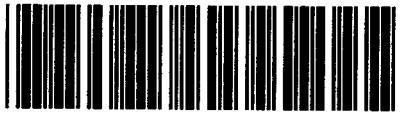




Control Number: 32070



Item Number: 142

Addendum StartPage: 0

SOAH DOCKET NO. 473-06-2341  
PUC DOCKET NO. 32070

APPLICATION OF WOOD COUNTY §  
ELECTRIC COOPERATIVE, INC. FOR §  
A CERTIFICATE OF CONVENIENCE § PUBLIC UTILITY COMMISSION  
AND NECESSITY FOR A PROPOSED §  
TRANSMISSION LINE IN WOOD § OF TEXAS  
COUNTY, TEXAS §

**DAN L. STRICKLIN'S APPEAL OF ORDER NO. 8**

**TO THE HONORABLE COMMISSIONERS:**

Dan L. Stricklin files this appeal of Order No. 8, issued September 8, 2006, pursuant to Commission PROC. R. §22.123. Because Order No. 8 is unjustified, improper, immediately prejudices a substantial or material right of Mr. Stricklin, and materially affects the course of the hearing, Mr. Stricklin respectfully requests that the Commission reverse Order No. 8 and grant such other relief as is described herein.

**I. FACTS AND SUMMARY OF THE ARGUMENT**

**A. ERROR IN ORDER NO. 8**

Order No. 8 depends upon the flawed legal premise that the review of the routes presented in an application for a transmission line CCN may *never* take into consideration the end-points of the transmission line, including the location of a substation to be served by it. The rationale of Order No. 8 potentially allows utilities to place substations anywhere they want and thereafter dictate what routes can be considered for the transmission lines that serve them, circumventing the rights of interveners to question—and the power of the Commission to evaluate—whether the undisputed goal of building a substation and related facilities to improve electric service in an area can be achieved through a transmission path more in keeping with the Commission's criteria. Because Order No. 8's legal determination conflicts with PURA and the

Commission's Rules, because it presents an obstacle to the recognition and implementation of the Commission's policy of "prudent avoidance," and because it encourages transmission and distribution service providers to pursue potentially unsound practices in the planning, placement, and routing of facilities,<sup>1</sup> Order No. 8 is unjustified and improper. Further, because Order No. 8 canceled the scheduled hearing on route adequacy—a hearing that would have provided a forum for the quick and relatively economical disposition of the factual and legal questions presented by the Co-op's potentially imprudent site selection—the order immediately prejudices Mr. Stricklin's substantial or material right to a hearing. Perhaps more importantly, Order No. 8 promises to multiply the cost to Mr. Stricklin of participating in this case because it alters the course of the hearing and leaves issues that could be determined early in the process to the hearing on the merits. Accordingly, the Commission should reverse Order No. 8 and direct the ALJ to hold proceedings as necessary to remedy the error.

## **B. FACTS AND OVERVIEW OF APPEAL**

Mr. Stricklin is a retired owner of approximately 200 acres of property located in Wood County, Texas. Wood County Electric Cooperative, Inc. ("Applicant" or "Co-op" herein) has filed an Application for Certificate of Convenience and Necessity (the "Application") for a proposed electric transmission line from a tap into an existing AEP-SWEPCO 138 kV transmission line at one location or another (the "Tap") to the site of a proposed, new substation (the "Substation") (from the Tap to the Substation, the span covered by the Co-op's Application,

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<sup>1</sup> Mr. Stricklin would acknowledge that he must have information from the Co-op to prove the question of whether any of the proposed routes—or his proposed alternative—better meet the law or Commission Rules or policies. Neither Mr. Stricklin's contest of the proposed routes nor this appeal should be construed to disparage the actual motivations or incentives of the Co-op or its personnel.

the "Transmission Line"). The Co-op's "preferred route" for the Transmission Line cuts Mr. Stricklin's property virtually in half.<sup>2</sup>

