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APPLICATION OF RAYBURN §
COUNTRY ELECTRIC §
COOPERATIVE, INC. FOR A §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY (CCN) FOR A §
PROPOSED TRANSMISSION LINE IN §
HENDERSON AND VAN ZANDT §
COUNTIES, TEXAS §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**BARRY D. ROBINSON'S RESPONSE AND OBJECTION
TO RAYBURN COUNTRY ELECTRIC COOPERATIVE, INC.'S MOTION FOR
PERMISSION TO FILE SUPPLEMENTAL TESTIMONY**

Landowner Intervenor, Barry D. Robinson ("BDR"), hereby files this response and objection to Rayburn Country Electric Cooperative, Inc.'s ("RCEC") Motion For Permission to File Supplemental Testimony ("Motion") as follows:

Commission Procedural Rules provide a response to a motion shall be filed within five working days after receipt of the motion. RCEC's Motion was received by BDR on Wednesday, June 13, 2007. Therefore, this response is timely filed.

On February 28, 2007 RCEC filed a motion to suspend the procedural schedule and request for expedited ruling ("Motion to Suspend"). In its Motion to Suspend, RCEC represented that its supplemental testimony would only relate to issues already raised in this case.¹ In Staff's motion in support of RCEC's Motion to Suspend, staff commented that it would be "in the public interest to allow for additional discovery and supplemental testimony concerning a limited set of issues, *i.e.* the voltage concerns and potential alternative technologies addressed in Explorer's direct testimony."² Staff confirmed in its motion that RCEC's supplemental testimony should be limited to existing issues.

On March 1, 2007 the Administrative Law Judge issued Order No. 24 indicating, among other things, that RCEC would have to request permission to supplement its

¹ RCEC Motion to Suspend at 1 (February 28, 2007).

² Staff Motion in Support of RCEC Motion to Suspend at 1 (March 1, 2007).

testimony pursuant to P.U.C. PROC. R. 22.225(c). According to P.U.C. PROC. R. 22.225(c), "The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues (emphasis added) or unreasonably denies opposing parties of the opportunity to respond to the supplemental testimony." By referencing P.U.C. PROC. R. 22.225(c) in Order No. 24, the Administrative Law Judge forewarned RCEC that supplemental testimony would be excluded if such testimony raised new issues or unreasonably denied opposing parties of the opportunity to respond to the supplemental testimony.

On May 30, 2007, RCEC submitted supplemental testimony in this proceeding entitled *Supplemental Direct Testimony and Exhibit of Jennifer B. Tripp, PE* ("Supplemental Direct Testimony").

On June 12, 2007, RCEC filed a motion to lift suspension of the procedural schedule and, in that motion, requested the Administrative Law Judge "lift the suspension of the procedural schedule and allow discovery to proceed immediately on new issues (emphasis added) raised by RCEC's May 30, 2007 supplemental testimony." RCEC admits the Supplemental Direct Testimony raises new issues and this fact is evident as shown in the Review of the Supplemental Direct Testimony presented below.

On June 13, 2007, RCEC filed the Motion in accordance with the Administrative Law Judge's Order No. 24 requirement that RCEC would have to request permission to supplement its testimony pursuant to P.U.C. PROC. R. 22.225(c). The question at issue is whether or not RCEC raises new issues in the Supplemental Direct Testimony.

Review of the Supplemental Direct Testimony

In the Supplemental Direct Testimony, Ms. Tripp indicates her "role in this proceeding is to supplement the testimonies of Mr. John W. Chiles of GDS Associates and Mr. Michael Moore of C. H. Guernsey & Company relative to electrical transmission planning and determination of need for transmission facilities."³ In supplementing Mr. Chiles' and Mr. Moore's testimony, Ms. Tripp should only address issues already raised in

³ Supplemental Direct Testimony and Exhibit of Jennifer B. Tripp, PE at 5:8-11 (May 30, 2007).

this case. In the Supplemental Direct Testimony, Ms. Tripp also indicates she reviewed “certain portions of RCEC’s SOAH Docket No. 473-07-0218/PUC Docket No. 32707 filing and data responses pertaining to transmission planning issues relative to the Proposed Project” and “the direct testimony of Mr. Chiles, Mr. Moore and Mr. James R. Dauphinais.”⁴ It should be noted Ms. Tripp only reviewed “certain portions” of RCEC’s SOAH Docket No. 473-07-0218/PUC Docket No. 32707 filing (RCEC’s “CCN Application”) and data responses and, therefore, she may be making an incorrect presumption that her testimony does not raise new issues. If Ms. Tripp has not reviewed all portions of RCEC’s CCN Application and data responses and does not know all the issues and position statements contained in RCEC’s CCN Application, data responses or other RCEC expert direct testimony, it is probable that Ms. Tripp does not know when her testimony raises a new issue or is inconsistent with the record in this proceeding.

