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PUC DOCKET NO. 34611

APPLICATION OF KELSON § BEFORE THE
TRANSMISSION COMPANY, LLC §
FOR A CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
FOR THE AMENDED PROPOSED § PUBLIC UTILITY COMMISSION
CANAL TO DEWEYVILLE 345 KV §
TRANSMISSION LINE WITHIN §
CHAMBERS, HARDIN, JASPER, §
JEFFERSON, LIBERTY, NEWTON, §
AND ORANGE COUNTIES § OF TEXAS

KELSON TRANSMISSION COMPANY, LLC'S APPEAL OF ORDER NO. 21

Pursuant to Procedural Rule 22.123, Kelson Transmission Company, LLC
(Kelson Transmission or the Company) files this appeal of Order No. 21.

I. INTRODUCTION

This appeal concerns the one-year deadline for review of Kelson Transmission's application. The Company does not relish the thought of taking an appeal from an order issued by an experienced and respected judge, particularly when Staff has indicated to the Company that Staff will support the order and oppose the appeal. Kelson Transmission is also well aware of the commissioners' preference for allowing judges considerable leeway to manage their dockets. But Order No. 21 materially increases the cost of the Company's project, flatly contradicts two prior orders by the same judge (with no intervening change in circumstances), and imposes requirements beyond those found in PURA or the Commission's rules.

II. SUMMARY OF ARGUMENT

In Order No. 12, Judge Field concluded:

Accordingly, at this time the one year period for review of this application is **December 28, 2008**, based on the filing date of the amended application. This date is subject to change in concurrence with a finding by Commission Staff and

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subsequent Commission order regarding the sufficiency of the amended application and notice.¹

Judge Field later issued Order No. 15, which was unambiguous as to the sufficiency of Kelson Transmission's application.

On January 28, 2008, Commission Staff filed comments stating that Kelson's application is sufficient and complete as amended on December 28, 2007. **Consistent with Staff's recommendation, Kelson's application is deemed sufficient and materially complete.**²

As to Kelson Transmission's notice, Order No. 15 was equally definitive.

According to Commission Staff, Kelson has committed that it will hold a public meeting specifically for landowners that are directly affected by the amendments to its application. Kelson has already held public meetings for previously-noticed directly affected landowners. Given that understanding, Commission Staff affirmed that Kelson **has complied** with Commission rules regarding published notice and notice sent to affected landowners, neighboring utilities, and county and municipal officials. **Consistent with Commission Staff's recommendation, Kelson's provision of notice is approved.**³

Order No. 15 therefore confirmed the December 28, 2008 deadline set in Order No. 12. Nevertheless, in Order No. 21, Judge Field re-set the one-year period to start on March 31, 2008 and continue through March 31, 2009.⁴

The genesis of the delay embodied in Order No. 21 appears to be some admittedly confusing procedural steps by the Company to address some newly *affected* landowners as well as some newly *discovered* landowners. First, Kelson Transmission voluntarily agreed to hold an additional public meeting on its proposed project for some landowners newly *affected* by the Company's amended application.⁵ Nothing in the Commission's rules requires public meetings to accompany every change in an application. But Staff expressed concern that the changes in

¹ Order No. 12 at 2 (Jan. 3, 2008) (emphasis in original).

² Order No. 15 at 1 (Feb. 1, 2008) (emphasis added).

³ *Id.* (emphasis added).

⁴ Order No. 21 at 1 (Apr. 9, 2008).

⁵ Procedural Rule 22.52(a)(4) requires a utility to hold at least one public meeting before filing its application. Before filing its original application in August 2007, Kelson Transmission held not one, but two public meetings.

the amended application would affect some landowners for the first time and that those landowners had not had the benefit of a public meeting. It has been Kelson Transmission's philosophy from the outset of this proceeding to be as open as possible, to coordinate and cooperate with Staff, and to encourage active landowner participation. Accordingly, Kelson Transmission readily agreed to hold a *third* public meeting. Kelson did so in part, however, based on its understanding that its agreement to hold a third meeting was voluntary and would not result in a Staff recommendation to extend the December 28, 2008 deadline. It is significant that the Company's agreement to hold a third public meeting was made and communicated to Judge Field by Staff *before* he issued Order No. 15.⁶ And despite expressly acknowledging Kelson Transmission's agreement to later hold a public meeting with newly affected landowners, Order No. 15 nevertheless correctly found the Company's notice complete.

Second, when preparing notice of the third public meeting, Kelson Transmission reviewed updated tax rolls and found affected landowners not previously identified in those records. In accordance with Procedural Rule 22.52(a)(3)(E), the Company provided notice to these newly *discovered* landowners and invited them to the third public meeting.⁷

Staff raised concerns with the Company about whether the notice provided to newly *affected* landowners of the public meeting and to newly *discovered* landowners of the project's existence and the public meeting stated clearly enough the voluntarily-extended intervention date for both groups, and the Company took steps to address those concerns. At some point, however, those issues with the subsequent notices became confused with the adequacy of the Company's initial notice already approved in Order No. 15.

⁶ Commission Staff's Comments on Sufficiency of Application and Notice (Jan. 28, 2008).

⁷ But discovery of and notice to these new landowners does not by itself affect the sufficiency of prior notice according to that rule.

To decide now, in Order No. 21, that notice was not complete until after a voluntary additional public meeting was held for newly *affected* landowners, until newly *discovered* landowners received notice, or until both groups of landowners were notified of the extended intervention date, is inconsistent with the Commission's rules, with Order No. 15, and with the Company's understanding of the effect its agreement to hold a public meeting and extend intervention deadlines would have on the deadlines applicable to this case.

III. PROCEDURAL HISTORY OF THE CASE

Prior to filing its original application, Kelson Transmission held two public meetings to gather public input.⁸ A total of 935 affected landowners were invited to the meetings and more than 100 additional letters of invitation were sent to local elected officials and affected regulatory agencies.⁹ The Company also published notice of the meetings in 15 newspapers of general circulation in the area of the project.¹⁰ One meeting in Mont Belvieu was attended by 41 people and 24 people attended the meeting in Beaumont.¹¹

Kelson Transmission then filed its original application in this docket. The Company provided notice of the application by mail to affected cities and counties, utilities, and landowners.¹² It also published notice in newspapers of general circulation.¹³

In Order No. 5, Judge Field agreed with Staff that the Company should republish the newspaper notice to clarify route descriptions Staff believed could be confusing.¹⁴ In Order No. 7, however, Judge Field found that in all other respects, the application was sufficient.¹⁵

⁸ Amended Application at 87 (Dec. 28, 2007).

⁹ *Id.* at 88.

¹⁰ *Id.*

¹¹ *Id.* at 87.

¹² Kelson Transmission Company, LLC's Proof of Publication and Proof of Notification by Mail and Request for Waiver at 5-7 (Sept. 14, 2007).

¹³ *Id.* at 5.

¹⁴ Order No. 5 at 1 (Oct. 9, 2007).

¹⁵ Order No. 7 at 1-2 (Oct. 25, 2007).

After receiving Order No. 5, Kelson Transmission met with the Staff and worked diligently to correct the perceived deficiencies in its published route descriptions. Instead of immediately republishing the corrected notice, however, Kelson Transmission advised the Commission it had received significant public input relating to its preferred route and that the Company planned to amend its application to address landowner and other public comments.¹⁶ The Company's intent in doing so was to reduce the contested issues in this case in order to streamline consideration of its application.

