



Control Number: 35690



Item Number: 29

Addendum StartPage: 0

COPY

SOAH DOCKET NO. 473-08-3165
PUC DOCKET 35690

PETITION OF BIG COUNTRY
ELECTRIC COOPERATIVE, INC. FOR
A CEASE AND DESIST ORDER

§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

DIRECT TESTIMONY OF

FREDDA BUCKNER

IN BEHALF OF

BIG COUNTRY ELECTRIC COOPERATIVE, INC.

Submitted by:

Don R. Richards, SBN 16846300
Robin M. Green, SBN 08369000
Daniel Gibson, SBN 24045939
Richards, Elder & Green, L.L.P.
5214 68th Street, Suite 302 (79424)
P.O. Box 64657
Lubbock, TX 79464-4657
Telephone: (806) 798-8868
Facsimile: (806) 798-8878

September 24, 2008

Attorneys for Big Country Electric Cooperative, Inc.

29

SOAH DOCKET NO. 473-08-3165
PUC DOCKET 35690

PETITION OF BIG COUNTRY § BEFORE THE STATE OFFICE
ELECTRIC COOPERATIVE, INC. FOR § OF
A CEASE AND DESIST ORDER § ADMINISTRATIVE HEARINGS

**DIRECT TESTIMONY OF
FREDDA BUCKNER
IN BEHALF OF
BIG COUNTRY ELECTRIC COOPERATIVE, INC.**

INTRODUCTION

Q. Please state your name and business address.

A. Fredda Buckner, 1010 West South 1st Street, Roby, Texas 79543.

Q. How are you employed?

A. I am the General Manager and Chief Executive Officer of Big Country Electric Cooperative, Inc. (the "Cooperative" or "BCEC") headquartered in Roby, Texas.

Q. Please provide your educational, training and employment background.

A. Attached as Exhibit "A" is my Resume.

Q. What is the purpose of your testimony?

1 A. As the General Manager of the Cooperative I am the primary representative and agent for
2 the Cooperative to the Commission in this proceeding. I will testify as to the basic policy
3 issues involving the Cooperative's filing of this petition in which the Cooperative seeks to
4 serve those consuming facilities at issue which are located in the singly-certificated area of
5 the Cooperative.

6
7 Specifically, BCEC has filed this petition, complaining primarily against Oxy Power
8 Marketing, L.P. ("OPM"), the retail electric provider which the Cooperative alleges is
9 illegally providing retail electric service in the single-certification area to facilities which
10 should be served by BCEC. We are asking the Commission, if necessary, to issue a cease
11 and desist order requiring OPM to transition the relevant consuming facilities from its retail
12 electric service to the retail electric service of BCEC. We also request the Commission to
13 order compliance by any additional third parties (*i.e.*, Oncor), which may be necessary to
14 fully effectuate the transition of retail electric service to BCEC for these consuming facilities
15 at issue. My testimony, as well as that of Dalvin Alexander and Shiela Burnette Hall, is
16 intended to provide the primary evidence in support of the Cooperative's petition.

17
18 **BACKGROUND OF THE COOPERATIVE**

19
20 **Q. Please provide background as to the petitioner, BCEC?**

21
22 A. The Cooperative is incorporated under the Texas Electric Cooperative Act, and its
23 governance is like that of almost any type of cooperative under Texas law. The Cooperative
24 operates on a non-profit basis, returning any earnings back to its customers/members/owners
25 in proportion to their patronage with the Cooperative. Over the last ten years, BCEC has
26 paid capital credits back to its members in eight of these years. If these consuming facilities

1 at issue are served by the Cooperative, the service will also be subject to capital credit
2 allocation and membership privileges.

3
4 The Cooperative is governed by a board of directors of nine (9) elected by and from the
5 membership. Members of the board serve without salary, but are provided a per diem
6 amount for board meetings and Cooperative business actually attended, and reimbursement
7 of actual expenses for business related matters in behalf of the Cooperative. Board members
8 are elected to three-year terms, with the nine board members serving overlapping terms such
9 that each year three board positions are submitted to members at the annual meeting for
10 election. Pursuant to the bylaws of the Cooperative, members of the Cooperative may be
11 nominated for the open director positions each year by one of three methods: (1) by
12 nomination by a nominating committee; (2) by petition of members; or (3) by nomination
13 from the floor at the annual meeting. Our current board has two members with more than
14 20-years of service each, three members with more than ten years service, and four members
15 with less than five years service; indicating a very active nomination and election process.

16
17 BCEC was formed in 1999 as a result of the consolidation of the former Midwest Electric
18 Cooperative and Stamford Electric Cooperative. After each of the boards for each of the
19 cooperatives reviewed the merits of consolidation, the issue was submitted to membership
20 votes from each cooperative and the consolidation was overwhelmingly approved. Thus,
21 BCEC is the successor-in-interest to each of those corporations.

22
23 **Q. Please describe the service area of BCEC.**

24
25 A. Following the consolidation in 1999, the Cooperative now serves almost 5,400 members
26 through just more than 12,000 meters over more than 5,300 miles of energized distribution
27 line. Service of the Cooperative extends into the 12 counties of Borden, Fisher, Garza,

1 Haskell, Jones, Kent, Mitchell, Nolan, Scurry, Shackelford, Stonewall and Throckmorton.
2 BCEC's service territory is located generally in the large farm and ranch rural area north of
3 Abilene, Texas. One of the unique aspects of the Cooperative is that we interconnect a
4 number of the major wind farms located in our service territory around the Snyder to
5 Sweetwater corridor. We provide ERCOT grid interconnection services and/or start up for
6 those wind farms.

7
8 BCEC serves a diverse base of customers/members, including farms and ranches, residential,
9 business, and commercial. For example, BCEC currently provides service to more than
10 3,000 oil well consuming facilities. As such, the Cooperative has extensive history and
11 experience of serving oil wells and petrochemical consuming facilities.

12
13 **Q. Please provide background as to the Cooperative with regard to the Commission's**
14 **certification process.**

15
16 **A.** BCEC is the successor-in-interest to both Midwest Electric Cooperative ("Midwest") and
17 Stamford Electric Cooperative ("Stamford"). For purposes of this proceeding, it is the
18 original certification of Midwest which is relevant in that it involves the geographic portion
19 of Kent County in which the Cogdell Oil Field is located.

20
21 Midwest participated in the Commission's original certification proceedings following the
22 September 1, 1975 effective date of the Legislature's creation of the Public Utility
23 Commission. For purposes of this proceeding, Midwest was a party to Docket 42 which
24 included the certification for utilities which were then serving in Kent County. Midwest
25 participated in the Docket 42 negotiation process whereby utilities were allowed, by statute
26 at what is now PURA § 37.155, to reach agreements for certification boundaries to be
27 approved by the Commission. Attached as Exhibit "B" to this testimony and incorporated

1 herein, is a certified copy of the map of Kent County which served as the Docket 42
2 agreement of the parties as to that county, evidenced by the signatures of the representatives
3 of the parties on the face of the map. Also noted on the map is its evidentiary indication as
4 PUC Staff Exhibit No. "42.13" wherein it was admitted as evidence of the parties'
5 agreement, and the Staff's concurrence. This map was eventually approved by the
6 Commission in the Final Order for Docket 42 and thus is the primary basis for certification
7 areas in Kent County which underlies the legal claims and interests in this proceeding.

8
9 Attached as Exhibit "C" to this testimony and incorporated herein is a certified copy of the
10 Examiner's Report and Final Order of the Commission in Docket 42, and thus serves, for
11 legal purposes under PURA, as the parties' agreement and Commission approval.

12
13 The various parties which participated in Docket 42 each had originally filed certification
14 requests for the Commission in their initial pleadings. The parties then began negotiations
15 for service territory in each county. The signed maps were offered as joint evidence of
16 service area agreements. The map of Kent County, along with the Examiner's Report and
17 Final Order, serves as the actual certification, which may differ from a party's original
18 application and request.

19
20 **Q. Is there any portion of either the map or the Commission's orders which are relevant**
21 **to this proceeding? If so, please explain.**

22
23 **A.** First, the map clearly delineates the certification boundaries at issue in this proceeding. In
24 the southwestern portion of Kent County on the map, it is easy to ascertain the certification
25 boundary which is seen cutting through the Cogdell Oil Field, pursuant to agreement of the
26 utilities. As can be seen, the oil field boundary overlaps from the south into Kent County;
27 and again, overlapping both the area singly-certificated of Texas Electric Service Company

1 (from whom Oncor is the successor-in-interest) and then the oil field continues north
2 overlapping into BCEC's singly-certificated area.

3
4 The line of BCEC's southern boundary and Texas Electric's northern boundary is easy to
5 ascertain when one is actually on location. The boundary was drawn along a dirt service
6 road which extends primarily from the west where it interconnects with State Highway 208
7 (formerly Ranch Road 1231), extending east through the oil field, and then runs eastward
8 along a pipeline easement. Thus, when one is on location, the boundary line between service
9 areas is very easy to locate. As such, this is not a "boundary" dispute to "locate" the line,
10 but clearly involves service to consuming facilities which are located in an area easy to
11 ascertain the service area in which they are located.

12
13 Second, it is important to review the Final Order of the Commission in Docket 42. One
14 should note that Docket 42 involved numerous counties in which various parties reach
15 numerous agreements. One agreement reached by all cooperatives (including Midwest), was
16 with Southwest Public Service ("SPS") for certification relating to consuming facilities in
17 the western counties (*i.e.*, **not** Kent County) which were included in the docket. That
18 agreement is noted early on the front page on the Examiner's Report and the Commission's
19 Final Order. However, it is important to note that it involved service at issue with SPS,
20 (which became known as "grandfathered" service in Docket 24229). It did not, however,
21 involve any agreement between Midwest and Texas Electric in Kent County, as is easily
22 ascertained from the face of the orders and the maps.

23
24 As such, there were no special "agreements" as to service area or customers between
25 Midwest and Texas Electric in Kent County, other than the Staff Exhibit No. 42.13 which
26 was the map agreement signed by both Midwest and Texas Electric. Thus, there were no
27 "exceptions" (*i.e.*, grandfathered rights) to the clearly delineated service boundaries on the

1 Docket 42 map submitted by the Commission Staff and approved by the Commission in the
2 Final Order in Docket 42.

3
4 **CERTIFICATION HISTORY**

5
6 **Q. Please explain any amendments to the service area boundaries in Kent County since**
7 **Docket 42.**

8
9 A. To the best of knowledge of BCEC, there have been no amendments approved by the
10 Commission to the Kent County boundaries since Docket 42. Thus, the Docket 42 approved
11 map is still the controlling original document.

12
13 **PRIMARY ISSUE IN THIS PROCEEDING**

14
15 **Q. What is the Cooperative's complaint in this proceeding?**

16
17 A. BCEC's primary complaint is that there are consuming facilities located in the service area
18 singly-certified to BCEC, but to which BCEC is not providing retail electric service. Our
19 petition to the Commission is to require that such retail electric service be provided by
20 BCEC and to transition any current retail electric service being provided to these consuming
21 facilities over to BCEC's service.

22
23 **Q. Please provide background regarding BCEC's decision to file this petition.**

24
25 A. To the best knowledge of the current personnel with BCEC, there was no prior knowledge
26 of retail electric service being provided to consuming facilities in BCEC's singly-certificated
27 area prior to the fall of 2002. To the extent service was being provided, BCEC contends it

1 was not being provided by utility lines owned by a certificated utility. Any such service that
2 may have been provided prior to our discovery in late 2002 had apparently been
3 discontinued, plugged or abandoned. BCEC has been unable to locate any documentation
4 of PUC authorization, or parties' approval, for any such service which may have existed
5 prior to its discovery of such service.

6
7 BCEC contends that Texas Electric Service Company, the original utility whose service
8 territory is contiguous to the south of BCEC's, did not have any electric distribution facilities
9 which extended into BCEC's territory in 1975, nor in 2001, nor does it have any today. Any
10 electric service which has been provided across the boundary has apparently been done so
11 by customer owned distribution facilities. As such, BCEC contends that there are no
12 exceptions: (1) either by agreement in the Docket 42 proceedings, (2) by subsequent
13 agreement, nor (3) by any PURA statutory exceptions.

14
15 **Q. How is such service being provided today into BCEC's territory?**

16
17 A. BCEC contends, and has been verified by discovery, that OPM, the respondent in this
18 proceeding, is providing retail electric service cross-boundary into BCEC's singly-
19 certificated area by virtue of customer-owned lines. We contend this is in violation of the
20 Public Utility Act, and BCEC's certification rights.

21
22 **Q. Can you identify the facilities which you contend are being illegally served?**

23
24 A. Yes. The Cooperative obtained the services of Ms. Shiela Hall, a certificated geologist, to
25 confirm the allegations the Cooperative made in its petition. Her testimony is filed
26 contemporaneously with this testimony in this proceeding, and her factual conclusions are

1 incorporated herein as it relates to the identification and location of the consuming facilities
2 at issue.

3
4 BCEC discovered what it believed were ten consuming facilities being served in violation
5 of law in late 2002 and early 2003 and obtained a surveyor to verify their location for
6 purposes of discussions with TXU and Oncor, the successors to Texas Electric. The
7 Cooperative has conducted a series of discussions over the past few years in an attempt to
8 resolve this without the necessity of filing and prosecuting an expensive complaint at the
9 Commission. We have had extended discussions with TXU and Oncor, and with various
10 OPM representatives, but we were not able to ascertain the specific identity of the
11 responsible parties for the illegal service. In fact, the initial petition was filed against
12 presumed parties, which then provided informal communications so that BCEC could file
13 its amended petition identifying the appropriate respondents and necessary parties.

14
15 A major part of the problem is that these consuming facilities are located in a vast, ranching
16 and rough rural area of the state. The northern portion of the Cogdell Oil Field is in very
17 rough, rolling hills in an area not easily found. In fact, trained utility employees with
18 knowledge of certification maps still would have difficulty initially locating these consuming
19 facilities and determining the origination of retail electric service. BCEC, through onsite
20 efforts identified ten consuming facilities which it attached as an exhibit to its amended
21 petition and as Exhibit "D" hereto. Ms. Hall, in her extensive research and testimony, has
22 identified 12 consuming facilities. She located the ten we found, and two new ones which
23 were recently permitted.

24
25 It is very clear to BCEC that this retail electric service is being provided in violation of
26 certification boundaries approved by the Commission with no exceptions applicable. BCEC
27 contends that there was never any certification exception which would allow service to any

1 consuming facilities in BCEC's singly-certificated area in the Cogdell Oil Field, and if such
2 service did exist it was improper and illegal. However, as can be noted from the testimony
3 of Ms. Hall, all 12 of the consuming facilities identified by her have not been continuously
4 served since 1976. In fact, almost half are new consuming facilities drilled relatively
5 recently; and the rest involve facilities which were plugged, abandoned, or taken off line for
6 an extended period of time and thus, clearly did not consume retail electric service. OPM
7 says it has no history of electric service. Many original wells used traditional diesel motors
8 instead of retail electric power.

9
10 In its responses to BCEC's request for information, OPM claims it does not have the
11 operational history of each well as to the provision of retail electric service. However, Ms.
12 Hall documents and verifies the extended time frame that each well was offline and/or
13 deactivated and thus was not consuming electricity. Ms. Hall verifies that electric
14 distribution lines are de-energized and electric service is cut off of deactivated consuming
15 facilities and usually the lines and poles taken down. When any previously deactivated
16 consuming facility is reactivated after an extended period offline, it is classified and put back
17 as "new service."

18
19 As such, BCEC contends that all 12 consuming facilities should be classified as "new
20 service" to consuming facilities and clearly should be served by BCEC.

21 22 IMPACT OF LEGISLATION

23
24 **Q. Please discuss the impact of the Legislature to "deregulate" retail electric service.**

25
26 **A.** The action by the Legislature in 1999 which extensively amended the Public Utility
27 Regulatory Act had no impact on retail electric service at issue in BCEC's singly-certificated

1 area, or relevant to this proceeding. Under the PURA §§ 41.051 and 39.102(a), cooperatives
2 in the state were effectively exempted by the Legislature from retail competition within their
3 service area until such time as the cooperative “opted-in” to such competition. BCEC has
4 not chosen to opt-in since the new legislation became effective. However, the Legislature
5 did make one change in the law which is relevant to this proceeding.

6
7 **Q. Please explain.**

8
9 A. Because of “deregulation” of retail electric service in the ERCOT grid system, a number of
10 Retail Electric Providers (“REP”) were thus created as a part of the competitive environment
11 now generally allowed in ERCOT. The respondent in this proceeding, OPM, is such a REP
12 as they have admitted. As such, by express definition in the Public Utility Act, an REP is
13 not an “electric utility.” Thus, an REP is not allowed the same interest or legal privileges
14 of an electric utility and vice versa.

15
16 **RESPONSE TO COMMISSION ISSUES**

17
18 **Q. Ms. Buckner, are you familiar with the Preliminary Order issued by the Commission**
19 **in this proceeding?**

20
21 A. Yes.

22
23 **Q. Can you please address each of those issues identified by the Commission in its**
24 **Preliminary Order?**

25
26 A. Yes. In my testimony below, I will restate the Commission issue in bold and then
27 underneath provide the BCEC answer and/or evidence as to each individual issue. As to

1 much of the evidence requested by the Commission, BCEC, through discovery, obtained
2 information from OPM, and has attached OPM's answers to those questions as Exhibit "E"
3 to this testimony, and incorporated herein. I have not included the attachments, or other
4 replies in those responses which OPM claimed to be confidential or highly-sensitive.
5

6 **PUC Issue No. 1: Is Occidental Power Marketing, L.P. (Oxy REP) providing retail**
7 **electric service to consuming facilities that are located in an area, or in areas, singly-**
8 **certificated to Big Country Electric Cooperative, Inc. (Big Country)?**
9

10 **Answer:** Yes. Oxy REP so admits in its Response 1-1 at Exhibit "E" hereto.
11

12 **PUC Issue No. 2: Is Oncor Electric Delivery Co., L.L.C. (Oncor) providing distribution**
13 **service in violation of the terms of its CCN as granted in Docket 42 or subsequently**
14 **amended?**
15

16 **Answer:** BCEC contends that would be primarily a legal question. As noted in OPM's
17 response 1-1 hereto, Oncor is the transmission and distribution utility providing delivery
18 service to OPM, but doing so from a delivery point in Scurry County where Oncor is dually-
19 certificated with BCEC. From there retail electric service is provided wholly over a customer-
20 owned distribution system into BCEC's singly-certificated area. Oncor thus participates in
21 the delivery of this unlawful service, and to the extent necessary, should be subject to
22 Commission order to transition the service to BCEC.
23

24 **PUC Issue No. 3: In determining the issues above, the following facts should be**
25 **addressed:**
26

- 1 a. **Identification, location, and ownership of the consuming facilities at issue in this**
2 **docket and ownership, if any, of these consuming facilities at the time of the**
3 **final order in Docket 42.**

4
5 **Answer:** The testimony of Ms. Hall and the responses attached hereto in Exhibit
6 “E,” particularly response 1-1 and 1-2. OPM claims confidential the list of owners
7 and such list is not attached hereto. However, BCEC contends actual ownership is
8 not necessary in that OPM has admitted it controls the customer-owned distribution
9 system and provides the retail electric service at issue.

- 10
11 b. **Determination of whether Big Country is certificated to provide electric service**
12 **to the area where the subject consuming facilities are located.**

13
14 **Answer:** Yes. BCEC’s single-certification to the area in question is clearly specified
15 on the original Docket 42 map, and Docket 42 Final Order, neither of which have
16 been amended such it would effect this proceeding. Both are attached as Exhibit “B”
17 and Exhibit “C” to this testimony.

- 18
19 c. **Determination of whether Oxy REP is currently providing retail electric utility**
20 **service to these subject consuming facilities via a customer-owned integrated**
21 **electric distribution system.**

22
23 **Answer:** Yes, OPM has admitted in its discovery response attached as Exhibit “E,”
24 particularly Response to 1-1 that it is providing such service.

- 25
26 d. **Determination of whether Oxy REP is utilizing distribution facilities owned by**
27 **Oncor to provide such service.**

1 **Answer:** Yes. OPM so admits in its responses attached hereto as Exhibit "E,"
2 particularly Response 1-2.
3

- 4 **e. Determination of whether Texas Electric Service Co. (TESCO), the corporate**
5 **predecessor to Oncor, was certificated to provide retail utility service to the**
6 **area where the subject consuming facilities are located, or to the customers who**
7 **own the subject consuming facilities.**

8
9 **Answer:** No. As I testified above regarding the background of certification, there
10 were no exceptions applicable to the BCEC singly-certificated area approved by the
11 Commission on the Docket 42 map or in the Final Order. Texas Electric Co. had no
12 distribution facilities then existing which extended into BCEC area. As such,
13 TESCO was not certificated to provide such service at the time of Docket 42, or
14 subsequent thereto.
15

- 16 **f. Determination of whether Oncor is currently certificated to provide distribution**
17 **service to the area where the subject consuming facilities are located, or to the**
18 **customers who own the subject consuming facilities.**

19
20 **Answer:** No. As the successor to TESCO, Oncor was not so certificated.
21

- 22 **g. If TESCO was certificated, or Oncor is certificated, to serve the area where the**
23 **subject consuming facilities are located, or to the customers who own the**
24 **subject consuming facilities, did these customers become entitled to customer**
25 **choice on January 1, 2002?**
26

1 **Answer:** No, the area in question is clearly within BCEC's singly-certificated area
2 of service and thus, because BCEC has not opted into customer choice, such
3 entitlement did not come about.
4

- 5 **h. Determination of whether Big Country, Oxy REP, and Oncor (or their**
6 **respective predecessors) ever entered into a Commission-approved contract to**
7 **designate areas and customers to be served.**
8

9 **Answer:** Yes. See the map, and signatures thereto, attached as Exhibit "B" and
10 incorporated herein. Such map served as the "contract," as noted by the Commission
11 on page 3 of the Preliminary Order footnote to this issue (*see* PURA § 37.155).
12

- 13 **i. Determination of whether these subject consuming facilities are part of an oil**
14 **field unit that was served by TESCO, or a predecessor to TXU Electric, at the**
15 **time of (1) the final order in Docket No. 42, and (2) December 31, 2001. If so,**
16

17 **Answer:** These consuming facilities at issue are located in the Cogdell Oil Field as
18 indicated in the testimony of Ms. Hall. The "unit" may be a status of the Railroad
19 Commission, but each oil well constitutes a "consuming facility" as to utility
20 certification. As Ms. Hall notes, almost half of the consuming facilities have been
21 newly permitted and drilled, and the remainder were subjected for an extensive
22 period of time to abandonment, plugging, or taken off-line, and thus termination of
23 retail electric service.
24

- 25 **i) the geographic area of the portions of the oil field unit in question that**
26 **extended into Big Country's current service area at the time of (1)**
27 **Docket No. 42's final order, (2) December 31, 2001, and (3) today.**

1 **Answer:** The geographic area of the oil field has not changed since the
2 Docket 42 proceeding and can be shown on the Docket 42 map attached
3 hereto as Exhibit "B."

- 4
5 **ii) the load being served with Oxy REP supplied power within the oil field**
6 **that extended into Big Country's current service area at the time of (1)**
7 **Docket No. 42's final order, (2) December 31 2001, and (3) today.**

8
9 **Answer:** The load being served is the oil field consuming facilities identified
10 in the testimony of Ms. Hall. Any service that existed at the time of Docket
11 42 was abandoned, plugged, or taken off line for an extended period of time
12 and thus reactivation of any consuming facilities constitutes new service.
13 See OPM Response 1-5 at Exhibit "E" hereto.

- 14
15 **iii) the location of Oncor or customer-owned distribution lines and points**
16 **of delivery that extended into Big Country's current service area at the**
17 **time of (1) Docket No. 42's final order, (2) December 31 2001, and (3)**
18 **today.**

19
20 **Answer:** Oncor's current facilities for such service is in a dually-certified
21 area in northern Scurry County as shown in OPM Response 1-4 at Exhibit
22 "E" hereto. BCEC believes that if any service to consuming facilities in
23 BCEC's service area at any prior time was from the same Oncor delivery
24 point in Scurry County. Thus, BCEC contends this same electric distribution
25 system has been serviced by the Scurry County delivery point.

1 At one point prior to Oxy's control and operation in the Cogdell Unit, the
2 customer-owned distribution system included a customer-owned substation.
3 Oncor's predecessor, TXU, constructed a substation which is now utilized at
4 the delivery point in Scurry County.
5

6 **PUC Issue No.4: How, if at all, does the Commission's final order in *Petition of Lamb***
7 ***County Electric Cooperative, Inc. for a Cease and Desist Order Against Southwestern***
8 ***Public Service Company, Docket 24229 (upon remand of Docket No. 14454), affect this***
9 ***petition?***
10

11 **Answer:** BCEC contends that the Commission's Final Order in Docket 24229 has no impact
12 on this proceeding in that the factual and legal issues there related to specific agreements
13 between cooperatives and SPS. Texas Electric Service (Oncor's predecessor) was **not** a
14 party to the agreements specifically at issue in Docket 24229, and thus the PUC's order in
15 Docket 24229 was limited to specific facts, which are not in this proceeding.
16

17 **CONCLUSION**

18

19 **Q. Through your research, discovery, and testimony, have you reached any conclusions?**
20 **If so, please explain.**
21

22 **A.** Yes. BCEC, through its initial research, and recent discovery, contends OPM is providing
23 improper and illegal retail electric distribution service to 12 consuming facilities located in
24 BCEC's singly-certificated area. BCEC contends there are no exceptions, no conflicting
25 agreements, which would allow such service. BCEC has not opted into customer choice and
26 thus it continues to have the right to serve all retail electric consuming facilities located in
27 its singly-certificated area. As such, BCEC requests the Commission issue a cease and desist

1 to OPM, as well as to any other utility or party which would otherwise prohibit BCEC's
2 from providing such service.

3

4 **Q. Does this conclude your testimony?**

5

6 **A. Yes.**

EXHIBIT “A”

FREDDA BUCKNER

P.O. Box 92, Roby, Texas 79543-0092 (325) 776-2119, email: wwbuckner@sbcglobal.net

PROFESSIONAL EXPERIENCE

BIG COUNTRY ELECTRIC COOPERATIVE, INC., Roby, TX

CEO/General Manager (2004-Present)

Responsible for 12,000 meter electric distribution system serving approximately 4,300 square miles with 52 employees and two district offices. Golden Spread Electric Cooperative Director and Policy Committee Chairman; Statewide advisory committee for Loss Control; President of statewide advisory committee for Member Services; NRECA task force for long-term disability benefits 2005-2006 and for employee benefits 2007-present; NRECA standing committee for Consumer and Public Relations 2005-Present; NRUCFC Executive Conference Planning Committee.

Assistant Manager (2000-2004)

Acting manager in absence of the General Manager; Responsible for the daily operations of the Cooperative

Controller (1999-2000)

Responsible for all administrative functions; Coordinated consolidation of Midwest/Stamford Electric Cooperatives into Big Country Electric Cooperative

Director of Support Services (1996-1998)

Diversification through Subsidiary; Internet Service Provider; Economic Development; Member Services

Office Manager (1989-1996)

Direct office services; Responsible for term investments; Purchasing office supplies and equipment; Maintain personnel records and policies; Hiring/Firing responsibilities

CMS ELECTRIC COOPERATIVE, INC., Meade, KS

Office Manager (1987-1989)

Direct office services; Responsible for term investments; Collection of Delinquent Accounts; Purchasing office supplies and equipment; Maintain personnel records and policies; Hiring/Firing responsibilities

TEXAS ELECTRIC COOPERATIVES DATA PROCESSING, Austin, TX

Member Services Advisor (1984-1987)

Evaluated user problems/requests, coordinated resolution; Provided user telephone support; Established training procedures; Scheduled and conducted training seminars; Coordinated billing/cost accounting data conversions; Forms design; Developed and implemented plans and procedures for cooperative/computer usage; Design team, cost/general accounting systems, National Information Solutions Cooperative (formally Central Area Data Processing), St. Peters, MO

TRI-COUNTY ELECTRIC COOPERATIVE, INC., Azle, TX

Dispatcher (1983-1984)

Evaluated/documented service outage reports; Dispatched line crew; Data entry

WISE ELECTRIC COOPERATIVE, INC., Decatur, TX

General Office Clerk (1982-83, Temporary Position)

Microfilming and Special Projects

HOUSEWIFE AND CONTRACT WORK FOR WISE ELECTRIC (1981-1982)

WISE ELECTRIC COOPERATIVE, INC., Decatur, TX

Plant Accountant (1978-81)

Implemented automated plant accounting system; Prepared reporting documents for Board of Directors, Public Utility Commission, and REA; Assisted with delinquent collections and

subsidiary; Approved vendor and contractor invoices for payment; Maintained special equipment records

Data Processing Operator (1973-78)

Responsible for consumer/cost accounting processing; Maintained member profile records; Reconciliation of accounts receivable; Maintenance of equipment and supplies for processing; Analyzed member's accounts for billing discrepancies; Cross-trained for all inner-office positions

General Office Clerk (1971-73)

Processed service requests, job tickets, incoming mail; Handled member complaints; Assisted Receptionist/Cashier and Data Processing Operator; Maintained member files, meter, membership and deposit records

Work Order Clerk Assistant (1970-71, Part-time Position)

Assisted with work order accounting during senior year of high school

EDUCATION

CEO Leadership Lab, NRECA, Madison, WI (2005)

Management Internship Program, NRECA, Lincoln, NE (1993)

Writing for Government and Business, and Principles of Accounting II, USDA Graduate School, Washington, DC (1989)

REA Borrower Accounting, USDA Graduate School (1986)

Principles of Accounting I, USDA Graduate School (1980)

Basic Computer Concepts, Cooke County Junior College, Gainesville, TX (1979)

High school graduate, Decatur, TX; National Honor Society, Outstanding Business Student

OTHER INTERESTS

Rotan Public Library Advisory Board, 4/2003-present (President 2007)

Lions International – Texas District 2T-2 Vice-District Governor, 2008-2009; Region 6 Chairman, 2005-2006; 2T-2 Zone 6-B Chairman, 2000-2005; 2T-2 Zone 3B Chairman 2007-2008; Roby Club President, 1999-2000; Roby Club Board of Directors, 1993-2008; Citizen of the Year, 2002; Membership Chairman 2007-2008; Program Chairman 2008-2009; Texas Lions Camp Jack Wiech Fellow, 2003; Guiding Lion Certificate, 2003; District Governor's Award of Appreciation, 2003, 2005; 2007; Lions Leadership Forum-2004; International President's Service Award, 2005

Callan Memorial Clinic Organization Board – 2004-2005

Team Stenholm Fisher County Leader – 2004

Fisher County Hospital Board, Rotan, 1998-2000

First Baptist Church Treasurer, Roby, 1993-1998

Texas Electric Cooperatives Accounting Association Treasurer, Austin, 1995-1997

EXHIBIT “B”

Mad
23

EXHIBIT “C”



Public Utility Commission of Texas

7800 Shoal Creek Boulevard
Austin, Texas 78757-1098
512/458-0100 • (Fax) 458-8340

Pat Wood, III
Chairman

Robert W. Gee
Commissioner

Judy Walsh
Commissioner

I, Paula Mueller, Secretary of the Public Utility Commission of Texas, certify
that the attached documents listed below are true and correct copies of the documents on
file with the Public Utility Commission of Texas.

Docket No. 42

*Application Of Bailey County Electric Cooperative, Inc. ET, AL, Concerning The Counties Of
Cochran, Cottle, Crosby, Dickens, Floyd, Garza, Hale, Hockley Kent, King, Lubbock, Lynn,
Motley, Terry And Yoakum*

Examiner's Report. Approved August 17, 1976.

Interim Order. Issued August 26, 1976.

Order. Issued October 8, 1976.

ISSUED UNDER MY HAND AND SEAL OF OFFICE THIS 19th DAY OF
DECEMBER, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS

SEAL

PAULA MUELLER
SECRETARY OF THE COMMISSION

SOAH NO 473-08-3165, PUC DOCKET 35690
Direct Testimony of Fredda Buckner in Behalf
of Big Country Electric Cooperative, Inc
EXHIBIT "C" Page 25



Printed on recycled paper

An Equal Opportunity Employer

POLICY DEVELOPMENT (512) 458-0308
ADMINISTRATION (512) 458-0188
CENTRAL RECORDS (512) 458-0181

EXECUTIVE DIRECTOR (512) 458-0141
PUBLIC INFORMATION (512) 458-0388
CONSUMER AFFAIRS (512) 458-0258
HUMAN RESOURCES (512) 458-0100
TTY (512) 458-0221

REGULATORY AFFAIRS (512) 458-0297
COMMISSION SECRETARY (512) 458-0241
INFORMATION SYSTEMS (512) 458-0200

APPLICATION OF BAILEY COUNTY ELECTRIC COOP. ASSOCIATION, ET AL, CONCERNING THE COUNTIES OF COCHRAN, COTTLE, CROSBY, DICKENS, FLOYD, GARZA, HALE, HOCKLEY, KENT, KING, LUBBOCK, LYNN, MOTLEY, TERRY AND YOAKUM

PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

Procedural History

This case involves applications for Certificates of Convenience and Necessity by Bailey County Electric Coop. Association, B-K Electric Coop., Inc., City of Brownfield, Cochran Power & Light Co., City of Crosbytown, Dickens County Electric Coop., Inc., City of Floydada, Gate City Electric Coop., Inc., Hall County Electric Coop., Inc., Lamb County Electric Coop., Inc., Lea County Electric Coop., Inc., Lighthouse Electric Coop., Inc., City of Lubbock Power & Light, Lyntegar Electric Coop., Inc., Midwest Electric Coop., Inc., South Plains Electric Coop., Inc., Southwestern Public Service Co., Swisher Electric Coop., Inc., Texas Electric Service Co. and West Texas Utilities Co. within the counties of Cochran, Cottle, Crosby, Dickens, Floyd, Garza, Hale, Hockley, Kent, King, Lubbock, Lynn, Motley, Terry and Yoakum. A pre-hearing conference was held on June 10, 1976, and the hearing was held on June 28-29, 1976. All parties appeared at the pre-hearing conference and at the hearing. Subsequent to the hearing, on July 1, 1976 Southwestern Public Service Co. (SPS) amended its application to include a claim for certification of future points of delivery to existing petro-chemical customers, regardless of certificated service areas. The amended application was opposed by Lea County Electric Coop., Inc., South Plains Electric Coop., Inc. and Lyntegar Electric Coop., Inc. on procedural and substantive grounds. The amendment was withdrawn by SPS on July 29, 1976.

Opinion

I.

Uncontested Service Areas

The areas requested by the various parties within the counties of Hale, Floyd, Cochran, Lubbock, Crosby, Yoakum, Terry, Lynn and Garza were undisputed. The Staff recommended that such agreements as shown on Staff Exhibits 1 through 9, be adopted by the Commission. This is also the recommendation of the Examiner.

Within Hockley County, the only dispute involved a small tract of land outside of Levelland, claimed by SPS and Lamb County Electric Coop., Inc. Staff Exhibit 10 reflects the agreements of the parties and the Staff for the remainder of the County. It is recommended that with the exception of the area in dispute, which is discussed below, the exhibit be adopted by the Commission in the order to be issued.

Involved in the agreements reached by many parties in these uncontested areas was the understanding that where a utility's lines extended out of an area claimed by it for certification purposes, the utility would waive any corridor rights it would otherwise have pursuant to Section 53 of the Public Utility Regulatory Act (Act) and Commission Rule .056(b)(6)(B). The agreement would allow the parties to keep existing customers but would prohibit taking a new customer outside of certificated areas. The agreement appeared to be a fundamental part of the settlements reached by the parties involved, and they strongly urge the Commission to adopt it in certificates to be issued to those parties. Those involved in the agreement were SPS, Lighthouse Electric Coop., Inc., Lyntegar Electric Coop., Inc., South Plains Electric Coop., Inc., Lamb County Electric Coop., Inc., Swisher Electric Coop., Inc., Midwest Electric Coop., Inc., Dickens Electric Coop., Inc., Lea County Electric Coop., Inc. and Bailey County Electric Coop., Inc.

Since it appears that the provisions of the Act and rules dealing with grandfather rights were designed primarily for the benefit of utilities in existence prior to the Act and to protect their existing property rights, it would seem that waiver of these benefits by them would be proper and would not adversely affect

the public interest. The utilities contend that this agreement would limit duplication of facilities and it may do so in a minor way. In any event, it would limit dual certification in these grandfathered areas, and it is recommended that the Commission incorporate the agreement into its Order in this case.

II.

Proposed Generation and Transmission Facilities

1. Southwestern Public Service Co.

SPS seeks certification for five transmission lines designated as follows and shown more specifically on its application:

- (1) A 115 kilovolt line from Yoakum County to Moss Interchange;
- (2) A 115 kilovolt line from Wolforth to Murphy;
- (3) A 230 kilovolt line from the Harrington Plant to Sundown;
- (4) A 115 kilovolt line from the eastern edge of Lubbock to Crosby;
- (5) A sixty-nine kilovolt line within the western section of Hockley County.

All lines will be completed by at least 1980 and are necessitated by increasing loads in the areas the lines will serve. Line (3) is necessary to deliver power from the proposed Harrington coal-fired plant which the Commission has previously certificated. It is recommended that certificates be issued for all lines.

2. South Plains Electric Coop., Inc.

South Plains Electric Coop., Inc. (South Plains) seeks certification for a proposed substation in Lubbock County known as the New Deal Substation. It is currently under construction and will be completed prior to the end of the year. It is necessary to relieve existing loads on four operational substations, and it is recommended that it be certified by the Commission.

3. West Texas Utilities Co.

West Texas Utilities Co. applied for certification of a transmission line known as the Paducah to Truscott line within Cottle and King Counties. Right-of-way was purchased in April, 1975, and actual construction began prior to September 1, 1975. It is recommended that this line be certified pursuant to Section 53 of the Public Utility Regulatory Act.

4. Lighthouse Electric Coop., Inc.

Lighthouse Electric Coop., Inc. requested certification for a sixty-nine kilovolt line within Crosby County known as the Ralls to Crosbyton Line. It is needed to provide additional service to the Cooperative's load in the Crosbyton area. It is recommended that the line be certified.

III.

Southwestern Public Service Co.

and

Lamb County Electric Coop., Inc.

The dispute between SPS and Lamb County Electric Coop., Inc. (Lamb County) concerns a 100-acre tract in Hockley County outside of Levelland. The property is owned by the Levelland Industrial Foundation and is intended to provide a site for an industrial plant which the Foundation hopes to bring to the area. At one point the Foundation had plans to provide the land as a location for a Japanese-owned textile mill which would have had a load of 1,000 kilowatts, but the plans were aborted and currently no commercial entity has plans to locate there. Nevertheless, the Foundation urgently hopes that SPS would be certified for the area due to the latter's efforts in assisting the Foundation in the past. Lamb County requests single certification for the tract, pointing out that it has three distribution lines crossing the edges of the tract, while SPS has no lines directly on the tract. SPS Exhibit 5 reflects the lines of the utilities in the immediate

area around the tract. Lamb County also urges that its slightly cheaper rates should be considered by the Commission in certifying the tract. The Cooperative does not have a current service connection on the tract, but its lines there are still energized.

The evidence is fairly clear that either utility would have to build additional facilities to serve as large a load as is contemplated and hoped for by the Foundation. The site is specifically earmarked for heavy industry and the current small distribution lines of the Cooperative could not serve any such load. The Staff recommended that for this reason the area be dually certified. According to the Staff Engineer, either party could adequately serve such a large load and regardless of who serves it, the utility would have to undertake an approximately equal amount of construction.

It is recommended that the area be dually certified by the Commission. With a situation in which such construction would have to take place, there is little reason for concern over duplication of any existing facilities. Further, both utilities have lines and service in the general area of the tract. With the situation so close, perhaps the best policy would be to let the ultimate consumer, the company that would eventually locate there, choose the supplier.

IV.

West Texas Utilities Co.
Dickens County Electric Coop., Inc.
Gate City Electric Coop., Inc.
Hall County Electric Coop., Inc.
Lighthouse Electric Coop., Inc.

The major areas of dispute in the hearing involved the above parties in Cottle, Kent, Motley and Dickens Counties. The area in King County which involved West Texas Utilities Co. (WTU) was settled by the parties prior to the hearing. Within the disputed areas WTU is claiming single certification in and around the towns and cities of the area and dual certification in the rural areas of a distance up to seven miles off their distribution lines. The Cooperatives, on the other hand, have generally claimed the vast majority of the rural areas, which constitute most of the territory involved, and would restrict WTU to the towns and cities almost completely.

It is obvious that the requests of all parties should be limited in order to prevent massive dual certification and resulting duplication of facilities. The recommendations of the Staff seem to do so in a reasonable manner, taking into account each utility's need to expand off its present investment in distribution lines and the public need to limit duplication of facilities where possible. The boundaries as shown on Staff Exhibits 11 through 15 do not unnecessarily restrict the parties and yet do eliminate much possible dual certification. For these reasons, it is recommended that the Commission adopt Staff Exhibits 11 through 15 in the Order to be issued.

Based upon the evidence presented to the Examiner at the hearing, the following Findings of Fact and Conclusions of Law are recommended to the Commission:

Findings of Fact

1. All parties have timely filed applications and were provided notice of the hearing.
2. Agreements and stipulations were reached concerning the requested service area boundaries among all parties within the following counties: Cochran, Crosby, Floyd, Garza, Hale, Lubbock, Lynn, Motley, Terry and Yoakum.
3. Agreements and stipulations were reached concerning requested service area boundaries by all parties within Hockley County, excepting an approximately 100-acre tract owned by the Levelland Industrial Foundation.
4. No protest or dispute was entered concerning the requested service area boundaries within King County of B-K Electric Coop., Inc., West Texas Utilities Co., Gate City Electric Coop., Inc. and Dickens County Electric Coop., Inc.
5. Agreements and stipulations were reached concerning the requested service

area boundaries within Kent County by Texas Electric Service Co. and Midwest Electric Coop., Inc.

6. Within the areas so agreed or not disputed, as shown on Staff Exhibits 1 through 11, each requesting utility has sufficient facilities and source of power to provide reliable service to the areas requested. The areas so requested reflect the historical service area of the utilities, and certification of such areas will not result in substantial and unnecessary duplication of facilities.

7. The following parties expressly waived all rights to a service area boundary of 400 feet pursuant to Commission Rule .056(b)(6)(B) for distribution lines which extend beyond the areas requested for a Certificate of Convenience and Necessity: Lighthouse Electric Coop., Inc., Lyntegar Electric Coop., Inc., South Plains Electric Coop., Inc., Lamb County Electric Coop., Inc., Swisher Electric Coop., Inc., Midwest Electric Coop., Inc., Dickens County Electric Coop., Inc., Lea County Electric Coop., Inc., Bailey County Electric Coop., Inc. and Southwestern Public Service Co. Each utility specifically requested that its certificate for such distribution lines be restricted to service of existing customers.

8. Southwestern Public Service Co. has an existing need to construct the following facilities in order to provide continued reliable service to the areas requested for a Certificate of Convenience and Necessity:

- (1) A 115 kilovolt line from Yoakum County to Moss Interchange;
- (2) A 115 kilovolt line from Wolforth to Murphy;
- (3) A 230 kilovolt line from the Harrington Plant to Sundown;
- (4) A 115 kilovolt line from the eastern edge of Lubbock to Crosby;
- (5) A sixty-nine kilovolt line within the western section of Hockley County.

9. South Plains Electric Coop., Inc. has an existing need to construct the New Deal Substation within Lubbock County, as shown more specifically on its application, in order to provide continued reliable service to the area requested for a Certificate of Convenience and Necessity.

10. Prior to September 1, 1975 West Texas Utilities Co. had purchased right-of-way and begun construction on a transmission line known as the Paducha to Truscott line within Cottle and King Counties, as shown more specifically on its application.

11. Lighthouse Electric Coop., Inc. has an existing need to construct a sixty-nine kilovolt line within Crosby County known as the Ralls to Crosbyton Line, as shown more specifically on its application, in order to provide continued reliable service to the area requested for a Certificate of Convenience and Necessity.

12. The Levelland Industrial Foundation owns a 100-acre tract of land outside the City of Levelland, as shown on Staff Exhibit 10.

13. Lamb County Electric Coop., Inc. owns three distribution lines within the above tract but has no current service connections within such.

14. Southwestern Public Service Co. has existing distribution lines in the immediate vicinity of the above tract of land.

15. Either Southwestern Public Service Co. or Lamb County Electric Coop., Inc. is capable of providing adequate retail service to the above tract of land for any size load contemplated by the owners.

16. West Texas Utilities Co. has sufficient distribution facilities and source of power to provide reliable service to the areas within Cottle, Kent, Hockley and Dickens Counties, as shown on Staff Exhibits 12, 13, 14 and 15. The areas so requested reflect the historical service area of West Texas Utilities Co. and certification of such area will not result in substantial and unnecessary duplication of facilities.

17. Lighthouse Electric Coop., Inc. has sufficient distribution facilities and source of power to provide reliable service to the areas within Dickens and Motley Counties, as shown on Staff Exhibits 14 and 15. The areas as shown reflect the historical service area of Lighthouse Electric Coop., Inc. and certification of such areas will not result in substantial and unnecessary duplication of facilities.

18. Gate City Electric Coop., Inc. has sufficient distribution facilities and sources of power to provide reliable service to the areas within Motley, Dickens, King and Cottle Counties, as shown on Staff Exhibits 12, 13, 14 and 15. The areas as shown reflect the historical service area of Gate City Electric Coop., Inc., and certification of such areas will not result in substantial and unnecessary duplication of facilities.

19. Hall County Electric Coop., Inc. has sufficient facilities and sources of power to provide reliable service to the area in Motley County, as shown on Staff Exhibit 14. The area as shown reflects the historical service area of Hall County Electric Coop., Inc., and certification of such area will not result in substantial and unnecessary duplication of facilities.

20. Dickens County Electric Coop., Inc. has sufficient facilities and sources of power to provide reliable service to the areas within Motley, Dickens and Kent Counties, as shown on Staff Exhibits 13, 14 and 15. The areas as shown reflect the historical service area of Dickens County Electric Coop., Inc., and certification of such areas will not result in substantial and unnecessary duplication of facilities.

Conclusions of Law

1. All parties are entitled to Certificates of Convenience and Necessity for the areas as shown on Staff Exhibits 1 through 15.

2. Southwestern Public Service Co. and Lamb Electric Coop., Inc. are entitled to dual certification of the disputed 100-acre tract of land in Hockley County, as shown on Staff Exhibit 10.

3. Southwestern Public Service Co. is entitled to Certificates of Convenience and Necessity for the following facilities:

- (1) A 115 kilovolt line from Yoakum County to Moss Interchange;
- (2) A 115 kilovolt line from Wolforth to Murphy;
- (3) A 230 kilovolt line from the Harrington Plant to Sundown;
- (4) A 115 kilovolt line from the eastern edge of Lubbock to Crosby;
- (5) A sixty-nine kilovolt line within the western section of Hockley County.

4. South Plains Electric Coop., Inc. is entitled to a Certificate of Convenience and Necessity for a proposed substation in Lubbock County known as the New Deal Substation.

5. West Texas Utilities Co. is entitled to a Certificate of Convenience and Necessity pursuant to Section 53 of the Public Utility Regulatory Act for a transmission line known as the Paducah to Truscott line within Cottle and King Counties.

6. Lighthouse Electric Coop., Inc. is entitled to a Certificate of Convenience and Necessity for a sixty-nine kilovolt line within Crosby County known as the Ralls to Crosbyton Line.

7. If any distribution lines of Southwestern Public Service Co., Lighthouse Electric Coop., Inc., Lyntegar Electric Coop., Inc., South Plains Electric Coop., Inc., Lamb County Electric Coop., Inc., Swisher Electric Coop., Inc., Midwest Electric Coop., Inc., Dickens Electric Coop., Inc., Lea County Electric Coop., Inc., and Bailey County Electric Coop., Inc. are located outside the service area boundaries as shown on Staff Exhibits 1 through 15, pursuant to agreement by the parties, such utilities are entitled to a Certificate of Convenience and Necessity for the facility itself only insofar as such facility is utilized to serve customers pre-

sently being served. Such utilities are not entitled to a Certificate of Convenience and Necessity for a 400 foot corridor as provided by Commission Rule .056 (b)(6)(8).


8. If the routes of any of the proposed transmission lines certificated in this cause deviate substantially from that shown on exhibits and applications filed with the Commission, the applicant shall be required to seek an amended certificate reflecting the route as finally determined.

9. With the exception of those parties listed in Conclusion 7, above, all parties are entitled to a Certificate of Convenience and Necessity pursuant to Section 53 of the Public Utility Regulatory Act and Commission Rule .056(b)(6)(8) for all facilities which were in place on September 1, 1975 within the areas as shown on facilities maps filed with the Commission.

Respectfully submitted,


PHILIP F. RICKETTS
HEARINGS EXAMINER

APPROVED this 17th day of AUGUST, 1976.


ROY J. HENDERSON
COMMISSION SECRETARY
AND DIRECTOR OF HEARINGS

APPLICATION OF BAILEY COUNTY ELECTRIC
COOP. ASSOCIATION, ET AL. CONCERNING
THE COUNTIES OF COCHRAN, COTTLE,
CROSBY, DICKENS, FLOYD, GARZA, HALE,
HOCKLEY, KENT, KING, LUBBOCK, LYNN,
MOTLEY, TERRY AND YOAKUM

PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

The Findings of Fact and Conclusions of Law contained in the Examiner's Report in this cause are adopted and made a part of this Order for all purposes with the following exception:

Findings of Fact No. 19 is amended to read as follows:

19. Hall County Electric Coop., Inc. has sufficient facilities and sources of power to provide reliable service to the areas in Motley, Cottle and Floyd Counties, as shown on Staff Exhibits 8, 12, and 14. The areas as shown reflect the historical service areas of Hall County Electric Coop., Inc., and certification of such areas will not result in substantial and unnecessary duplication of facilities.

The Commission further issues the following Order:

1. All parties are granted Certificates of Convenience and Necessity for the areas as shown on Staff Exhibits 1 through 15.
2. Southwestern Public Service Co. and Lamb Electric Coop., Inc. are granted a dual Certificate of Convenience and Necessity for the disputed 100-acre tract of land in Hockley County, as shown on Staff Exhibit 10.
3. Southwestern Public Service Co. is granted Certificates of Convenience and Necessity for the following facilities:
 - (1) A 115 kilovolt line from Yoakum County to Moss Interchange;
 - (2) A 115 kilovolt line from Welforth to Murphy;
 - (3) A 230 kilovolt line from the Harrington Plant to Sundown;
 - (4) A 115 kilovolt line from the eastern edge of Lubbock to Crosby;
 - (5) A sixty-nine kilovolt line within the western section of Hockley County.
4. South Plains Electric Coop., Inc. is granted a Certificate of Convenience and Necessity for a proposed substation in Lubbock County known as the New Deal Substation.
5. West Texas Utilities Co. is granted a Certificate of Convenience and Necessity pursuant to Section 53 of the Public Utility Regulatory Act for a transmission line known as the Paducah to Truscott line within Cottle and King Counties.
6. Lighthouse Electric Coop., Inc. is granted a Certificate of Convenience and Necessity for a sixty-nine kilovolt line within Crosby County known as the Ralls to Crosbyton Line.
7. If any distribution lines of Southwestern Public Service Co., Lighthouse Electric Coop., Inc., Lyntegar Electric Coop., Inc., South

Plains Electric Coop., Inc., Lamb County Electric Coop., Inc., Swisher Electric Coop., Inc., Midwest Electric Coop., Inc., Dickens Electric Coop., Inc., Lea County Electric Coop., Inc. and Bailey County Electric Coop., Inc. are located outside the service area boundaries as shown on Staff Exhibits 1 through 15, pursuant to agreement by the parties, such utilities are granted a Certificate of Convenience and Necessity for the facility itself only insofar as such facility is utilized to serve customers presently being served. Such utilities are not granted a Certificate of Convenience and Necessity for a 400-foot corridor as provided by the Commission Rule .056(b)(6)(B).

8. If the routes of any of the proposed transmission lines certificated in this cause deviate substantially from that shown on exhibits and applications filed with the Commission, the applicant shall be required to seek an amended certificate reflecting the route as finally determined.
9. With the exception of those parties listed in Order 7, above, all parties are granted a Certificate of Convenience and Necessity pursuant to Section 53 of the Public Utility Regulatory Act and Commission Rule .056(b)(6)(B) for all facilities which were in place on September 1, 1975 within the areas as shown on facilities maps filed with the Commission.
10. The final order as entered by the Commission in this matter shall constitute the Certificate of Convenience and Necessity for each party until formal certificates are issued by the Commission.
11. All certificates issued shall be non-exclusive and shall be subject to amendment or revocation in whole or part by the Commission upon a showing of public convenience and necessity, and such certificates shall be issued subject to all laws, rules, and conditions for "Certificates of Convenience and Necessity".

ISSUED AT AUSTIN, TEXAS this the 8th day of OCTOBER, 1976.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED:

GARRETT MORRIS

SIGNED:

ALAN R. ERWIN

ATTEST:

SIGNED:

GEORGE M. COWDEN

Roy J. Henderson
ROY J. HENDERSON
COMMISSION SECRETARY

EXHIBIT “D”

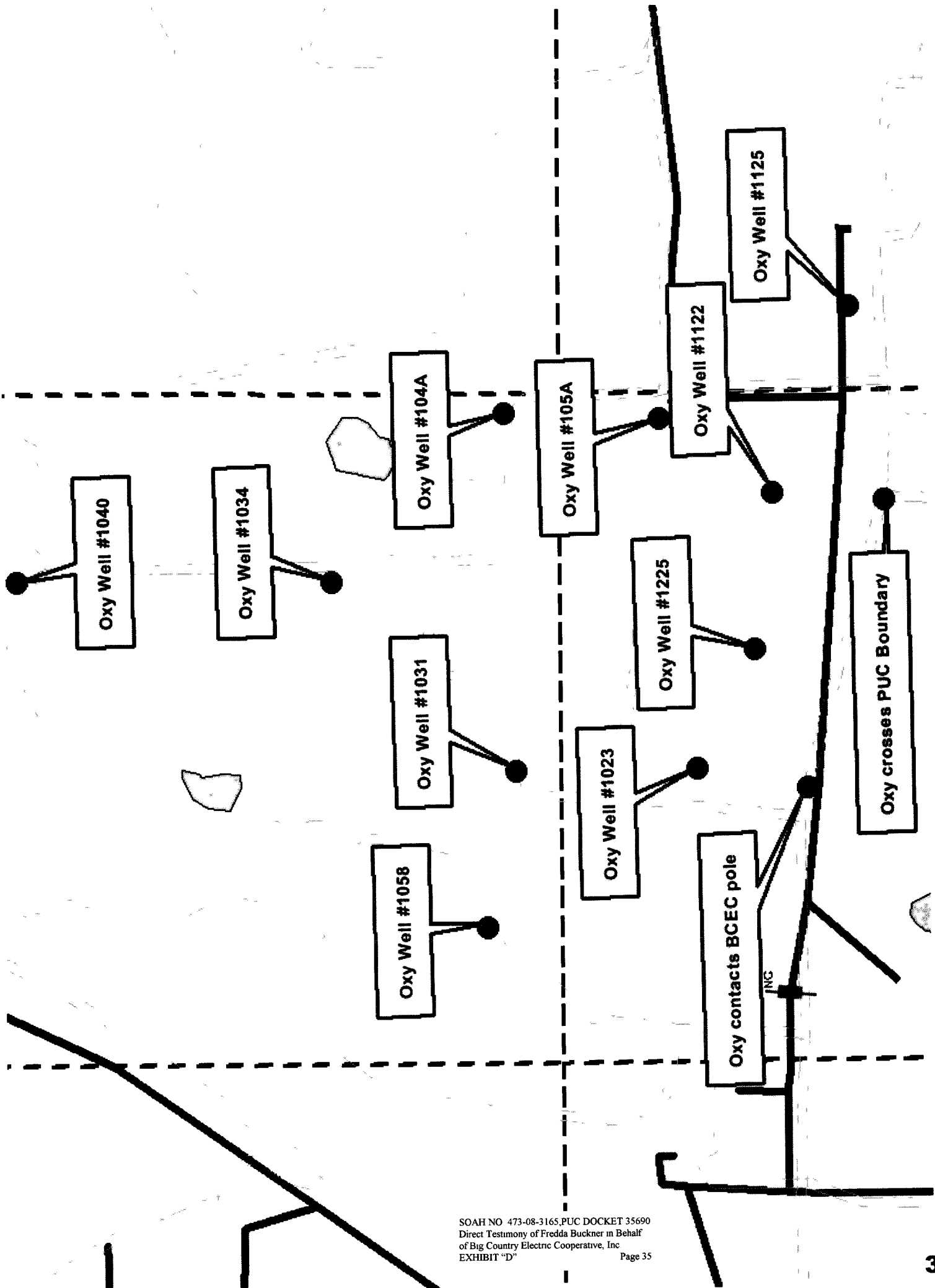


EXHIBIT “E”

SOAH DOCKET NO. 473-08-3165
PUC DOCKET NO. 35690

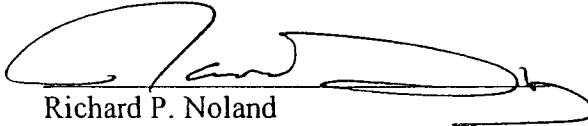
PETITION OF BIG COUNTRY § BEFORE THE STATE OFFICE
ELECTRIC COOPERATIVE, INC. § OF
FOR A CEASE AND DESIST ORDER § ADMINISTRATIVE HEARINGS

**OCCIDENTAL POWER MARKETING, L.P.'S RESPONSE TO
BIG COUNTRY ELECTRIC COOPERATIVE, INC.'S
FIRST REQUEST FOR INFORMATION**

Occidental Power Marketing, L.P. ("OPM") files this response to Big Country Electric Cooperative, Inc.'s ("BCEC") First Request for Information ("RFI") to OPM. BCEC's First RFIs were filed on July 21, 2008. By agreement, the date for responding to BCEC's First RFIs was extended to August 15, 2008. This response is therefore timely filed. All parties may treat these answers as if they were filed under oath.

OPM files these responses (1) subject to and without waiving the objections it filed on July 28, 2008, (2) without agreeing to the relevancy of the information sought, and (3) without waiving its right to object at the time of the hearing to the admissibility of information produced herein.

Respectfully submitted,



Richard P. Noland
State Bar No. 15063500
James E. Guy
State Bar No. 24027061
SUTHERLAND ASBILL & BRENNAN LLP
Austin Centre
701 Brazos Street, Suite 970
512.721.2700
512.721.2656 (FAX)
richard.noland@sutherland.com
james.guy@sutherland.com

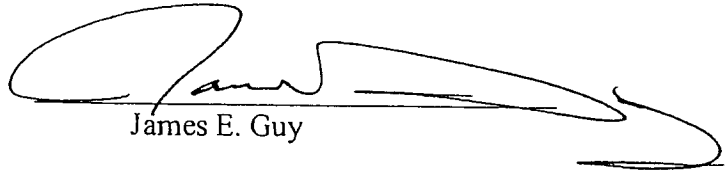
RECEIVED
2008 AUG 15 PM 2:52
PUBLIC UTILITY COMMISSION
FILING CLERK

August 15, 2008

RECEIVED
8/15/08

CERTIFICATE OF SERVICE

I, James E. Guy, certify that a copy of this document was served on all parties of record in this proceeding on August 15, 2008, by first class mail, e-mail, facsimile transmission and/or hand-delivery.



James E. Guy

SOAH DOCKET NO. 473-08-3165
PUC DOCKET NO. 35690

BCEC-OPM 1-1

Is Oxy REP providing retail electric service to consuming facilities that are located in Kent County. If so, specifically describe the facilities and methods used to deliver such service; origination date of such service by Oxy REP; what entity Oxy REP replaced as the retail provider; and identify each customer served for each consuming facility so served.

RESPONSE:

OPM supplies electric energy to the Cogdell Canyon Reef Unit ("Cogdell Unit") at a point of interconnection between the Cogdell Unit customer-owned electric distribution system ("Cogdell Unit Electric Distribution System") and the facilities of Oncor Electric Delivery Company LLC ("Oncor"). Occidental Permian Ltd. ("OPL") is the Operator for the Cogdell Unit. The point of interconnection is located in Scurry County, Texas, in an area that is dually certificated to Oncor and BCEC. Oncor is the transmission and distribution utility that provides delivery service for OPM. The energy supplied to the Cogdell Unit by OPM is metered at the point of interconnection.

The energy delivered by OPM to the Cogdell Unit at the point of interconnection between the Cogdell Unit Electric Distribution System and Oncor's facilities is utilized to meet the electrical requirements of the Cogdell Unit. The Cogdell Unit is operated as a single entity pursuant to a unitization agreement approved by the Texas Railroad Commission in 1955 and is the consuming facility. The Cogdell Unit is located in the north central portion of Scurry County and the southwestern portion of Kent County.

OPM began supplying energy to the Cogdell Unit on January 1, 2002. Prior to that date, energy was sold and delivered to the Cogdell Unit by the corporate predecessors of Oncor at the point of interconnection between the Cogdell Unit Electric Distribution System and Oncor's facilities in Scurry County identified above. As Operator for the Cogdell Unit, OPL is the only customer served by OPM at such point of interconnection.

Preparer: Tom Payton
Sponsor: Tom Payton

SOAH NO 473-08-3165, PUC DOCKET 35690
Direct Testimony of Fredda Buckner in Behalf
of Big Country Electric Cooperative, Inc.
EXHIBIT "E" Page 39

SOAH DOCKET NO. 473-08-3165

PUC DOCKET NO. 35690

BCEC-OPM 1-2

Please provide by map or other documentation, the identification, location and ownership of the consuming facilities being served by Oxy REP in Kent County and the date the consuming facility first received retail electric power.

RESPONSE:

Attached as Exhibit BCEC-OPM 1-2(a) is a map that shows the geographic area covered by the Cogdell Unit, the consuming facility supplied with electric energy by OPM. See response to BCEC-OPM 1-1. Exhibit BCEC-OPM 1-2(b) shows the portion of the Cogdell Unit that is located in Kent County, including specific oil wells and associated electrical facilities that are located within the area that is currently certificated to BCEC. Exhibit BCEC-OPM 1-2(b) is Highly Sensitive Information and will be provided pursuant to the Protective Order in this proceeding.

To the best of OPM's knowledge, retail electric service has been provided to the Cogdell Unit through the interconnection with Oncor and its corporate predecessors in Scurry County since the 1950's. OPM has not determined the exact date or dates on which the Cogdell Unit first received retail electric power through such interconnection. Retail electric service was first provided to the portion of the Unit that is located in Kent County (including the area that is currently certificated to BCEC) through the Cogdell Electric Distribution System prior to September 1, 1975. OPM has not determined the exact date or dates on which the specific oil wells shown on Exhibit BCEC-OPM 1-2(b) first received retail electric power.

A list of persons or entities who own working interests in the Cogdell Unit is attached as Exhibit BCEC-OPM 1-2(c).

Preparer: Tom Payton

Sponsor: Tom Payton

SOAH DOCKET NO. 473-08-3165
PUC DOCKET NO. 35690

BCEC-OPM 1-3

Is Oxy REP currently providing retail electric utility service to consuming facilities in Kent County via a customer-owned integrated electric distribution system? If so, please identify the owner of the customer-owned facility and provide a map of the distribution lines involved to reach the consuming facilities served.

RESPONSE:

OPM is currently providing retail electric service to the Cogdell Unit, including the portion of the Unit located in Kent County, by delivering energy to a "customer-owned integrated electric distribution system" owned by the Cogdell Unit – *i.e.*, the Cogdell Unit Electric Distribution System. See OPM's responses to BCEC-OPM 1-1 and 1-2 above.

Exhibit BCEC-OPM 1-3 is a map of the Cogdell Unit Electric Distribution System, including the portion of the Cogdell Unit Electric Distribution System that is located in Kent County. This map, which was prepared in 2004, is the most current version of the Cogdell Unit Electric Distribution System that is available. However, Exhibit BCEC-OPM 1-2(b) shows the portion of the Cogdell Unit Electric Distribution System that is located within the area in Kent County that is currently certificated to BCEC as of today. Exhibit BCEC-OPM 1-3 is Highly Sensitive Information and will be provided pursuant to the Protective Order in this proceeding.

The Cogdell Unit Electric Distribution System is owned by the Cogdell Unit. For a list of persons or entities who own working interests in the Cogdell Unit, see Exhibit BCEC-OPM 1-2(c)

Preparer: Tom Payton
Sponsor: Tom Payton

SOAH DOCKET NO. 473-08-3165
PUC DOCKET NO. 35690

BCEC-OPM 1-4

Is Oxy REP utilizing transmission and/or distribution facilities owned by Oncor to provide such service? If so, please describe the facilities and locate them by map or detailed documentation.

RESPONSE:

Electric energy is delivered to the Cogdell Unit through Oncor's transmission and/or distribution facilities at a point of interconnection in Scurry County, Texas, as shown on the map provided as Exhibit BCEC-OPM 1-3. This point of interconnection is located in an area that is dually certificated to Oncor and BCEC. See also response to BCEC-OPM 1-1.

Preparer: Tom Payton
Sponsor: Tom Payton

SOAH NO. 473-08-3165, PUC DOCKET 35690
Direct Testimony of Fredda Buckner in Behalf
of Big Country Electric Cooperative, Inc.
EXHIBIT "E" Page 42

**SOAH DOCKET NO. 473-08-3165
PUC DOCKET NO. 35690**

BCEC-OPM 1-5

For any consuming facilities presently served by Oxy REP in Kent County that are part of an oil field unit that was ever served by TESCO, or a predecessor to TXU Electric, please:

- (a) Provide the geographic area of the portions of the oil field unit in question that extended into BCEC's current service area at the time of (1) Docket 42's Final Order, (2) December 31, 2001, and (3) today.
- (b) Provide details of the load being served with Oxy REP supplied power within the oil field that extended in to BCEC's current service area at the time of (1) Docket 42's Final Order, (2) December 31, 2001, and (3) today.
- (c) Provide the location of Oncor or customer-owned distribution lines and points of delivery that extended in BCEC's current service area at the time of (1) Docket 42's Final Order, (2) December 31, 2001, and (3) today.

RESPONSE:

(a) The geographic area of the Cogdell Unit, including the portion of the Cogdell Unit that extends into the current BCEC service area in Kent County, is and has been the same as shown on the map provided as Exhibit BCEC 1-2(a) as of the three dates set forth in the question and prior to September 1, 1975.

(b) The large majority of the load associated with the Cogdell Unit, including the portion of the Cogdell Unit that extends into BCEC's current service area, consists or has consisted of pumping equipment powered by electric motors as of the three dates set forth in the question and prior to September 1, 1975. Such equipment is utilized in connection with secondary recovery practices in order to enhance oil production from the Cogdell Unit.

(c) OPM has no information responsive to the request for the location of Oncor distribution lines and points of delivery that extended in BCEC's current service area at the time of (1) Docket No. 42's Final Order, (2) December 31, 2001, or (3) today.

With respect to the location of customer-owned lines and points of delivery, Exhibits BCEC-OPM 1-2(b) and 1-3 show the location of distribution lines owned by the Cogdell Unit in BCEC's current service area in Kent County as of today (Exhibit BCEC-OPM 1-2(b)) and 2004 (Exhibit BCEC-OPM 1-3). As stated in OPM's responses to BCEC-OPM 1-1 and 1-4 the point of interconnection (or point of delivery) between Oncor's facilities and the Cogdell Unit Electric Distribution System is located in Scurry County, not in Kent County. OPM is still investigating the location of distribution lines owned by the

SOAH DOCKET NO. 473-08-3165
PUC DOCKET NO. 35690

Cogdell Unit in BCEC's current service area in Kent County as of December 31, 2001, and will supplement its response when it obtains further information.

OPM has not been able to locate a map of customer-owned electrical facilities in BCEC's current service area that was prepared at the time of Docket No. 42's Final Order. Exhibit BCEC-OPM 1-2(b) shows the location of certain customer-owned distribution facilities today and provides the "born on" dates for the poles, many of which are in the early 1970's. To the best of OPM's knowledge, the location of customer-owned distribution lines at the time of Docket No. 42's Final Order and prior to September 1, 1975, is the same as the location of the distribution lines shown on Exhibit BCEC-OPM 1-2(b) that are supported by poles with "born on" dates before 1975.

Preparer: Tom Payton
Sponsor: Tom Payton