Based upon discovery obtained and in anticipation of further information from the Co-op, as well as an examination of the routes of the Transmission Line and the distribution circuits it is proposed to feed, Mr. Stricklin contended in a Statement on the Adequacy of the Proposed Routes ("Stricklin Statement") that all of the proposed Transmission Line routes were unnecessarily lengthy and costly and that none of the proposed routes was, therefore, adequate.<sup>3</sup> Mr. Stricklin's review of the Co-op's map of post-CCN distribution lines (included with Mr. Norman's Direct Testimony as Exhibit RBN-2), together with a certain amount of investigation, showed that vacant property—including a parcel currently for sale—existed reasonably near the load and geographic centers of the Co-op's proposed distribution grid that would accommodate the proposed Substation *and* eliminate or dramatically shorten the proposed transmission line for which the Application is pending (promoting the Commission's policy of prudent avoidance and potentially saving the Co-op both the cost of condemning easements and building the Transmission Line itself, *i.e.*, saving the Co-op something in the range of \$1 million).<sup>4</sup>

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<sup>2</sup> Although it has approached with disdain the alternatives Mr. Stricklin advocates and that make this appeal important, the Co-op has offered to consider a realignment of the preferred route to a location on Mr. Stricklin's property that would not cut it down the center. If Mr. Stricklin cannot persuade the Co-op, the ALJ, or the Commission of the economic, environmental, and aesthetic merits of his proposal or persuade the Co-op to reconsider and relocate the proposed Substation, realignment such as that which has been discussed with the Co-op may be necessary.

<sup>3</sup> In the alternative, Mr. Stricklin proposed that if the issue for the "Adequacy Hearing" was nothing more than whether the "number" of proposed routes proposed was "adequate," even if the routes themselves failed to meet the terms of PURA or the Commission's Rules, then six routes (actually five) is as good a number as any, particularly when the segments of any route could be adjusted.

<sup>4</sup> On September 7, 2006, Mr. Stricklin provided the Co-op with information regarding certain potential sites for the proposed Substation. Mr. Stricklin continues to investigate the potential locations through additional Requests for Information under PUC PROC. R. §22.144 and expected to provide certain testimony on the issue at the Cancelled Hearing.

The Co-op responded, contending that Mr. Stricklin had the nefarious objective of burdening his neighbors with the Transmission Line or the proposed Substation (a claim the Co-op knows to be untrue).<sup>5</sup> The Co-op also argued that the construction of a substation does not require a CCN (a point that Mr. Stricklin does not dispute), but commented sarcastically that “Mr. Stricklin believes that such sites must meet his approval.” (Another claim that the Co-op knows to be untrue.) The Co-op went further in its response to mock Mr. Stricklin for his truthful responses to discovery that, in summary, demonstrate that while Mr. Stricklin is not an electrical transmission or distribution engineer, a layman’s view of the Co-op’s Application and direct testimony—which include the location of the proposed Substation and a map of the proposed distribution grid to be served by the Substation—shows that sites exist for the placement of the Substation that would shorten or eliminate the need for the Transmission Line without substantially increasing the length of the distribution circuits, apparently enhancing the cost-effectiveness and environmental and aesthetic appeal of the Project and conforming as much as possible to the Commission’s policies.

Without evaluating the merits of Mr. Stricklin’s proposals, Order No. 8 holds that “[t]he ALJ agrees with the argument set forth in [the Co-op’s] response, in particular that pursuant to PUC [SUBST. RULE §] 25.101(c)(2), the selection and the construction of an electric substation is a matter for which the Commission does not require certification. The ALJ finds that the requested preliminary hearing is not necessary.” Order No. 8 at 2. In issuing Order No. 8, the

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<sup>5</sup> Again, while the Co-op would mock his motivations, Mr. Stricklin readily acknowledges that his motivation in spending his own time, effort, and money in this Docket is to save himself—and his neighbors—from the environmental and aesthetic blight of almost two miles of evidently unnecessary high-voltage transmission lines. If the Co-op were actually pursuing the Application in conformity with the Commission’s policies in transmission line CCNs under PUC SUBST. R. §25.101, it would at least cooperate in the process of determining whether Mr. Stricklin’s proposal has merit. Instead, encouraged by Order No. 8, the Co-op has “dug in” on its proposed routes and chosen to resist discovery that would potentially determine the viability of the option.

