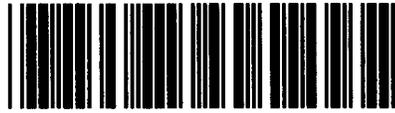


Control Number: 38290



Item Number: 49

Addendum StartPage: 0

**SOAH DOCKET NO. 473-10-4790
PUC DOCKET NO. 38290**

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| <p>APPLICATION OF SHARYLAND UTILITIES, L.P. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED HERFORD TO WHITE DEER 345 KV CREZ TRANSMISSION LINE IN ARMSTRONG, CARSON, DEAF SMITH, OLDHAM, POTTER, AND RANDALL COUNTIES, TEXAS</p> | <p>§ § § § § § § § § §</p> | <p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p> |
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COMMISSION STAFF'S RESPONSE TO ORDER NO. 2 CONCERNING MATERIAL SUFFICIENCY OBJECTIONS

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Order No. 2 requiring Staff to respond to material sufficiency objections and would show the following:

I. BACKGROUND

On June 16, 2010, Sharyland Utilities, L.P. filed an application to amend its certificate of convenience and necessity (CCN) for a proposed 345-kilovolt (kV) Competitive Renewable Energy Zones (CREZ) transmission line in Armstrong, Carson, Deaf Smith, Oldham, Potter, and Randall counties, Texas (Application). On June 30, 2010, intervenors Seewald Ranch and Bush/Emeny Properties (Seewald) filed its response to Order No. 1 alleging that the written description of Link B17 in the notices provided by Sharyland is inaccurate and that the notices are deficient. Seewald asks that Sharyland be ordered to provide additional notice to cure this deficiency and that the statutory deadline be calculated based on the date of filing a sufficient application. Also on June 30, 2010, the Masterson & Stinnett Ranch (Masterson) filed its Response to Order No. 1 joining Seewald's response to Order No. 1. Staff, again on June 30, 2010, filed its response to Order No. 1 commenting that the application be found sufficient and contains no material deficiencies. On July 7, 2010, Sharyland filed its Proof of Notice by Mail and Proof of Publication as well as its Reply to the Allegations of Material Deficiency wherein it disagreed with Seewald's and Masterson's allegations that that notice was deficient. This Response is timely filed pursuant to Order No. 2.

49

II. SUFFICIENCY OF NOTICE

Seewald argues that the written description of Link B17 in the notices contained with the application does not describe the Link as it is depicted on various maps included with the notices or with Figure 2-6b of the Application. The conflicting visual and narrative descriptions contained in the notices, according to Seewald, render the notices in violation of the Commission's notice rules and the application materially deficient.¹ Staff does not agree. First, the errors cited to by Seewald are minor, consisting of three textual lines in a 20 page description of routes. Second, as Sharyland admits, in its Reply to Allegations of Material Sufficiency, the narrative description is inaccurate because Sharyland did not revise the description to incorporate changes to that link as a result of comments received at the public meeting, in contrast to the depiction of the link on the maps which did incorporate the changes.² The maps provided by Sharyland with its notices do not have any identified errors. Sharyland used the maps and not the incorrect route description as the basis for determining affected landowners for the purposes of sending out notice.³ Hence, the map will allow noticed landowners to ascertain whether or not their property may be affected by one of the proposed routes. Third, Sharyland asserts that it has corrected the error by sending supplemental notice containing the correct narrative description to affected landowners in the general vicinity of the affected links.⁴ Lastly, as noted by Sharyland, the Administrative Law Judge (ALJ) in a recent Oncor CREZ CCN case rejected the argument that notice was deficient because the narrative descriptions for the links contained minor errors.⁵ For these reasons, Staff does not agree that the minor errors identified by Seewald and Masterson are material deficiencies to Sharyland's application and requests that the ALJ reject Seewald's and Masterson's request that Sharyland be required to provide additional notice.

¹ Seewald Ranch's and Bush/Emeny Properties' Response to SOAH Order No. 1 Concerning Material Deficiencies at 1-2 (June 30, 2010).

² Sharyland Utilities, L.P.'s Reply to Allegations of Material Deficiency at 3-4 (July 7, 2010).

³ *Id.* at 4.

⁴ *Id.* Sharyland's correction of the error by sending supplemental notice to affected landowners in the general vicinity of the affected routes does not mean that Sharyland has cured the notice deficiency. Staff's view is, as will be addressed in Staff's comments with respect to notice which will be filed on July 9, 2010, is that Sharyland will need to provide this supplemental notice to all affected landowners and not just those in the general vicinity of the affected routes, although this deficiency is not a material deficiency.

⁵ *Application of Oncor Electric Delivery Company, LLC to Amend a Certificate of Convenience and Necessity for the Riley-Bowman 345-kV CREZ Transmission Line (Formerly Oklaunion-Bowman Line) Within Archer, Wichita, and Wilbarger Counties, Texas*, Docket No. 37408, Order No. 4 Finding Sufficiency and Adequate Notice; Establishing Service Conventions; and Setting Prehearing Conference at 3 (October 15, 2009).

III. CREZ STATUTORY DEADLINE CANNOT BE EXTENDED

Seewald and Masterson request that the statutory deadline be calculated based on the date of filing a sufficient application. CREZ transmission CCNs are procedurally different from non-CREZ CCNs. P.U.C. PROC. R. 22.52(a)(5) provides that “[f]ailure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.” For the reasons stated above, Staff does not believe that Sharyland has failed to provide notice in accordance with Rule 22.52(a)(5). Further, the day-for-day extension of deadlines, which amounts to an abatement of the CCN proceeding, is not applicable to CREZ CCN applications because the statutory deadline for the processing of CREZ CCNs does not provide for any type of extension. Non-CREZ transmission CCNs are filed in accordance with PURA §37.057 which provides that a party may seek a writ of mandamus to compel the Commission to rule on a CCN that has not been approved or denied one year after the application was filed. CREZ CCNs are filed pursuant to PURA § 39.203(e), which states that “[n]otwithstanding any other law, including Section 37.057” a CREZ CCN must be approved or denied by the 181st day following the filing of its application or “the application is *approved*.” (Emphasis added.) The express statutory consequence of the commission failing to meet the CREZ CCN deadline differs significantly from the consequence provided for other transmission CCN cases. Consequently, it is not possible to delay the 180-day deadline for the Commission to act on a CREZ CCN application, even if there is a material deficiency in the application or its notice, which Staff asserts there is not in this case.

Dated: July 8, 2010

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

Andres Medrano
Senior Attorney
Legal Division

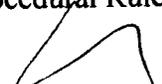


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SOAH DOCKET NO. 473-10-4790
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 8th day of July, 2010 in accordance with P.U.C. Procedural Rule 22.74.



Brennan J. Foley