



Control Number: 37778



Item Number: 525

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OPEN MEETING COVER SHEET

MEETING DATE: July 1, 2010

DATE DELIVERED: June 30, 2010

AGENDA ITEM NO. 15

CAPTION: Docket No. 37778; SOAH Docket No. 473-10-2461
- Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Twin Buttes to McCamey D CREZ 345-kV Transmission Line in Tom Green, Irion, and Schleicher Counties, Texas.

ACTION REQUESTED: Memo from Commissioner Anderson

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Public Utility Commission of Texas

Memorandum

TO: Chairman Barry T. Smitherman
Commissioner Donna L. Nelson

FROM: Commissioner Kenneth W. Anderson, Jr. *KWA*

DATE: June 30, 2010

SUBJECT: **July 1, 2010 Open Meeting, Agenda Item No. 15, Docket No. 37778** – Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Twin Buttes to McCamey D CREZ 345-kV Transmission Line in Tom Green, Irion, and Schleicher Counties, Texas.

Except for the modifications set forth below, I would adopt the proposal for decision.

I. Additional Monopoles

In its post-hearing brief, intervenor *Slaughter Interest* requested the use of monopoles on its property. The *Bryant Trust* also requested the use of monopoles along link A13a on its property. Finally, the *Steen Estate* requested the use of monopoles along the opposite side of its northern fence line boundary for one mile and along the eastern boundary for three miles. The Steen Estate's request is supported by the neighboring owners of the land where these lines are to be located, Galen Akin and Robert Helmers. *I support the use of monopoles as requested by Slaughter Interest, the Bryant Trust, and the Steen Estate. Ordering paragraphs should be added to reflect this modification.*

The language in *finding of fact 89*, which includes language about the benefit of using LCRA's lattice-tower structures as opposed to pole structures, should be deleted.

In addition, I propose the following ordering paragraph for consistency with prior Commission orders regarding monopoles:

LCRA TSC shall endeavor to use monopole structures in situations where the ROW is extremely constrained, the ROW could disproportionately affect a particular landowner, or the cost of the ROW acquisition is extremely high, if the use of monopoles is more cost-effective.

II. Incorporation of the Language of the Settlement Agreement in the Order

A. Clarification of disparity between language of NUS and maps

I propose that the Commission modify *finding of fact 90* to include the exact language of the non-unanimous settlement (NUS) regarding the routing adjustments, with minor modifications made for consistency. Before the language of the NUS is incorporated into the language of the order, I seek clarification on two items where there is disparity between the language of the NUS and the associated maps.

- 1) Modification no. 3 on the Bryant Trust property refers to FM 2355. It appears on the maps that the road that crosses the Bryant Trust property is FM 2335. Additionally, *finding of fact 71* also references FM 2355.

I would like clarification from the parties that the road to be properly referenced in the order is FM 2335.

- 2) Modification no. 4, the Dickens modification, describes a deviation from LCRA TSC's original link A16 as follows:

“[L]ink A16 proceeds south until it meets the southwest corner of tract *A16-004* where link A16 will take a right-angle turn to the east parallel to the southern boundary of tract *A16-004*, across Dove Creek to the eastern boundary of tract *A16-007*. At that point, link A16 takes a turn in a southerly direction and parallels the eastern boundary of the tract shown on the LCRA TSC maps as tract *A16-007*.” [emphasis added].

However, Exhibits 14A and 14B, which were created at the prehearing conference and which are hand illustrated with the intervenors' proposed modifications, show link A16 taking a right-angle turn to the east along the southern boundary of tract *A16-003*, not *A16-004* as is described in the written description of the modification. According to LCRA TSC's landowner records, tract *A16-003* is owned by the Rios and tract *A16-004* is owned by the Greens, neither of whom are parties to the NUS or intervenors in this docket. Tract *A16-005* is owned by Mr. Ridge who is a party to the NUS.

I believe that the parties should clarify this point so that the correct tract can be identified in the order.