On December 28, 2007, in response to public comments, the Company amended its application to change the western terminus of its proposed line from the existing Cedar Bayou substation near Mont Belvieu to a proposed new Canal switching station to the north. In response to landowner concerns, the amended application also reflected several modifications along the Company's preferred route. Kelson Transmission provided notice of its amended application by mail to counties and utilities, as well as newly affected landowners (i.e., landowners not previously noticed of the original CCN application).¹⁷ It also published notice of its amended application in newspapers of general circulation; that new notice included revisions proposed by Staff to the route descriptions in compliance with Order No. 5.¹⁸

In Order No. 12, Judge Field set the statutory deadline for Commission action in this case to December 28, 2008, i.e., one year after the amended application was filed, subject to a finding that the amended application and notice were sufficient as of that date.¹⁹ After Judge Field asked the Staff to opine as to whether the amended application and notice were sufficient, Staff informed Kelson Transmission of their concern that the newly affected landowners would

¹⁶ Kelson Transmission Company, LLC's States Report Relating to Republishing Notice (Oct. 23, 2007)/

¹⁷ Kelson Transmission Company, LLC's Proof of Publication and Proof of Notification by Mail at 4-5 (Jan. 18, 2007).

¹⁸ *Id.* at 3-4.

¹⁹ Order No. 12 at 1-2 (Jan. 3, 2008).

not have had the opportunity to attend one of the original public meetings. Instead of asking the Commission to determine whether the law required an additional public meeting in this context, Kelson Transmission agreed to hold another public meeting based in large part on the Company's understanding that the amended application and notice would be deemed sufficient and that Staff would not recommend any change in the December 28, 2008 deadline. In line with its philosophy of encouraging landowner participation, Kelson Transmission also readily agreed to an extension of the intervention deadline to permit those newly affected landowners plenty of time to intervene if they chose to do so after attending the public meeting. Consistent with this understanding, Staff informed Judge Field that the Company would be holding a public meeting for newly affected landowners and that they found "Kelson's application and notice sufficient," and recommended that the intervention deadline be extended until 45 days from the date of the public meeting.²⁰ Staff did not recommend that the one-year deadline be extended.

In Order No. 15, Kelson Transmission's amended application was deemed "sufficient and materially complete."²¹ Order No. 15 also approved Kelson Transmission's notice. The wording of that approval is critical to a proper resolution of this appeal and bears repeating.

According to Commission Staff, Kelson has committed that it will hold a public meeting specifically for landowners that are directly affected by the amendments to its application. Kelson has already held public meetings for previously-noticed directly affected landowners. Given that understanding, Commission Staff affirmed that Kelson **has complied** with Commission rules regarding published notice and notice sent to affected landowners, neighboring utilities, and county and municipal officials. Consistent with Commission Staff's recommendation, **Kelson's provision of notice is approved.**²²

²⁰ Commission Staff's Comments on Sufficiency of Application and Notice, Docket No. 34611 (Jan. 28, 2008).

²¹ Order No. 15 at 1 (Feb. 1, 2008).

²² *Id.* (emphasis added).

Order No. 15 did not say that Kelson Transmission *will have* complied. It clearly states that the Company “*has* complied.”

Kelson Transmission scheduled the third public meeting for February 18, 2008. It sent notice of the meeting to all newly affected landowners plus the county and local governments and utilities invited to the previous public meetings.²³ Although direct mail notice is the only notice required for public meetings under Procedural Rule 22.52(a)(4), Kelson Transmission also published notice of the additional public meeting in local newspapers.²⁴ In addition, because certain county tax records had been updated since the last public meetings, Kelson Transmission sent notice of the February 18 public meeting to a number of landowners appearing for the first time on the tax rolls.²⁵

In Order No. 19, Judge Field observed that the Company’s written notice to landowners had not included the extended intervention date and asked Staff to advise whether they believed the notice of the public meeting was sufficient.²⁶ The only issue Staff raised was with respect to the newly *discovered* subset of landowners, but the issue had nothing to do with the public meeting. Instead, Staff was concerned that these newly *discovered* landowners were not aware of the extended intervention deadline. Counsel for Kelson Transmission again worked with Staff and agreed to send a letter to those landowners informing them of the extended intervention date. Staff’s response to Order No. 19 therefore recommended that Kelson Transmission send such a letter.²⁷ Again, Staff did not recommend that the December 28, 2008 deadline be extended. Order No. 20 required Kelson Transmission to send the letter

²³ Kelson Transmission Company, LLC’s Report Regarding Public Meeting at 3-4 (Mar. 7, 2008).

