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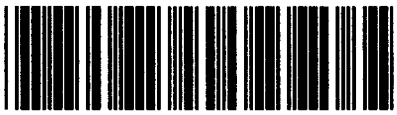

Item Number: 213

Addendum StartPage: 0

PUC DOCKET NO. 38484
SOAH DOCKET NO. 473-10-5919

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APPLICATION OF WIND ENERGY TRANSMISSION TEXAS, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED SCURRY COUNTY SOUTH - LONG DRAW – GRELTON – ODESSA 345-KV CREZ TRANSMISSION LINES IN SCURRY, MITCHELL, BORDEN, HOWARD, DAWSON, MARTIN, MIDLAND, AND ECTOR COUNTIES	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

BRIAN H. SCARBOROUGH'S MOTION TO INTERVENE AND FOR ADMINISTRATIVE HEARING

COMES NOW Brian H. Scarborough and files this Motion to Intervene and Request for Administrative Hearing, and would respectfully show as follows:

On August 18, 2010, Wind Energy Transmission Texas ("WETT") filed its application with the Commission to amend its Certificate of Convenience and Necessity ("CCN") for the proposed Scurry County South – Long Draw – Grelton - Odessa portions of the Competitive Renewable Energy Zone transmission project.

On September 29, 2010, an initial pre-hearing conference and a technical conference were held at the State Office of Administrative Hearings. Settlement discussions were initiated and continued over a period of several weeks.

On November 15-16, 2010, certain parties entered into a Stipulation and Agreement purporting to resolve all issues regarding the Grelton to Odessa portion of this docket. Unfortunately, the stipulation included the use of Mr. Scarborough's property without any prior notice to him, and without his knowledge or consent. On November 23, 2010, at the request of the administrative law judge, a single comprehensive Stipulation was signed by several parties,

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purporting to resolve all routing issues in the case. See WETT's and Staff's Motion to Admit Evidence, Approve the Stipulation, and Remand the Proposed Project, Item #198.

Because separate stipulations had been executed and a comprehensive stipulation was being prepared, the hearing on the merits scheduled for November 17-20, 2010 was cancelled. No public evidentiary hearing was ever held in this docket.

On January 27, 2011 the Commission issued its Final Order dated January 27, 2011, selecting the settlement route of 2-2, 5-3 and modified route 14-4, thus adopting a route that included Mr. Scarborough's property. The Final Order was mailed only to active parties in the proceedings (Item #211).

However, Applicant WETT failed to provide the notice to all directly-affected landowners, as required by law, to Brian H. Scarborough, and perhaps others similarly situated. Movant has a right to intervene pursuant to PUC rules and other applicable law.

Without being allowed to intervene and afforded a chance to participate in an administrative hearing, Movant will be deprived of his federal and state constitutional rights.

I.
WETT DID NOT COMPLY WITH CREZ NOTICE REQUIREMENTS TO DIRECTLY AFFECTED LANDOWNERS AS MANDATED BY THE COMMISSION.

The PUC Order of Referral and Preliminary Order (Item #10) directed SOAH to determine whether the notice provided by WETT complied with P.U.C. Proc. R 22.52(a). The Commission also required that all directly-affected landowners receive direct written notice of the WETT Application and project. WETT failed to provide that notice.

SOAH Order No. 1, (Item #19) required the following

4. Applicant shall have **mailed notice** on or before filing the application to the owners of land **directly affected by the requested certificate**. For the

purposes of this paragraph, land is directly affected if an easement would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 500 feet of the proposed facility; and

5. Applicant shall notify the Commission in the event that any directly affected landowner has not **received** actual notice at least three weeks prior to the deadline for intervention. Applicant will indicate in its filing the name and address of any such landowner and the date and manner by which notice was provided.

The Application filed by WETT, using the required Commission form, required that WETT "Provide a copy of the written direct notice to owners of directly affected land. Attach a list of the names and addresses of the owners of directly affected land **receiving** notice." (Item #3). Although WETT indicated that a written direct notice was mailed by WETT to owners of directly affected land (Item #40), no notice was **received** by Mr. Scarborough, owner of land which is crossed by segment Z4 of modified route 14-4.

In its Final Order, the PUC indicated as follows:

9. On August 18, 2010, WETT provided, by first class mail, written notice of the application to... (d) each landowner, as stated on current county tax rolls, that will be directly affected by the proposed project.

As will be demonstrated in this Motion, and as is evidenced in the record of this proceeding, the representations by WETT that led to the Commission's Finding of Fact No. 9 in its Final Order were wrong, as are the other findings of fact and conclusions of law related to the fact and sufficiency of notice to directly-affected landowners.

A. The Commission's findings of fact and conclusions of law regarding the fact and adequacy of notice are erroneous.

The statement in the Finding of Fact No. 9 of the Final Order is incorrect. As set out in detail below, although Mr. Scarborough is certainly a directly-affected landowner whose property is being crossed by the selected settlement route, he never received any notice from

WETT. In fact, his first communication from WETT was dated February 2, 2011 – a week after the Commission's Final Order was issued.

Mr. Scarborough's name and address clearly appears on the rolls of the Midland County Tax Office. WETT obtained Mr. Scarborough's correct mailing address, and included that address in its affidavit of notice (Item #40). While WETT's affidavit purports to be executed by a witness in California with "personal knowledge of the facts contained herein," the actual affidavit does not reflect any basis for personal knowledge regarding the hundreds of notices that were purportedly mailed. (*Ibid.*)

Of great interest is the fact that WETT has now prepared a new affidavit, dated February 15, 2011. (Attached Exhibit A). This new affidavit is from a witness in Arizona, who states that she personally reviewed envelopes and packets before they were mailed. This new affidavit still does not prove that the notice packet for Mr. Scarborough was actually mailed, let alone received. However, it does prove one thing. The affidavit filed in this docket and serving as the only evidence of notice in this evidentiary record was **not** based on personal knowledge and was, in fact, no evidence at all.