B. Modification to *finding of fact 90*

Finding of fact 90 would be replaced with the following language, with modifications made as necessary based on the outcome of the two clarifications discussed above. Minor corrections have also been made to the route modification language in the interest of consistency.

90. A description and costs for the routing adjustments contained in route TM9 are listed below:

a. Modification 1 – Slaughter Interest

The transmission line shall enter Slaughter Interest's property along original link a7 from the northeast into tract A7-007. At a point 50 to 80 feet inside Slaughter Interest's property, the transmission line will turn left approximately 60 degrees so as to travel due south following Slaughter Interest's easternmost property line. The eastern edge of the transmission line easement must abut Slaughter Interest's easternmost property line. The transmission line shall continue south across the Middle Concho River along and abutting Slaughter Interest's easternmost property line. South of the Middle Concho River, the unnumbered tract south of tract A7-007, which is owned by Slaughter Interest, is described in the M. Keller Survey as No. 830, Abstract 1592. The transmission line shall continue south along and abutting Slaughter Interest's easternmost property line until a point approximately 450 feet from the northern boundary of tract A13-003, at which point the transmission line shall turn right at an angle of approximately 80 degrees so as to travel to the west-southwest and so as to traverse to a point 50 to 80 feet north of the boundary of tracts A13-002 and A13-003 and connect with the current location of original link a13. The west-southwest traversing line described in the prior sentence must be oriented such that the southern border of the transmission line easement will be as far south as possible and also must run as nearly due west as possible without the transmission-line easement crossing into tract A13-003. Upon reaching link A13 at a point 50 to 80 feet north of the boundary of tracts A13-002 and A13-003, the transmission-line easement shall turn due south and exit the Slaughter Interest's property along link A13. The easement on Slaughter Interest's property will be no wider than necessary to accommodate the applicable structures.

The Slaughter Interest adjustment is estimated to add approximately \$1.3 million, primarily for additional dead-end structures and approximately 0.2 miles of additional length.

b. Modification 2 – Collins

The modified link a13 on Joseph Lee Collins' property starts at the northwest corner of tract A13-008 and will traverse between 40-60 degrees southeast for about 5,000 feet to a point to be determined based on constraints and the next connection point to link a13. The transmission line shall bypass or span an existing windmill, water tank, water trough, and dirt tank.

From this point, the transmission line will traverse at an approximate 85-90 degree angle southwest for about 4,750 feet to reconnect to the original link a13. This point depends on the earlier starting point. This portion of the link will bypass an existing windmill. LCRA TSC shall work with the landowner to accommodate minor deviations on the landowner's property.

The transmission structures for both portions of the link will be single monopole structures. The transmission line will cross over an existing 3-inch above ground pressurized flow line, an existing 2-inch non-pressurized flow line, an electrical distribution line, and a communication line.

The Collins adjustment is estimated to add approximately \$1.3 million, primarily for additional dead-end structures and approximately 0.4 miles of additional length. Using monopoles would add an additional estimated cost of \$2.1 million, including \$0.6 million for tangents and \$1.5 million for dead-ends. Thus, the total estimated cost for the Collins adjustment (\$1.3 million) and monopoles (\$2.1 million) adds \$3.4 million.

c. Modification 3 – Bryant Trust

After proposed link A13 crosses Highway 67, and at the point link A13 enters the northeast corner of tract A13-025 owned by the M.D. Bryant Family Trust, new link A13a would angle approximately 25 degrees to the southwest and run for approximately 2,400 feet to the southern boundary of "Lee Farm," (approximately 2,500 feet south of Highway 67) at which point link A13a would turn south and continue on a straight line to connect to the northern end of proposed link A16 directly from tract A13-079 to adjoining tract A13-080. From the point at which link A13a turns south on tract A13-025 until it connects to link A16, the distances between proposed link A13a and link A13 would vary as the links run south; however link A13a would be positioned so that it is no closer than 550 feet to a habitable structure on the east side of FM 2355.

The Bryant Trust adjustment has the potential to reduce estimated construction costs by \$0.7 million, primarily for reduced numbers of angle structures; however, this would place the transmission line farther from a parallel roadway into the interior of the Bryant Trust properties which could affect ROW acquisition costs.

d. Modification 4 – Dickens

From its beginning point at the southern end of link A13a on tract A13-080, link A16 proceeds south until it meets the southwest corner of tract A16-004 where link A16 will take a right-angle turn to the east parallel to the southern boundary of tract A16-004, across Dove Creek to the eastern boundary of tract A16-007. At that point, link A16 takes a turn in a southerly direction and parallels the eastern boundary of the tract shown on the LCRA TSC maps as tract A16-007. As the line proceeds on the boundary of A16-007, the line will be lowered to a height of approximately 75 feet for a stretch of approximately 1000 feet to meet the 1:20 slope guidelines for the Dickens primary airstrip. These lower structures will be H-frame structures or any technology available to LCRA TSC to lower the line to the 1:20 height. Then the line will continue to proceed on the eastern boundary of tract A16-007 until it crosses Guinn Road. Where the southeastern most corner of tract A16-007 meets Guinn Road, the route crosses Guinn

Road and turns to the west-southwest and follows parallel to and along the southern boundary of Guinn Road on the tract A16-012, which is part of the Tweedy Ranch, until it meets A16 as originally proposed by LCRA TSC. Although the map shows a small portion of tract A16-007 south of Guinn Road, that property is actually owned by the owners of the Tweedy Ranch.

LCRA TSC necessarily modified the north end of the proposed Dickens adjustment on the Green property to account for a feasible crossing of Dove Creek. The LCRA TSC-modified Dickens adjustment is estimated to increase costs by \$2.6 million, primarily for additional dead-end structures, a few low-profile structures only in the immediate vicinity of the projection of Dickens primary runway, and approximately 0.5 miles of additional length. Extending low profile structures farther would result in even higher costs.

e. Modification 5 – Pickett

From the point at which link A16 and link A18 join at the northern boundary of tract A16-016, go east along the northern property line of A16-016 until the eastern boundary of A16-016 where it meets tract A18-001. Go south along the property line between A16-016 and A18-001 until the modification meets the existing point where link A18 meets the property line between tracts A16-016 and A18-001. From that point, continue following proposed link A18 to the point where tracts A18-003, A18-002, A18-005, and A18-006 meet. From that point, follow the modifications through parcel A18-006 south as proposed in the McGregor Ranch Compromise. The entire segment of link A18 from the Pickett modifications beginning point to the Pickett modifications end point shall be constructed using monopoles as the supporting structure for the line.

The Pickett adjustment is estimated to increase costs by \$0.8 million, primarily for additional more expensive dead-end structures and approximately 0.3 miles of additional length. Using monopoles from the corner of Pickett's property to the corner of Mayfield's property would add an additional estimated cost of \$4.8 million, including \$1.7 million for tangents, \$0.5 million for angles, and \$2.6 million for dead-ends. Thus, the total estimated cost for the adjustment (\$0.8 million) and monopoles (\$4.8 million) equals \$5.6 million.

f. Modification 6 – McGregor Compromise

At the northwest corner of tract A18-006, turning clockwise to the middle of the southern boundary of that tract, cross Allen Road before entering the McGregor Ranch on the east side of tract A24-002. Then proceed south along McGregor Ranch's eastern fence, staying on the McGregor Ranch and not on Double M Ranch, for two miles. Turn counter-clockwise slightly towards McGregor Ranch's southeast corner for about three more miles. Turn due east, cross into Galen Akin's south pasture at tract A26-012 and proceed east paralleling Galen Akin's south fence line for about one mile, staying on Akin's property and not on the Steen Estate ranch. Upon entering Karen Marth's ranch at tract A26-013, turn due south again paralleling her west fence, staying on the Marth ranch and not on the Steen Estate ranch, until entering Bob Helmers's ranch at tract A35-

010. Continue due south paralleling Bob Helmers's western fence, staying on the Helmers ranch and not on the Steen Estate ranch, in tract A37-001 and most of A35-010. Continue south across Bob Helmers's south pasture in tract A35-010 and proceed due south into Wilson Jones ranch at tract A36-007 until the line meets up with the road on his ranch that leads eastward to the proposed McCamey D substation on his ranch. At no point will the McGregor Compromise route cross any portion of the Double M Ranch or the Steen Estate ranch.

The McGregor Compromise adjustment is estimated to increase costs by \$1.2 million, primarily for additional tangent and angle structures and approximately one mile of additional length. No part of Route TM9 will be placed on the Double M Ranch or the Steen Estate Ranch.

III. Texas Parks and Wildlife's Written Comments and Recommendations

After reviewing the Proposal for Decision in this docket, in order to more directly and fully address the recommendations and comments of the Texas Parks and Wildlife Department, and in order to have consistency among the various dockets, I propose making modifications to several of the findings of fact in the section of the Proposal for Decision regarding the TPWD recommendations. The entire section is reproduced below, with the modifications included. I also propose adding a related ordering paragraph.

- 94. TPWD's letter containing comments and recommendations was filed in this docket on March 22, 2010. On March 23, 2010, errata to TPWD's letter were filed. This order addresses only those recommendations and comments for which there is record evidence.
- 95. Route TM9 is consistent with TPWD's recommendation because it retains characteristics of Route TM6, even with the modifications.
- 96. No modifications to the project are required as the result of the recommendations and comments made by TPWD in its letter.
- 97. ~~Necessary TPWD's recommendations for mitigation measures are included in the Ordering Paragraphs found below.~~ DELETED.
- 97 A. The standard mitigation requirements, included in the ordering paragraphs in this order, coupled with LCRA TSC's current practices, are reasonable measures for a utility to undertake when constructing a transmission line.
- 97 B. LCRA TSC must comply with all environmental laws and regulations governing endangered species.
- 97 C. Mitigation measures relating to raptor protection, herbicide use, flora and fauna disturbance, and erosion control are part of LCRA TSC's standard practices.
- 97 D. LCRA TSC will use best management practices to minimize potential impacts to migratory birds and threatened or endangered species.

97 E. LCRA TSC will identify potential habitat for the black-capped vireo and the Concho water snake and utilize best management practices to avoid, minimize, or mitigate potential impacts to these federally-listed endangered species.

98. ~~The following TPWD recommendations or comments are not necessary for the issuance of a final order in this docket because they are not necessary or are not operationally practicable: on the ground surveys of all proposed routes prior to the selection of a route by the Commission; and the development and implementation of a mitigation plan for the life of the Project in cooperation with TPWD. DELETED.~~

98 A. It is impracticable and unnecessary to undertake a comprehensive on-the-ground survey of all proposed routes for habitat of rare and protected species before a final order identifying a route is issued by the Commission.

98 B. The development and implementation of a mitigation plan for the life of the project in cooperation with TPWD is not necessary.

The following ordering paragraph should be added regarding the TPWD recommendations:

LCRA TSC shall identify locations of the black-capped vireo and Concho water snake and utilize best management practices to avoid, minimize, or mitigate potential impact to those federally-listed endangered species.

IV. Railroad Commission of Texas

The Proposal for Decision includes a proposed ordering paragraph regarding the Railroad Commission of Texas (RRC). Because the RRC did not intervene or file comments in this docket, I do not believe it is appropriate to include an ordering paragraph requiring LCRA to provide a copy of this order to the RRC along with topographical maps of the selected route, or to coordinate its planning and construction schedules with the RRC. I propose that the Commission not include this proposed ordering paragraph in the order in this case. However, if my colleagues disagree, the language should be modified to reflect the language adopted by the Commission in previous dockets:¹

LCRA TSC 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~~ ten days from the date this Order becomes final. LCRA TSC shall supplement the map(s) provided to RRC in a reasonable time upon the discovery of any previously unidentified oil and gas wells. LCRA TSC 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 LCRA TSC in the