²⁴ *Id.* at 3. Although Kelson Transmission believed it was holding the meeting as an accommodation to Staff and not pursuant to any requirement under the Commission’s rules, the Company decided that publishing notice was more consistent with its own philosophy of encouraging participation and a free flow of information.

²⁵ *Id.* at 4.

²⁶ Order No. 19 (Mar. 12, 2008).

²⁷ Commission Staff’s Response to Order No. 19 at 2 (Mar. 19, 2008).

recommended by Staff to all landowners invited to the February 18 public meeting.²⁸ The Company sent the required letter to landowners on March 25, 2008 and filed proof of sending that letter on March 31, 2008.²⁹

Judge Field then issued Order No. 21 extending the deadline for Commission action in this case to March 31, 2009, one year after the date Kelson Transmission filed proof it sent the letter required by Order No. 20.

IV. ARGUMENT

Kelson Transmission shares the Commission's view that "public participation in the evaluation of transmission line routing is vital to the long-term integrity of the CCN process."³⁰ The Company has demonstrated repeatedly its willingness to cooperate with the Staff and has worked diligently with parties outside of the contested hearing to maximize landowner participation. Indeed, after filing its original application, Kelson Transmission made the decision to amend that application—thus voluntarily extending the Commission's one-year deadline to process its application by four months—to address public concerns regarding route selection and substation location.

Procedural Rule 22.52(a)(3)(C) expressly requires that newly *affected* landowners receive written notice of an application. Kelson Transmission provided that notice when it amended its application in December 2007, and Order No. 15 approved that notice. There is nothing in the Commission's rules requiring additional public meetings for newly affected landowners.

²⁸ Order No. 20 (Mar. 20, 2008).

²⁹ Kelson Transmission Company, LLC's Affidavit of Notice (Mar. 31, 2008).

³⁰ *Electric Utility CCN Rulemaking and Form Changes*, Order Adopting Amendments to §22.52 as Approved at the September 25, 2002 Open Meeting, Project No. 25515 (Oct. 4, 2002).

Procedural Rule 22.52(a)(3)(E) addresses newly *discovered* landowners. It expressly provides that once notice has been approved (as in Order No. 15), newly *discovered* landowners do not undermine that approval. Instead, the rule requires that newly discovered landowners (like newly affected landowners) be given written notice of an application and (unlike newly affected landowners) that they be given 15 days to intervene. Kelson Transmission provided that notice.

Throughout this proceeding, Kelson Transmission has actively promoted and encouraged landowner participation. Yet, it is precisely because of Kelson Transmission's willingness to accommodate landowners and work with Staff that the Company's interests in the project are now materially prejudiced.

A prime objective of Kelson Transmission's line is to address the shortage of electric generation capability in ERCOT by 2011. With the delay caused by Order No. 21, it is unclear whether that objective can be met. If it can, it will undoubtedly result in increased costs to speed construction. The Company therefore requests that the Commission enter an order reinstating December 28, 2008 as the one-year statutory deadline for issuing an order in this case

V. CONCLUSION

At a time when the Commission seems interested in attracting new participants to the transmission market, an entrant's willingness to work with landowners and Staff should be treated favorably and should not result in a significant project delay. The delay caused by Order No. 21 unjustly lengthens the project schedule, adds significant costs, and prevents Kelson Transmission from fulfilling a stated objective of the transmission project—to address the shortage of electric generation capability in ERCOT by 2011. Kelson Transmission therefore requests that Order No. 21 be withdrawn or modified so that the deadline for Commission action

is consistent with Order No. 15's finding that Kelson Transmission's amended application was sufficient and complete and that its notice was approved, all as of December 28, 2007.

Respectfully submitted,

BAKER BOTTS L.L.P.

By:



James H. Barkley

Texas Bar No. 00787037

Jason M. Ryan

Texas Bar No. 24033150

910 Louisiana Street

Houston, Texas 77002

713.229.1234

713.229.1522 (fax)

COUNSEL FOR KELSON TRANSMISSION
COMPANY, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record by email, facsimile transmission, or United States First Class Mail on this 21st day of April, 2008.



Jason M. Ryan