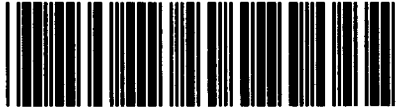




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LAW OFFICES OF
JOE H. STALEY, JR., P.C.

2008 JUL 25 AM 9:47
5949 Sherry Lane, Suite 501
Dallas, Texas 75225
(214) 739-3700
Fax: (214) 739-1919
FILING CLERK

July 23, 2008

Hon. Thomas H. Walston
State Office of Administrative Hearings
William P. Clements Office Building
300 W.15th Street
Austin, Texas 78701

via telecopy 512-936-0770

Re: SOAH Docket No. 473-07-0218; PUC Docket No. 32707
Application of Rayburn Country Electric Cooperative, Inc.
For a Certificate of Convenience and Necessity (CNN) for a
Proposed Transmission Line in Henderson and Van Zandt
Counties, Texas, Before the State Office of Administrative
Hearings

Dear Judge Walston:

I write in response to the letter of Rayburn Country Electric Cooperative, Inc. ("RCEC") which asks this Court to "reconsider" its Order No. 49 regarding the scheduling of testimony from Ms. Karen Hardin of the Texas Parks and Wildlife Department. No "reconsideration" is necessary; Order No. 49 merely concerns the *scheduling* of the hearing in this matter and as such is clearly within this Court's purview under P.U.C. Proc. R. 22.202(d). Any objections RCEC may have to Ms. Hardin's testimony can and should be heard at the time she is presented.

Moreover, the premature objections raised by RCEC are completely without merit. P.U.C. Proc. R. 22.202(d) clearly states that "The presiding officer shall conduct the hearing in such a manner to secure fairness in administration, eliminate unjustifiable delay, and promote the development of the record consistent with the applicable laws." For the RCEC to try and preemptively preclude testimony from the Texas Parks and Wildlife Department regarding the environmental impact of the proposed Modified Route 1 at issue is contrary to both the letter and spirit of Rule 22.202(d), as well as to meeting its own burden to demonstrate that the proposed route will not have a harmful impact on the aesthetic value and environmental integrity of the property affected. See TEX. UTIL. CODE § 37.056(c)(4).

Indeed, the RCEC's attempt to avoid hearing what Ms. Hardin has to say is particularly troubling in light of the fact that this matter was remanded for the subject hearing *specifically because the RCEC had not properly consulted with the Texas Parks and Wildlife Department regarding the assessment of the proposed route's impacts to wetlands, bottomland forest habitat, riparian habitat, and other sensitive communities or special habitat features.* As the

Order on Remand from the Public Utility Commission notes:

"[T]he Commission finds the record deficient in that there is no evidence of as response to the Texas Parks and Wildlife Department's request, in its letter dated July 29, 2005, that a copy of the environmental assessment prepared by PBS&J be provided to the Department for its review and comment, preferably before the application to the Commission for a certificate of convenience and necessity."

As Ms. Hardin's letter to the P.U.C. notes, the PBS&J assessment was not provided to the Texas Parks and Wildlife Department until March 20, 2008, so her testimony is *explicitly* what this hearing was called to develop. See Letter of April 18, 2008 from Karen Hardin to Bruce Almon, Director of Engineering, P.U.C. of Texas, submitted herewith. Had the RCEC complied with its obligation to obtain the input of the Texas Parks and Wildlife Department, it might have understood the insurmountable environmental damages with its proposed Modified Route 1 and avoided the need for this hearing in the first place.

Instead, RCEC continues to try and avoid having the views of the Texas Parks and Wildlife Department included in the record of this matter despite the direction by the P.U.C. in its Order of Remand that "landowners should be on notice that all proposed routes are available for selection until the decision is ultimately made by the Commission." Ms. Hardin's testimony will be directly relevant to that determination as her letter notes

(a) that the original Route 1 was found by PBS&J in its Environmental Assessment and Alternative Route Analysis to be "the least preferred route," but had been selected "following negotiations among RCEC and some impacted landowners,"

(b) that a formal update of the EA studying the proposed Modified Route 1 – as well as the "Route 12" which Ms. Hardin herself crafted and which the Texas Parks and Wildlife Department prefers -- should be submitted, and

(c) that the actual environmental impact of RCEC's proposed "Modified Route 1" *in toto* has not even been studied by RCEC, and that absent such a study, the Texas Parks and Wildlife Department's assessment of the PBS&J work clearly places Modified Route 1 as the *worst* option available for the proposed line. Clearly, RCEC has failed to meet its burden of proof and failed to even make an environmental assessment of Modified Route 1 but rather chosen to simply snipe at the Wises' proffered evidence.

The fact is that RCEC has ignored the true thrust of its statutory obligation under TEX. UTIL. CODE § 37.056(c)(4) as well as the direct Order of Remand from the P.U.C. Rather than working to *prevent* Ms. Hardin from testifying, RCEC should have *solicited* and *offered* the testimony of the State's expert. Instead, RCEC decided to pay its own expert, Rob Reid, to take a walk along the proposed route as it crosses the Wises' property and then opine why the Texas Parks and Wildlife Department's input should be ignored. That simply does *not* equate to an actual "environmental evaluation of the recommended modified route 1," Order of Remand at 1, and thus fails to meet the RCEC's *prima facie* burden. At the very least, Ms. Hardin should be allowed to rebut the testimony from Mr. Reid attacking her analysis and credibility.

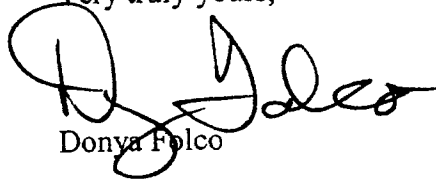
Finally, RCEC's objection that Ms. Hardin's testimony "offends all notions of justice and fair play [and] amounts to trial by ambush" is ludicrous. As noted, the input of the Texas Parks

and Wildlife Department – here through the testimony of Ms. Hardin -- is exactly the record information which the P.U.C. remanded this matter to obtain. Nor can the Wises be faulted for not presenting prepared testimony from Ms. Hardin; the burden to address the environmental impact of its proposed route falls to RCEC – it was only the failure by RCEC to develop and present the views of the State's expert which caused the Intervenor to step in and try to ensure those views were actually heard at this hearing. RCEC and its attorneys met with Ms. Hardin to give her their spin. The Wises and their attorney have not met with Ms. Hardin or ever discuss the fact of this case with her.

The Wises' attorney did contact Shawn St. Clair by phone today and conferred with him about the scheduling of the hearing. Mr. St. Clair stated that RCEC wants to leave the hearing scheduled for August 6 and 7, and then if more time is needed reset the hearing for another time. The Wises believe that the hearing will require at least three days given the number of witnesses and amount of evidence. Further, it will be a serious financial burden on the Wises, their witnesses, and the other intervenors to be required to travel to Austin from Van Zandt county twice for the hearing.

In light of the court's conflict on August 8th, the need to accommodate Ms. Hardin's schedule and the financial burden to all of the intervenors of splitting the hearing dates, the Wises respectfully request the hearing be reset for three consecutive days at sometime later in August or September at the court's discretion.

Very truly yours,



Donya Folco

cc: All Parties of record