

Control Number: 38324



Item Number: 65

Addendum StartPage: 0

**SOAH DOCKET NO. 473-10-4789
PUC DOCKET NO. 38324**

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 OF ADMINISTRATIVE HEARINGS
--	---	---

FILED
10 JUL -7 PM 2:30
PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF’S RESPONSE TO COMMENTS OF DAVID
NANCE, DAN NANCE, AND HALL-NANCE RANCHES, LTD. IN
RESPONSE TO ORDER NO. 1 ON SUFFICIENCY OF APPLICATION
AND ROUTE ADEQUACY**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Comments of David Nance, Dan Nance, and Hall-Nance Ranches, Ltd. (collectively, Nances) in Response to Order No. 1 on Sufficiency of Application and Route Adequacy (Comments):

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), the Nances filed their Comments on June 30, 2010. P.U.C. PROC. R. 22.75(d)(4) provides that a response to such comments shall be filed no later than seven days after the motion’s receipt, same being July 7, 2010, and therefore, this Response is timely.

II. RESPONSE TO THE NANCES' COMMENTS

The Nances argue that specific links of Oncor's proposed routes fail to utilize particular available existing rights-of-way (ROWs) and corridors.¹ The Nances allege that these failures render: (1) the Application materially deficient under P.U.C. PROC. R. 22.75; and (2) the proposed routes inadequate. The Nances request that Oncor be required to amend its Application to include or modify routes and links at certain locations so that Oncor's proposed routes will do more to use available ROWs and corridors, and that Oncor be required to provide notice to landowners that would be directly affected by such amendments. Staff disagrees with the Nances that the Application is materially deficient under P.U.C. PROC. R. 22.75, but takes no position on the Nances' route adequacy argument.

A. Sufficiency of the Application

The Nances argue that Oncor's decision not to propose or modify certain links that would follow additional existing ROWs and corridors renders the Application materially deficient under P.U.C. PROC. R. 22.75. Staff disagrees that the Application is materially deficient.

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."² P.U.C. PROC. R. 22.75(b), the subsection of the rule titled "*Procedural* sufficiency of pleadings and documents,"³ focuses on the *form* of documents that are to be filed at the Commission.⁴ The standard of a P.U.C. PROC. R. 22.75 application sufficiency review was specifically explained in Docket No. 28813:

Staff takes the position that a determination of material deficiency is made on a cursory review of a [filing], not an in-depth analysis. Staff contends that an in-depth analysis cannot be completed until discovery is conducted and the entire filing is analyzed. Alleged deficiencies found during this type of in-depth

¹ Comments of David Nance, Dan Nance, and Hall-Nance Ranches, Ltd. in Response to Order No. 1 on Sufficiency of Application and Route Adequacy at 5-6 (June 30, 2010).

² P.U.C. PROC. R. 22.75(d)(1).

³ *Id.* at § 22.75(b) (emphasis added).

⁴ For example, "[T]he filing clerk shall not accept documents that do not comply with § 22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission)." *Id.* at § 22.75(b)(1).

analysis are to be addressed during the hearing and not in a material sufficiency review.⁵

The ALJs agreed with Staff in Docket No. 28813.⁶ The Nances appear to be confusing the P.U.C. PROC. R. 22.75 application sufficiency review, which is preliminary and procedural in nature, with a more substantive evaluation.

The Nances' material deficiency argument is analogous to an argument recently asserted by parties in another Oncor CREZ CCN case, Docket No. 38140. In that case, the intervenors, like the Nances, filed a material deficiency motion arguing that Oncor's CCN application, even though it contained 90 proposed routes, was materially deficient under P.U.C. PROC. R. 22.75(d) because it did not contain certain links that would parallel certain existing transmission ROW.⁷ Staff disagreed with the intervenors, citing Docket No. 28813 and arguing that the intervenors were asserting arguments relating to the merits of the case, which is inappropriate for a P.U.C. PROC. R. 22.75 application sufficiency review.⁸ In Order No. 3, the ALJ denied the intervenors' material deficiency motion, agreeing with Staff that "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."⁹ On the intervenors' appeal of Order No. 3 at the July 1, 2010 Open Meeting, the Commission agreed with the ALJ's application sufficiency review analysis, but nonetheless granted relief to the intervenors based on the rationale that the intervenors' motion should have been treated as a "route adequacy challenge" instead of material deficiency motion.¹⁰

⁵ *Petition to Inquire into the Reasonableness of the Rates and Services of Cap Rock Energy Corp.*, Docket No. 28813, Order No. 27 at 1 (Sept. 7, 2004). See also *Application of Gulf Coast Power Connect, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Texas City and Application of Gulf Coast Power Connect, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Chambers and Harris Counties, Texas*, Docket Nos. 13932, 13943, Order No. 5 at 19–22, 20 P.U.C. BULL. 1836, 1856–1859 (May 11, 1995) (denying a motion to find a CCN application materially deficient on the basis that the applicant was "unviable," as the applicant's viability was an issue related to the merits of the case and did not relate to a procedural defect in the application).

⁶ Docket No. 28813, Order No. 27 at 1–2.

⁷ Docket No. 38140, Henry Family's 22.75(d) Motion to Find Oncor's Application Materially Deficient (May 17, 2010).

⁸ Docket No. 38140, Commission Staff's Response to the Henry Family's 22.75(d) Motion to Find Oncor's Application Materially Deficient (May 21, 2010).

⁹ Docket No. 38140, Order No. 3 at 3 (June 1, 2010).

¹⁰ Open Meeting Tr. at 34–39, 113–116, 125 (July 1, 2010).

Because the Nances' material deficiency arguments are analogous to the arguments asserted by the intervenors in Docket No. 38140, and based on the Commission's decision at the July 1, 2010 Open Meeting, the relief requested by the Nances that the Application be deemed materially deficient in accordance with P.U.C. PROC. R. 22.75 should be denied and the Nances' Comments should instead be received as a route adequacy challenge and request for hearing.

B. Route Adequacy Hearing

Staff takes no position as to whether a hearing should be conducted to consider the merits of the Nances' argument that Oncor's routes are inadequate.

III. CONCLUSION

Staff respectfully requests that the relief requested in the Nances' Comments be denied on a P.U.C. PROC. R. 22.75 material sufficiency basis. Staff takes no position as to whether a route adequacy hearing should be conducted in response to the Nances' Comments.

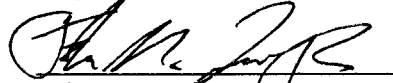
Dated: July 7, 2010

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

Andres Medrano
Senior Attorney
Legal Division

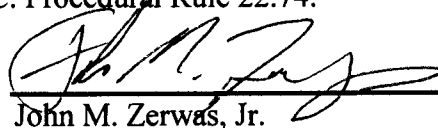


John M. Zerwas, Jr.
Attorney – Legal Division
State Bar No. 24066329
(512) 936-7297
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

**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.