Specific objections to the Supplemental Direct Testimony are as follows:

- (A) In Ms. Tripp’s SUMMARY OF CONCLUSIONS, she concludes, among other things, that the Proposed Project ... “(3) is an integral part of future electric system expansion plans.”⁵ Ms. Tripp states the support for her conclusion is the “SPP’s Transmission Expansion Plan – 2006-2016” (“SPP Expansion Plan”), dated December 11, 2006.⁶ I object to Ms. Tripp’s conclusion that the proposed project is an integral part of future electric system expansion plans, because her conclusion is based on a December 11, 2006 SPP Expansion Plan that is not of record in this proceeding. As the December 11, 2006 date clearly confirms, the SPP Expansion Plan is new to this proceeding and all testimony related thereto should be considered raising a new issue and, therefore, excluded in accordance with P.U.C. PROC. R. 22.225(c). The following Supplemental Direct Testimony should be

⁴ *Id.* at 5:17-20.

⁵ *Id.* at 8:7-8.

⁶ *Id.* at 8:22 – 9:7.

excluded because it is directly related to the December 11, 2006 SPP Expansion Plan and, therefore, raises a new issue:

Page 8, Lines 7 and 8 – Exclude “(3) is an integral part of future electric system expansion plans.”;

Page 9, Lines 4 through 7 – Exclude all lines;

Page 9, Line 16 through 18 – Exclude all lines. In her testimony, Ms. Tripp indicates her Supplemental Assessment was completed using the 2011 SPP Expansion Planning case.⁷ Ms. Tripp’s testimony confirms the 2011 case is cited in the SPP Expansion Plan.⁸ The SPP Expansion Plan and 2011 SPP Expansion Planning case information were not available until December 11, 2006 and are not part of the record of this proceeding. The entire Supplemental Assessment creates a new issue in this proceeding and should be excluded in accordance with P.U.C. PROC. R. 22.225(c);

Page 18, Line 9 – Exclude “(3) ‘interregional/coordination studies’”;

Page 18, Line 13 and 14 – Exclude “and the interregional/coordination studies are summarized in the ‘SPP Expansion Plan’”;

Page 18, Line 18 – Exclude “and to coordinate planning with regional planning entities.”;

Page 21, Lines 19-21 – Exclude “SPP performs the annual SPP Expansion Plan as part of its tariff administration and role as reliability coordinator or Planning Authority.”;

Page 22, Line 7 through Page 26, Line 11 – Exclude all lines;

Page 31, Line 13 – Exclude “within the SPP Expansion Plan window”;

Page 44, Line 12 through Page 78, Line 4 – Exclude all lines. As discussed above, the entire Supplemental Assessment creates a new issue in this proceeding and should be excluded in accordance with P.U.C. PROC. R. 22.225(c);

Page 79, Lines 9-10 – Exclude “and none is integrated with the existing regional coordinated planning”;

Page 83, Line 17 – Exclude “and Supplemental Assessment”;

⁷ *Id.* at 49:6.

⁸ *Id.* at 24:26.

(B) As mentioned above, Ms. Tripp indicated her role in this proceeding is to supplement the testimonies of Mr. John W. Chiles of GDS Associates and Mr. Michael Moore of C. H. Guernsey & Company relative to electrical transmission planning and determination of need for transmission facilities. A review of Ms. Tripp's testimony reveals she did not just "supplement" Mr. Chiles' and Mr. Moore's testimony, she completely changed the character of their testimony as relates to RCEC's CCN Application Question 13. **Need for the Proposed Project** and, in doing so, created a new issue in this proceeding. In her testimony, Ms. Tripp downplayed the role of the System Impact Study as pertains to justifying need for the proposed project. For example, Ms. Tripp testifies "the System Impact Study discussed in Mr. Chiles' testimony and included as Exhibit E to the Application is not specifically to identify need for the Proposed Project."⁹ Ms. Tripp suggests the purpose of the System Impact Study is "to fulfill the requirement of an interconnected utility relative to interconnection and coordination, demonstrating that the Proposed Project meets the interconnection standards of the utility to which the facility is to be interconnected and can be integrated without detrimental effect into the regional system."¹⁰ In her testimony, Ms. Tripp admits she only reviewed certain portions of RCEC's CCN Application, direct testimony and data responses.¹¹ It is evident Ms. Tripp did not review the following section of RCEC's CCN Application and Mr. Moore's direct testimony which confirm RCEC's position that the System Impact Study was presented by RCEC to evidence (identify) need for the proposed project.

*** CCN Application page 12., Question 13. **Need for the Proposed Project**, requires RCEC to provide a written description of the steady state load flow analysis that justifies the need for the project. On page 17. of the CCN Application, RCEC evidences the System Impact Study is offered as *the study* that justifies (identifies) need for the project;

⁹ *Id.* at 19:12-14.

¹⁰ *Id.* at 19:14-18.

¹¹ *Id.* at 5:17-20.

*** Mr. Moore's direct testimony page 6, line 12, where Mr. Moore confirms he sponsored the answer to RCEC's CCN Application Question 13. and Exhibit E. Mr. Moore offered the System Impact Study as the load flow analysis required by CCN Application 13. to justify (identify) the need for the project. The AEP Study was not offered as the load flow analysis required by CCN Application 13. in order to justify the project.

By way of Ms. Tripp's testimony, RCEC is changing its position on which study supports the need for the proposed project. In her testimony, Ms. Tripp downplays the System Impact Study and labels it the "interconnection" study. Ms. Tripp builds up the AEP Study as one of the "reliability" studies.¹² The fact is the System Impact Study was offered as the load flow study, required by CCN Application Question 13., to justify the project need and the AEP Study was not offered. The fact is the AEP Study was not even mentioned in this proceeding, until RCEC offered it in response to Explorer's sixth RFI.

RCEC should not be allowed to late-file supplemental testimony that completely changes the character of, and representations made in, its CCN Application or expert direct testimony. If after evaluating intervenors' direct testimony, RCEC believes it will not be able to prove "need", based on providing the System Impact Study as the steady state load flow analysis that justifies the project, then RCEC should amend its CCN Application. It is unfair to opposing parties to allow RCEC to late-file testimony that, in effect, says,

"We are concerned the System Impact Study does not justify the project need and we no longer want to offer the System Impact Study in response to CCN Application Question 13. **Need for the Proposed Project.** We now offer the AEP Study, because it indicates we *need* a third delivery point in order for AEP to grant firm delivery above 161 MW."

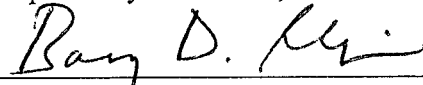
¹² *Id.* at 18:10-11.

The following Supplemental Direct Testimony should be excluded because it is mischaracterizes the role of the System Impact Study as *the study* that justifies the project need as evidenced by RCEC's (Mr. Moore's) response to CCN Application Question 13. **Need for the Proposed Project.** By suggesting otherwise, the Supplemental Direct Testimony filed by RCEC raises a new issue:

Page 19 – Lines 12-18 – Exclude “The purpose of the ‘interconnection’ System Impact Study discussed in Mr. Chiles’ testimony and included as Exhibit E to the Application is not specifically to identify need for the Proposed Project. Its purpose is to fulfill the requirement of an interconnected utility relative to interconnection and coordination, demonstrating that the Proposed Project meets the interconnection standards of the utility to which the facility is to be interconnected and can be integrated without detrimental effect into the regional system. However, based on the analyses completed for this “interconnection study’,”

Barry D. Robinson respectfully requests the Administrative Law Judge, in accordance with P.U.C. PROC. R. 22.225(c), exclude all the Supplemental Direct Testimony identified above that raises new issues. Additionally, I respectfully request the Administrative Law Judge establish reasonable procedures and deadlines regarding any Supplemental Direct Testimony allowed and grant such other and further relief to which the parties opposing RCEC are entitled.

Respectfully submitted,



Barry D. Robinson

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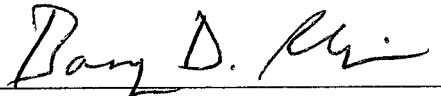
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June 20, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing document has been hand-delivered, mailed by first-class mail, postage prepaid, or faxed to all parties on the service list, on this 20th day of June, 2007.



Barry D. Robinson