. As discussed by Ms. Barko and Mr. Catania, segment B is fraught with problems, many of which exist now and others that will occur in the future. Consequently, segment B is not appropriate for further consideration as part of an alternate route for this transmission line.

In addition, another segment of the City's proposed route is objectionable – segment J. Segment J traverses an area of land that the Port's development plans indicate will be removed in the future. The Commission directed in the Order of Referral that CenterPoint's application "must be consistent with the Coastal Management Program goals and policies." The route proposed by the City fails in this regard because the construction of transmission facilities along segment B will interfere with the Port's future plans to widen the Turning Basin and may require the removal of transmission lines in the future along segment J. In addition, segment J is in an area of a known historical site, a Civil War Era fort.

For these reasons, Segments B and J are not viable segments for consideration. Therefore, the ALJ finds that the City's Proposed Route is not appropriate for further consideration. The four routes CenterPoint proposes for consideration are the four most desirable routes. These routes traverse different areas, while reducing the potential negative impact in the Study Area. The ALJ finds that CenterPoint's application contains an adequate number of alternative routes to conduct a proper evaluation.

SIGNED July 25, 2005.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS