



Control Number: 37464



Item Number: 747

Addendum StartPage: 0

SOAH DOCKET NO. 473-10-0710
PUCT DOCKET NO. 37464

RECEIVED
10 FEB -3 PM 1:57
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR A PROPOSED CREZ 345-KV TRANSMISSION LINE IN BROWN MCCULLOCH, MILLS, SAN SABA AND LAMPASAS COUNTIES, TEXAS	BEFORE THE STATE OFFICER OF ADMINISTRATIVE HEARINGS
---	--

**COMMISSION STAFF'S REPLY BRIEF ON LIMITED ISSUES RAISED BY
THE RAILROAD COMMISSION OF TEXAS**

COMES NOW Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Reply Brief on Limited Issues Raised by the Railroad Commission of Texas (RRC).

I. INTRODUCTION

On October 7, 2009, Oncor Electric Delivery Company, LLC (Applicant or Oncor) filed its application (the Application) with the Commission to amend its certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) 345-kV transmission line in Brown, Mills, Lampasas, McCulloch and San Saba counties. The project consists of constructing a new double-circuit 345 kilovolt (kV) transmission line from Oncor's new Brown Switching Station located southwest of the city of Brownwood, Texas, in Brown County, to the new Oncor Newton Switching Station located west of Kempner, Texas, in Lampasas County.¹

On December 1, 2009, the Railroad Commission of Texas (RRC) filed a request for leave to file a late motion to intervene. The RRC stated it had a justiciable interest in this proceeding by virtue of the fact that it is the agency responsible for the regulation of oil and gas wells, and the presence of oil or gas wells within the right-of-way of a transmission line may hinder the RRC's state-mandated responsibility. RRC's motion to intervene was conditionally granted on

¹ Oncor Ex. 6, Direct Testimony of Jill L. Alvarez at 5 (Oct. 7, 2009) (hereinafter "Alvarez Direct").

December 2, 2009, with the RRC required to show that a justiciable interest in the proceeding. On December 9, 2009, the RRC filed a Statement of Position demonstrating a justiciable interest in this proceeding.

II. RAILROAD COMMISSION PROPOSAL IS UNACCEPTABLE

In its Initial Brief, RRC proposed that an “additional condition” be included in any order entered in this docket to “address the discovery of an oil or gas well during the planning and construction of the transmission line.”² RRC does not specify with which types of oil and gas wells it is concerned, but it is reasonable to assume that the condition is proposed to address concerns about uncapped inactive wells that may be discovered within a transmission line right-of-way (ROW). Oil and gas wells may be inactive and plugged, inactive and unplugged, or active and unplugged.³ Only uncapped, inactive wells are of concern because Oncor will not construct lines with active wells in the ROW and capped inactive wells do not constitute a constraint.⁴ RRC’s proposes specific language for the “additional condition” it requests, presumably as an ordering paragraph in the final order, as follows:

Before construction commences, the utility or its contractors shall determine from the mapping records of the Railroad Commission of Texas (RRC), whether any oil or gas well site is located within the approved route and shall advise the RRC of any site identified and the date construction will be commenced in the area where the site is located. Oncor will not construct a new transmission line with an unplugged oil or gas well within the approved right-of-way. In the event the utility or its contractors encounter an unidentified oil or gas well during project planning and/or construction, any construction work shall cease in the immediate vicinity until Oncor has reported the discovery of the well to the RRC and has taken action in coordination with the RRC and the PUC, consistent with the requirements of this Order. In the event that a minor deviation is necessary to avoid an oil or gas well, any minor deviation to the approved route shall only directly affect landowners who received notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation.

Staff opposes the inclusion of this language in a final order because it is overly restrictive and seeks to enforce conditions upon the construction of transmission projects that are not supported by law and have not been demonstrated necessary or reasonable by the evidence in this case. Specifically, RRC requests that Oncor be ordered not to construct a transmission line

² RRC Brief at 4.

³ Tr., Vol. 5 at 1388-190.

⁴ Tr., Vol. 5 at 1390 and 1440.

with an unplugged oil or gas well within the ROW. Neither the law nor the evidence supports such a request.

RRC offers no legal authority whatsoever in its brief for the proposition that a company should be prohibited from constructing transmission lines with an unplugged inactive well in the ROW. RRC generally cites its responsibilities and authority as derived from the Texas Natural Resources Code and Texas Water Code but provides no specific reference to any statutory provision that gives it authority to prohibit construction of transmission line with oil and gas wells of any type within the ROW. RRC similarly offers no case law or commission precedent for such authority.

At the hearing on the merits Oncor's expert witness, Jill Alvarez, testified that an inactive, unplugged well is not a constraint.⁵ RRC states that its request for inclusion of its proposed language is justified because there is "some uncertainty with respect to the location oil and gas wells and sites, and further there is uncertainty whether inactive oil or gas well sites have been properly plugged and abandoned."⁶ The language proposed by RRC is not limited to *abandoned* wells, however, and ultimately will have the effect of making Oncor responsible for the plugging of wells within the ROW of its selected transmission line route even if a well has *not* been abandoned and is therefore the responsibility of the operator to plug. The RRC mischaracterizes Ms. Alvarez' testimony wherein she testified that Oncor would contact the RRC "[i]f that's something that we're required to do, we certainly would"⁷ and would follow the directions of the RRC "[i]f it was reasonable."⁸ Ms. Alvarez further testified that it would not be reasonable to incur the cost of plugging a well and pass it on to the ratepayers nor would it be reasonable for Oncor to indefinitely delay in construction until the RRC plugged a well.⁹

Though it is not expressly stated in its brief, it is apparent that RRC is attempting to place its responsibility for plugging abandoned wells on Oncor. If Oncor is prohibited from constructing transmission lines with unplugged wells in the ROW and the RRC does not act in a timely manner to plug any such wells, Oncor will have to either accept indefinite delay in its

⁵ Tr., Vol. 5 at 1440.

⁶ RRC Brief at 4.

⁷ *Id.*

⁸ Tr. Vol. 5 at 1391.

⁹ Tr., Vol. 5 at 1440.

construction schedule or plug the well itself. Undoubtedly, Oncor will seek recoupment of the costs of plugging such wells in a rate proceeding and the cost of this activity will thus be transferred from RRC to ratepayers. RRC has offered no authority for why such a transfer is legally permissible or warranted and, consequently, their proposed language should be rejected.

Staff proposes that an ordering paragraph be included in the order in this docket to address the concerns of the RRC as follows:

Oncor shall provide a copy of this order to the Railroad Commission of Texas (RRC) along with a topographical map(s) of the selected route in electronic form no later than 10 days from the date this order becomes final. Oncor shall supplement the map(s) provided to RRC in a reasonable time upon the discovery of any previously unidentified oil and gas wells. Oncor shall coordinate its planning and construction schedules for the selected route, to the extent practicable, with the RRC to allow the RRC to inspect any wells identified by Oncor in the right of way of the transmission project and to take appropriate action in regards to such wells as the RRC determines necessary.

Staff believes that this ordering paragraph, along with Staff's standard recommended requirement that Oncor work with landowners in making any minor deviations to address constraints discovered upon a selected route,¹⁰ will be the most reasonable means of addressing RRC's concerns regarding the existence of unplugged inactive oil and gas wells in the ROW of the transmission line. The RRC, not Oncor, is required by law to plug orphaned oil and gas wells¹¹ and will be able to proceed in doing so once Oncor provides the information described in proposed Ordering Paragraph above.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Staff respectfully requests that the Administrative Law Judge issue a proposal for decision consistent with the Conclusions of Law filed on February 3, 2010 with the addition of the Ordering Paragraph proposed in this brief.

¹⁰ This recommendation is found in the Conclusions of Law as Ordering Paragraph No. 7.


¹¹ The RRC is provided regulatory authority over such wells by the Texas Natural Resources Code and Texas Water Code.

Dated: February 3, 2010

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

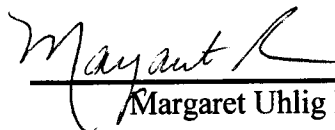


Margaret Uhlig Pemberton
Legal Division
State Bar No. 20371150
(512) 936-7290
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

SOAH DOCKET NO. 473-10-0710
PUCT DOCKET NO. 37464

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the February 3, 2010 in accordance with P.U.C. Procedural Rule 22.74.



Margaret Uhlig Pemberton