ALJ has necessarily assumed that because a CCN is not required for a substation, the location of the substation—one of the end-points of the Transmission Line (and of many transmission lines in other CCN applications)—is irrelevant to the adequacy of the proposed routes. Order No. 8, therefore, conflicts with and is an obstacle to the PURA’s policies that the Transmission Line be required by the public convenience and necessity and including support of community values, aesthetics, environmental integrity, and the lowering of cost to consumers. TEX. UTIL. CODE §§37.056(a); (c)(4)(A), (D), and (E). Order No. 8 also conflicts with the Commission’s effectuation of PURA through its rules establishing a policy of “prudent avoidance” and requiring that the Transmission Line “be routed to the extent reasonable to moderate the impact on the affected community and landowners.” PUC SUBST. R. §25.101(b)(3)(B). Order No. 8 is also unjustified and improper because it encourages transmission and distribution service providers to pursue potentially unsound practices in the planning, placement, and routing of facilities.<sup>6</sup> Order No. 8 is unjustified and improper.

Further, because Order No. 8 canceled the scheduled hearing on route adequacy—a hearing that would have provided a forum for the quick and relatively inexpensive disposition of the factual and legal questions presented by the Co-op’s apparently imprudent site selection—the order immediately prejudices Mr. Stricklin’s substantial or material right to a hearing, and perhaps more importantly, promises to multiply the cost to Mr. Stricklin of participating in this case because it alters the course of the hearing by leaving issues that could be determined early in the process to the hearing on the merits. In requesting a preliminary hearing on route

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<sup>6</sup> Mr. Stricklin would acknowledge that he must have information from the Co-op to prove the question of whether any of the proposed routes—or his proposed alternative—better meet the law or Commission Rules or policies. Neither Mr. Stricklin’s contest of the proposed routes nor this appeal should be construed to disparage the actual motivations or incentives of the Co-op or its personnel. Only the Co-op possesses such knowledge or information.

adequacy, Mr. Stricklin has not, as the Co-op would suggest, requested that the Co-op disprove every conceivable alternative route or set of end-points for the Transmission Line. Nor has Mr. Stricklin requested that the ALJ or Commission examine every potential end-point for the Transmission Line in lieu of those the Co-op has proposed.<sup>7</sup>

The Co-op claims without support that Mr. Stricklin's proposal for the evaluation of alternative substation locations would require a new application and a new project and would "seriously impact and jeopardize the electric reliability to thousands of customers to be served by this project (sic)." Although the final plans would affect whether an amended Application would be required, relocating the proposed Substation to another location within the scope of the environmental assessment and very near the apparent geographic and load centers, as Mr. Stricklin has suggested be evaluated, apparently would require no new environmental assessment and in fact would require no application for a CCN at all because the only remaining facilities would be exempt from the CCN process under PUC SUBST. R. §25.101(c).

This proceeding may and should examine whether the proposed Transmission Line is proposed and routed in accordance with PURA and the Commission's Rules and policies, and this examination should include whether the Transmission Line is necessary at all if the Substation is relocated to a point much nearer the existing transmission facilities. Accordingly, the Commission should reverse Order No. 8 and direct the ALJ to hold proceedings as necessary to remedy the error.

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<sup>7</sup> Applicant's Response at 5.

## II. ARGUMENT AND AUTHORITIES

### A. STANDARDS FOR APPLICATION FOR CCN

Neither the Substation nor the Tap requires a CCN.<sup>8</sup> Based upon the facts known today, Mr. Stricklin does not contest that the construction of a substation in the vicinity of northwest Mineola may enhance the reliability of electric service in the area.

However, PUC SUBST. R. §25.101, adopted under Section 37.051, *et seq.* of PURA, requires more, particularly in the evaluation of a transmission line. First, subsection (b) sets forth the standard and describes the scope of the Commission's discretion, in requiring that:

*the certificate [be determined to be] 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.*

*Id.* (emphasis added). Moreover, the routing of the transmission line is subject to particular scrutiny:

*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*

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<sup>8</sup> See, e.g., TEX. UTIL. CODE §§37.051; PUC SUBST. R. §25.101(c)(2).

