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APPLICATION OF TXU ELECTRIC DELIVERY COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) FOR A PROPOSED TRANSMISSION LINE IN DALLAS COUNTY, TEXAS	§ § § § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

ORDER NO. 8
REGARDING SUPERIOR COOLING'S MOTION TO ALTER SCHEDULE AND MOTION TO EXTEND TIME FOR FILING OBJECTIONS TO TXU'S DIRECT TESTIMONY, AND OTHER REQUESTS

On July 7, 2006, Intervenor Superior Cooling (Mark Spence) filed five communications, each titled "motion filing," with the Public Utility Commission of Texas (Commission). On July 18, 2006, TXU Electric Delivery Company (TXU) filed its response. No other party responded. The substance of each communication from Superior Cooling is condensed below:

1. Request for interested persons and the ALJs to tour neighborhoods of the proposed routes;
2. Request that a "pre-hearing" be held in the neighborhood of the proposed routes;
3. Request for "total change" to the established procedural schedule;
4. Request to reschedule the due date for Objections to TXU's direct testimony;
5. Requesting information about State law on missing deadlines;
6. Implied statement that notice of the proceeding to the affected landowners was inadequate.

The ALJs appreciate the time and effort Mr. Mark Spence on behalf of Superior Cooling has put into moving the process forward.

Regarding particular requests, the ALJs make the following responses and rulings.

1. Request for interested persons and the ALJs to tour neighborhoods of the proposed routes.

Concerning the requested for interested persons to tour the affected neighborhood, the ALJs do not plan to issue any orders requiring this, because interested persons can conduct meetings and tours without leave from the ALJs.

Regarding the ALJs' touring the affected area, it is a long-established principle that, with very few exceptions, the fact-finders (in this case, the ALJs) should not tour the scene that is at issue in a proceeding, whether that be the scene of a wreck, a crime, or, as in this case, a potentially affected neighborhood. The reason may not be persuasive to nonlawyers, but in legal thinking it is a simple one: a legal proceeding exists to allow a decision to be made based only upon: (1) evidence that is considered relevant, (2) evidence that is offered and admitted according to defined procedural rules, and (3) evidence that each party has a chance to controvert, that is, to overcome by other evidence that tends to prove the opposite of what the first evidence has tended to show.

When a fact-finder views a site outside the hearing room, there can be no control over what sights, sounds, smells, and incidents the fact-finder will be exposed to. Therefore, it is impossible, or nearly so, for such a "viewing" of the site be conducted and controlled by the rules of applicable law. For that reason, unless the parties unanimously agree on such a proceeding and request it, the ALJs will not consider viewing the potentially affected area. The parties should remember that properly authenticated photographs, maps, scale models, sound recordings, and testimony are all available to prove relevant facts.

2. Request that a "pre-hearing" be held in the neighborhood of the proposed routes.

Although it is unclear to the ALJs exactly what Intervenor means by "prehearing," they believe that the present unanimously agreed schedule, which contains a technical conference and a settlement conference that were or will be held in Dallas and will be several weeks apart, allows adequate opportunity for all parties to discuss, debate, and resolve the issues. The ALJs note that

the parties are not limited to those meetings on the schedule, but can meet as often as the involved individuals' time permits.

3. Request for "total change" to the established procedural schedule.

This request is based upon the Intervenors' not receiving certain information until June 26, 2007. However, all parties present at the May 24, 2006, prehearing conference agreed to the schedule, and the information provided in the June 26 correspondence from Staff to the intervenors is publicly available information. As stated in Order 5, all persons who apply for and are granted Intervenor status must become familiar with and follow the PUC rules applicable to this proceeding. Many Intervenors did not attend the prehearing conference despite adequate notice, as Order 6 recognizes, but it is not fair to those parties who did attend to reset this proceeding back to a prior state. Some showing of specific harm caused by an agreed procedural schedule should be pled and proved as part of any request to materially alter it.

4. Request to reschedule the due date for Objections to TXU's direct testimony.

The deadlines affected by this request are those for the filing of objections to TXU's direct testimony (July 7) and the deadline for filing replies to objections to TXU's direct testimony (July 14). The ALJs, therefore, treat the request as a motion to modify the established procedural schedule (Motion) with regard to those two dates, and **order** that responses to that Motion be filed timely in accordance with PUC procedural rules by 3:00 p.m. Friday, August 11. The ALJs request that the parties, in responding or in supplementing the Motion, use their ingenuity and attempt to agree upon a workable solution. If no agreement is reached, the ALJs will rule on this Motion.[1]

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[1] The ALJs remind Intervenors that contradicting evidence is not the same as objecting to it. Objections to evidence are legal matters that are often best addressed by counsel experienced in administrative proceedings, or at least in civil trial work. For example, although the ALJs have read and discussed the sample objection contained in Filing No. 4, and although the ALJs construe their duty to conduct a fair hearing as imposing on them an obligation to read any filed document so as to give effect to its legitimate statements and requests (unless prohibited from doing so by other legal requirements), if the sample objection were made to offered evidence, the ALJs would not find that Filing No. 4 raises any legal objections.

5. Requesting information about State law on missing deadlines.

The ALJs cannot respond to this request, other than to say that, in general, missing a deadline to perform a certain action waives the party's right to take that action. The party that missed a deadline may file a motion to be allowed to perform the action late, but other parties may object and each motion must be decided on its own merits. In almost every case, ignorance of a deadline is not good cause for missing it.

6. Implied allegation concerning adequacy of notice.

As TXU's response states, a previous order in this proceeding has found that notice was adequate. (Order No.2, April 13, 2006.) The affidavit supporting notice was filed in this proceeding on April 3, and attests that affected landowners were mailed notice on March 10, 2006. The attachment to Superior Cooling's Request to Intervene, filed April 13, 2006, shows that Mr. Spence wrote to the Dallas Morning News about the proposed lines on March 12, a month before the notice provided by TXU was found to be adequate. Objections to the adequacy of notice could have been made during that period. Without addressing whether such an inquiry is permitted under the PUC rules, no good cause has been shown why the notice issue should be revisited.

Summary

As stated in Order No. 6:

> It is the ALJs' goal to have everyone who wants to participate do so but in an efficient manner. An intervenor must follow all Commission and SOAH rules. (Order No. 6, p.4)

In this connection, Intervenors who want to participate fully as parties are reminded of the September 8, 2006, filing deadline for filing a statement of position and of the requirements for that statement, which are discussed on page 4 of Order No. 6.

SIGNED August 4, 2006.

LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHARLES HOMER III
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS