



Control Number: 38324



Item Number: 64

Addendum StartPage: 0

JUL -7 PM 2:31

APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY LLC TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE WILLOW CREEK-HICKS 345-KV CREZ TRANSMISSION LINE IN DENTON, PARKER, TARRANT, AND WISE COUNTIES	§ § § § § § § § § §	BEFORE THE STATE OFFICE <small>PUBLIC UTILITY COMMISSION</small> FILING CLERK OF ADMINISTRATIVE HEARINGS
--	--	--

**COMMISSION STAFF'S RESPONSE TO BONDS RANCH'S MOTION TO
FIND ONCOR'S APPLICATION MATERIALLY DEFICIENT**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission) representing the public interest, and files this Response to Bonds Ranch's Motion to Find Oncor's Application Materially Deficient (Motion) and would show the following:

I. BACKGROUND

On June 16, 2010, Oncor Electric Delivery Company LLC (Oncor) 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 Denton, Parker, Tarrant, and Wise Counties, Texas (Application). Pursuant to Public Utility Regulatory Act (PURA) § 39.203(e), the Commission must issue a final order in this docket before the 181st day after the date the Application was filed, same being December 11, 2010. Because that day is a Saturday, the jurisdictional deadline in this case is December 10, 2010. Pursuant to P.U.C. PROC. R. 22.75(d), Bonds Ranch filed its Motion on June 30, 2010. On July 2, 2010, Bonds Ranch filed a Re-styling of Its Earlier Motion to Find Oncor's Application Materially Deficient (Re-styling), requesting that Section III of its Motion be considered a "route adequacy challenge" to Oncor's Application. P.U.C. PROC. R. 22.75(d)(4) provides that a response to such a material deficiency motion shall be filed no later than seven days after the motion's receipt, same being July 7, 2010, and therefore, this Response to Bonds Ranch's Motion (Response) is timely.

II. RESPONSE TO BONDS RANCH'S MOTION

Bonds Ranch's Motion (considered along with the Re-styling) asserts that Oncor's Application is materially deficient because Oncor "filed too many proposed routes to allow for a proper evaluation of each route to be conducted in the time permitted by statute,"¹ because "Oncor has proposed two links, Q and Y, which its witnesses testify are not viable,"² and that a route adequacy hearing is appropriate to address Oncor's failure to propose particular links that utilize particular existing transmission rights-of-way (ROWS) near the new Hicks Switching Station.³

Bonds Ranch's Motion is internally inconsistent as one argument alleges that Oncor has proposed *too many* routes, while another argument advocates for the necessity of a route adequacy hearing to demonstrate the need for *additional* routing options. Effectively, the Motion seeks to require Oncor to demonstrate the merits of its application at a preliminary stage—showing, not unlike Goldilocks, that its application is neither "too hot" nor "too cold" but "just right." Nothing in PURA or the Commission's rules requires that Oncor prove the merits of its application before the hearing on the merits.

A. The Number of Proposed Routes in the Application Does Not Render It Materially Deficient under P.U.C. PROC. R. 22.75

Bonds Ranch argues that the Application is materially deficient because Oncor proposed 95 alternative routes, which, Bonds Ranch asserts, are too many proposals to allow for a proper evaluation of each route within the compressed statutory timeline.⁴ P.U.C. PROC. R. 22.75(d) provides that a party may challenge by pleading the sufficiency of a CCN application by "[specifying] the nature of the deficiency and the relevant portions of the application, and [citing] the particular requirement with which the application is alleged not to comply."⁵ Staff

¹ Bonds Ranch's Motion to Find Oncor's Application Materially Deficient (Bonds Ranch's Motion) at 1 (June 30, 2010).

² *Id.*

³ *Id.* at 3–4; Bonds Ranch's Re-styling Of Its Earlier Motion to Find Oncor's Application Materially Deficient (Re-styling) at 1 (July 2, 2010).

⁴ Bonds Ranch's Motion at 2.

⁵ P.U.C. PROC. R. 22.75(d)(1).

disagrees that the Application is materially deficient under P.U.C. PROC. R. 22.75 because Oncor proposed 95 routes.

The number of proposed routes is not an issue addressed during a P.U.C. PROC. R. 22.75 application sufficiency review. In Docket No. 38140, a pending Oncor CREZ CCN case, the administrative law judge (ALJ) stated in Order No. 3, "Application sufficiency review under P.U.C. PROC. R. 22.75(d) involves only an evaluation of whether the utility has fully answered each of the questions in the Commission's CREZ CCN application form, and whether the description of the links and routes are sufficiently reflected on the maps."⁶ Staff acknowledges that at the July 1, 2010 Open Meeting, the Commission granted relief to a landowner intervenor that appealed Order No. 3; however, the Commission agreed with and affirmed Order No. 3's interpretation of P.U.C. PROC. R. 22.75, as such relief was granted to the appellant on a "route adequacy" basis instead of on material sufficiency grounds.⁷

Further, even if the number of routes in the Application is properly considered during the initial application sufficiency review, a large number of alternative routes should be viewed favorably. A large number of possible routes provides the Commission a more comprehensive variety of routing alternatives than a limited number would. The Commission expressed a strong preference for a large number of routing options in Docket No. 37448,⁸ LCRA's Gillespie to Newton CREZ CCN, in which LCRA's application was denied because of insufficient routing choices.⁹ Furthermore, Table 2 in Attachment 4 of the Application provides environmental data for each of the 95 alternative routes in a form that allows an overall comparison of how the routes compare as to the length they parallel existing rights-of-way (ROWs), the number of affected habitable structures, their lengths through parks or recreational areas, and all the other criteria set forth in PURA and the Commission's rules.

The Application should not be found materially deficient under P.U.C. PROC. R. 22.75(d) based on the fact that Oncor has proposed 95 alternative route choices.

⁶ Docket No. 38140, *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Riley – Krum West 345-kV CREZ Transmission Line in Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger, and Wise Counties, Texas*, Order No. 3 at 3 (June 2, 2010).

⁷ Open Meeting Tr. at 34–39, 113–116, 125 (July 1, 2010).

⁸ Docket No. 37448, *Application of LCRA TSC to Amend Its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas*, Chairman Smitherman Memo (Apr. 22, 2010).

⁹ Docket No. 37448, Order (Apr. 26, 2010).

B. Staff Takes No Position on Whether a Route Adequacy Hearing is Necessary

Bonds Ranch's first Motion regarding application sufficiency asserted that Oncor's failure to include in the Application two proposed links that follow an existing transmission corridor and an existing 138-kV line rendered the Application materially deficient under P.U.C. PROC. R. 22.75. However, after discussions at the July 1, 2010 Open Meeting in which the Commission distinguished P.U.C. PROC. R. 22.75 application sufficiency from route adequacy, Bonds Ranch re-styled this argument as a "route adequacy challenge," and requested that a route adequacy hearing be conducted to address Oncor's failure to propose the links.¹⁰

Staff takes no position on whether a route adequacy hearing is necessary to address this matter.

C. The Application Should Not Be Found Materially Deficient Because Oncor Proposed "Non-Viable" Links

Finally, Bonds Ranch argues that the Application should be found materially deficient because two of Oncor's proposed links, Links Q and Y, are "non-viable" as indicated by Oncor's own witness testimony.¹¹ Staff disagrees. Nowhere do Oncor's witnesses state in their testimony that Links Q and Y are "non-viable." The witnesses state that they *do not recommend* the use of those two links because they parallel another CREZ 345-kV line for an extended distance, and therefore, create reliability and security *concerns*.¹² There is no indication that Oncor believes those links are impossible to construct or unworkable at some level of wind generation once in service, though the level of such generation might be significantly less than that contemplated in the CREZ Transmission Optimization Study (CTOS) performed by the Electric Reliability Council of Texas (ERCOT). Additionally, the Commission expressed concern that Oncor did not include route links that paralleled existing or proposed CREZ 345-kV transmission lines in Docket No. 38140, despite the fact that substantively identical reliability

¹⁰ Bonds Ranch's Re-styling at 1.

¹¹ Bonds Ranch's Motion at 4.

¹² Direct Testimony of Oncor Witness Kenneth A. Donohoo at 10 (lines 7-14), 11 (lines 19-22); Direct Testimony of Oncor Witness Robert F. Holt at 12 (lines 19-22), 13 (lines 22-26).

and security concerns existed for those links as Oncor's witnesses have expressed in this case.¹³ Thus, the inclusion of Links Q and Y in the Application is appropriate and Bonds Ranch's Motion that the Application be deemed insufficient for inclusion of those links should be denied.

III. CONCLUSION

Staff respectfully requests that Bonds Ranch's Motion be denied as to the arguments that the Application is materially deficient because Oncor proposed too many routes and because Oncor proposed links that have reliability questions. Staff takes no position on whether a route adequacy hearing is necessary.

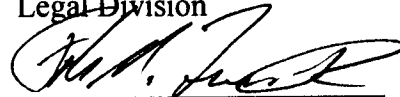
Dated: July 7, 2010

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

Andres Medrano
Senior Attorney
Legal Division



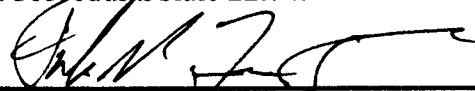
John M. Zerwas, Jr.
Attorney – Legal Division
State Bar No. 24066329
(512) 936-7297
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

¹³ Open Meeting Tr. at 32-62 (July 1, 2010).

**SOAH DOCKET NO. 473-10-4784
PUC DOCKET NO. 38324**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 7th day of June, 2010, in accordance with P.U.C. Procedural Rule 22.74.



John M. Zerwas, Jr.