- (iv) *whether the routes conform with the policy of prudent avoidance.*

*Id.* at §25.101(b)(3)(B) (emphasis added). Finally, Tex. Util. Code §37.056(c), as incorporated in Rule 25.101(b), requires that:

- (c) The commission shall grant each certificate on a nondiscriminatory basis after considering:
- (1) the adequacy of existing service;
  - (2) the need for additional service;
  - (3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
  - (4) other factors, such as:
    - (A) *community values*;
    - (B) recreational and park areas;
    - (C) historical and *aesthetic values*;
    - (D) *environmental integrity*;
    - (E) *the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted*; and
    - (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.

*Id.* (emphasis added). Subject to the evaluation of specified criteria, therefore, the Commission has substantial discretion in the evaluation of an Application.

If, as Mr. Stricklin contends, the preliminary hearing on the adequacy of the proposed routes is held and a preliminary determination of the propriety of the Co-op's route end-points made, this case may either be short-circuited into an amended application that incorporates a revision to the location of the Substation (or the elimination of the Application altogether because the remaining facility will not require a application under PUC SUBST. R. §25.101) or into a proceeding about changes in the locations of certain links in the Proposed Routes. This time and money saving device is supported by the facts now known, and the ALJ should be directed to hold such a hearing at the earliest possible date. An examination of the end-points of

the transmission line is essential to the proper evaluation of the Application and its routes under these mechanisms and standards.

**B. THE ALJ'S DETERMINATION CONFLICTS WITH THE SCOPE OF MANDATED REVIEW OF THE APPLICATION**

The ALJ's legal determination that substation end-points of proposed transmission line routes are not subject to review in a preliminary hearing on route adequacy conflicts with and is an obstacle to the PURA's policies that the Transmission Line be required by the public convenience and necessity and promote community values, aesthetics, environmental integrity, and the lowering of costs to consumers. TEX. UTIL. CODE §§37.056(a); (c)(4)(A), (C), (D), and (E). As is explained above, if determined appropriate, the proposal to place the Substation end-point of the proposed routes at or near the intersection of US-69 and County Road 2311 would place it less than 1000 feet from the AEP-SWEPCO line to which it is to be interconnected. Some locations near that intersection—including some that are already for sale—are themselves crossed by the AEP-SWEPCO line and provide access that is much less than 1000 feet from AEP-SWEPCO line.<sup>9</sup> Each of these locations offers the prospect of short, additional distribution links to either existing distribution facilities or to new distribution facilities that the Co-op must build in the near future to accommodate the widening of US-69. Each of these locations would avoid the nearly-two-mile blight of the Transmission Line upon the property not just of Mr. Stricklin, but anyone who drives by or can see the line from his or her home.

Far from promoting a determination of the PURA and Commission-Rule-mandated factors in a timely manner, the refusal to preliminarily review the matter of the Substation end-point unnecessarily delays an objective determination of whether the Proposed Routes unduly

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<sup>9</sup> Mr. Stricklin is prepared to offer evidence at the Preliminary Hearing that the parcel of real estate already for sale is crossed by the AEP-SWEPCO transmission line and is within approximately 1000 feet of existing and planned distribution facilities along US-69.

interfere with community values, aesthetics, and environmental integrity, as well as the impact on the cost of service, as Section 37.056(c) and the Commission's Rules require. This delay will increase the cost to all participants, and in the end, if it is determined that the location of the Substation must be changed to meet the requirements of the statute or rules, all of the time spent between the date of the preliminary hearing and the final hearing on the merits would have been lost.

**C. ORDER NO. 8 PREVENTS A PRELIMINARY DETERMINATION OF THE ADEQUACY OF THE PROPOSED ROUTES UNDER THE PRINCIPLE OF PRUDENT AVOIDANCE AND SIMILAR STANDARDS IN COMMISSION RULES AND MAY LEAD TO AN INADEQUATE EVALUATION**

Similarly, Order No. 8 also conflicts with the Commission's effectuation of PURA through its rules establishing a policy of "prudent avoidance" and the Commission Rules in which it is effected. "Prudent avoidance" is defined in Commission Rules as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort." PUC SUBST. R. §25.101(a)(4). Section 25.101(b) requires in turn that a transmission line "be routed to the extent reasonable to moderate the impact on the affected community and landowners" and consider whether the routing "conforms to the policy of prudent avoidance." *Id.* at §25.101(b)(3)(B).