¹ *Application of Oncor Electric Delivery Company, LLC to Amend Its Certificate of Convenience and Necessity for the Brown-Newton 345-Kv CREZ Transmission Line in Brown, Mills, Lampasas, McCulloch, and San Saba Counties, Texas, Docket No. 37464, Order at 30 (Apr. 5, 2010).*

Application of Oncor Electric Delivery LLC to Amend its Certificate of Convenience and Necessity for the Proposed Bluff Creek to Brown 345-Kv CREZ Transmission Line in Taylor, Runnels, Coleman, and Brown Counties, Texas, Docket No. 37530, Order at 21-22 (Apr. 26, 2010).

right-of-way of the transmission project and to allow the RRC to take appropriate action in regards to such wells as the RRC determines necessary. Any issues that cannot be resolved by LCRA TSC and the Railroad Commission shall be immediately brought to the attention of the Chairman of the Public Utility Commission and the Chairman of the Railroad Commission.

V. Other Minor Modifications

Finding of fact 16 states that at the prehearing conference Staff presented the NUS negotiated by Staff and *all of the intervenor* landowner parties. However, the NUS was also signed by Carolyn B. McCrea and Jackie Robison. Both Ms. McCrea and Ms. Robison were admitted as intervenors but were later dismissed as parties because they failed to file direct testimony. Therefore, I propose that *finding of fact 16* be modified as set forth below:

16. On April 13, 2010, immediately before the commencement of the hearing on the merits, Administrative Law Judge Lilo D. Pomerleau convened a final prehearing conference. At that time, Commission Staff presented a draft NUS negotiated and prepared among PUC Staff, all other parties and two dismissed intervenors, which proposed a series of routing modifications based on LCRA TSC's Route TM6. Based on the agreement of the parties, the ALJ determined that the hearing on the merits would begin after LCRA TSC had the opportunity for analysis and response to the NUS, and the hearing was recessed until April 15, 2010.

Finding of fact 18 lists all of the admitted landowner intervenors in this docket. However, the language of that finding omits three intervenors, lists an individual who is a representative of a party as a party himself, and groups several intervenors collectively who should not be so grouped. In order to correct these errors and correctly reflect the record, I propose that *finding of fact 18* be modified using the following language:

18. Landowners admitted as intervenors include: W. Freeman Pickett, III, and Tony Jones; David E. Steen Estate (Janise R. Simmons and Myrta Rathbone, independent co-administrators); L. David and Larilyn Winston; Wardlaw Brothers Ranch, Ltd.; M.D. Bryant Family Trust (Bryant Trust); Joseph Lee Collins; James and Preston Hallman (the Duff Ranch); Double M. Ranch, LP; Patricia Lee Lewis, M. Susan Lewis, and Andrea Lyn Lewis Whitcomb (Lewis Ranch); Galen Akin; Knickerbocker Ranch, LP; J. Stanley Mayfield and Deanna G. Mayfield, McGregor Ranch, Walter Scott McGregor, Michael Gene McGregor, Robert and Julia Maier Living Trust Agreement I, Angie Jo Plemons, Catherine Ann Pickett, and Andrew L. Allen (McGregor Ranch); Tweedy Ranch, Louise M. Tweedy, Sandra M. Tweedy, Barbara V. Tweedy, Patricia D. Tweedy, the Andrew Tweedy Family Trust, the Louis Tweedy Martial Trust and Dove Creek Ranch, Dove Creek Partners, Chapoton, LLC, Ruth E. Flournoy, Mary E. King, and Sarah Chapoton, Elizabeth and O. Strother Simpson (collectively Tweedy); Schelro, Ltd.; Jackie L. Robison; Slaughter Interests, Ltd. (Slaughter); Jay Dickens; Sara C. Roach; Blake L. Duncan; Robert E. Helmers; and James F. Ridge

I look forward to discussing this matter at the open meeting.