As is set forth above, a refusal to consider the location of the Substation end-point of a proposed transmission line would fail to promote the policy of routing such structures to moderate the impact on the affected community and landowners and would place at risk a full inquiry into whether the proposed routes actually effect the policy of prudent avoidance. If the policy of prudent avoidance and Section 25.101(b) does not permit the evaluation of the Substation end-point of the Transmission Line, the case will merely avoid the question of policy by requiring an evaluation of proposed routes that should never have been in play in the first

place. The Commission should not prevent the timely evaluation of options that would completely eliminate the need for a transmission line (or nearly so).

**D. ALTHOUGH CORRECT THAT NEITHER PURA NOR COMMISSION RULES REQUIRE A CCN FOR A SUBSTATION, ORDER NO. 8 IS UNJUSTIFIED AND IMPROPER BECAUSE IT DISCONNECTS THE LOCATION OF A SUBSTATION FROM THE COSTS OF DEPLOYMENT**

Order No. 8 is unjustified and improper because it encourages transmission and distribution service providers to pursue potentially unsound practices in the planning, placement, and routing of facilities. In the instant case, the Co-op has proposed a set of routes based upon its proposed location of the substation it is to serve. While the record remains incomplete, Order No. 8's refusal to consider the proposed location of the Substation in the analysis of route adequacy raises the specter that a Distribution Service Provider ("DSP") that also provides transmission services may inadvertently or intentionally push costs to all payers of transmission service rates through the deployment of such facilities without the exercise of "good utility practice."<sup>10</sup>

Specifically, to recover the costs of the elements of its transmission system from all DSPs in the state through the mechanism provided in PUC SUBST. R. §25.192, a Transmission Service Provider ("TSP") must use "good utility practice" in the planning, construction, operation, and maintenance of any facility the cost of which a TSP seeks to recover. *Id.* at §§25.195(b), 25.192. "Good utility practice" is defined in the Commission's Rules as:

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with

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<sup>10</sup> Mr. Stricklin would acknowledge that he must have information from the Co-op to prove the question of whether any of the proposed routes—or his proposed alternative—better meet the law or Commission Rules or policies. Neither Mr. Stricklin's contest of the proposed routes nor this appeal should be construed to disparage the actual motivations or incentives of the Co-op or its personnel.

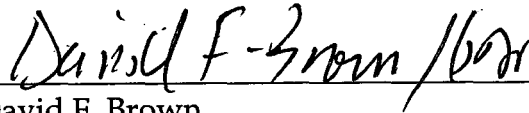
good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

The construction of a substation does not require approval of a CCN. However, if the location of the end-points of a proposed transmission line, including the substation end-point, are not subject to question in a preliminary evaluation of the proposed routes in a transmission line CCN case (or later, in a hearing on the merits), where the Commission is required to analyze the public convenience and necessity and the cost to consumers of the deployment, a serious question exists as to whether the project could later be challenged as failing to meet "good utility practice" for purposes of including it in the TSP's rate. As such, consumers in the state of distribution services could be unduly burdened by the imprudent deployment of transmission facilities. This question is best avoided by allowing the analysis of the Substation end-point at the earliest practicable time in this case, regardless of whether the utility must obtain approval of a CCN for the Substation itself.

### **III. CONCLUSION**

For the reasons set forth above, Mr. Stricklin respectfully requests that the Commission reverse Order No. 8 and direct that the ALJ conduct a Preliminary Hearing on Route Adequacy at a date to be determined and in conformity with Mr. Stricklin's requested relief in his Statement on the Adequacy of Routes and Request for Preliminary Hearing.

Respectfully submitted,

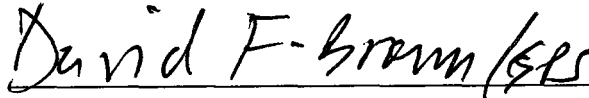
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**ATTORNEYS FOR DAN STRICKLIN**

**CERTIFICATE OF SERVICE**

I, David F. Brown, certify that a copy of the above and foregoing document, Dan Stricklin's Appeal or Order No. 8, was served in accordance with Public Utility Commission of Texas Rules on all parties of record in this proceeding on September 18, 2006.

A handwritten signature in cursive script, reading "David F. Brown", followed by a horizontal line.

David F. Brown