Attached as Exhibit B is the affidavit of Brian H. Scarborough, which states without doubt or equivocation that he did not receive notice from WETT prior to the Commission's issuance of its Final Order. In its various affidavits, WETT does not provide any evidence that a notice packet was actually mailed to Mr. Scarborough. Absent a certified mail return receipt or some other evidence, WETT cannot provide any evidence that any notice was sent to or received by Mr. Scarborough – whose testimony is very clear that he did not receive any notice from WETT.

In Finding 9, the Commission's Final Order filed January 27, 2011 (Item #211) incorrectly finds that "On August 18, 2010, WETT provided, by first class mail, written notice of the application to... (d) each landowner, as stated on current county tax rolls, that will be directly affected by the proposed project." This finding was based upon the insufficient affidavit filed by WETT, which it is now clear was not based upon personal knowledge at all, but was actually prepared by a witness who was not even in the same state as the person who now claims to have personally inspected the notice packets.

Pursuant to subsection 16 TAC §22.104(d)(5), in the case of late intervention after Proposal for Decision (PFD) or Proposed Order (PO) is issued, the Policy Development Division is required to send separate ballots to each Commissioner to determine whether the motion to intervene will be considered at an open meeting. The Policy Development Division is required to notify the parties by letter whether a Commissioner by individual ballot has added the motion to intervene to an open meeting agenda (without identifying the requesting commissioner(s)) and if no Commissioner has placed the motion on the agenda of the open meeting by agenda ballot, the motion is deemed denied.

Furthermore, PUC Procedural rules dictate that when there is a failure to notice individuals within 500 feet of the centerline of a proposed transmission project greater than 230kV, which is the case with Mr. Scarborough, such a failure will result in a day-for-day extension of deadlines for intervention and for Commission action on the application. 16 TAC § 22.52(a)(5) (2010) (Pub. Util. Comm'n, Notice in Licensing Proceedings). Therefore, as notice has never been received by Mr. Scarborough, this failure to notify must result in a day-for-day extension of the deadlines for intervention and Commission action on WETT's application. This day-for-day extension effectively mandates that the Commissioners, under the Commission's

rules, extend its deadline for intervention and withdraw or reconsider its order, or most appropriately rehear the matter, as Mr. Scarborough remains unnoticed and unnotified under the Commission's notification rules. *Id.*

The United States Supreme Court has instructed regarding adequate notice:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, . . . and it must afford a reasonable time for those interested to make their appearance.

Mullane v. Central Hanover Bank & Trust Co. 339 U.S. 306, 314-15 (1950) (citations omitted). The Texas Supreme Court has noted that procedural due process requires both notice and an "an opportunity to be heard at a meaningful time and in a meaningful manner." *University of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 930 (Tex.1995) (citing *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). Should these requirements not now be fulfilled, Mr. Scarborough and all others similarly situated would be deprived of their constitutional right to due process, *see* U.S. Const. amend. XIV, § 1, and due course of law, *see* Tex. Const., art. I. § 19.

WETT wholly failed to give written direct notice to Mr. Scarborough, as an owner of real property directly affected by WETT's application. Mr. Scarborough has real property interests that are directly affected by the Commission's order. Regardless of the reason for notice never having reached Mr. Scarborough, his rights will be adversely affected by the determination of the Commission. These rights are not just minor rights entitled to relaxed or limited due process. They are protected real property ownership rights guaranteed by both the U.S. and Texas Constitutions and entitled to full due process.

Notice is also essential in an administrative hearing setting and must precede a final administrative order that affects an individual's interest. *See Texas St. Bd. of Pharmacy v. Seely*, 764 S.W.2d 806, 814 (Tex. App.-Austin 1988, writ den'd). Because Mr. Scarborough was entitled to notice that would reasonably apprise him of the pendency of the action and the opportunity to present his objections, the failure to do so violated his due process rights. *See Mullane* at 314. Procedural due process applies when an administrative agency action deprives an individual of property based on the resolution of contested factual issues concerning that individual, and the agency's decision has an individualized effect. *Flores v. Employees Retirement System of Texas,* 74 S.W.3d 532, 539, (Tex.App, -- Austin 2002, rev. denied). Even if it could be proven that Mr. Scarborough had some perfunctory knowledge of this proceeding as a result of notice through a newspaper of general circulation in the area (which is denied), for example, this would only be perfunctory knowledge of the proceedings of the WETT application, and would not constitute adequate notice that his property rights were at stake, in order to satisfy constitutional due process requirements. *See In re Ken Davis Holding Co.,* 249 F.3d 383, 386 (5th Cir. 2001). Furthermore, the resulting SOAH and Commission proceedings, resulting in the Commission's Final Order cannot be used as a substitute for notice and due process requirements, as this would render due process meaningless. *See City of Houston v. Glen Oaks Util., Inc.*, 360 S.W.2d 549, 533 (Tex. Civ. App.---Houston 1962, writ ref'd n.r.e.) The fundamental requisite of due process of law is a meaningful participation in the process and the opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). As Mr. Scarborough was not notified of WETT's application and was not given an opportunity to participate in the resulting proceedings, his procedural due process rights were violated under the federal and state constitutions, and the agency action ultimately resulting in the deprivation of Mr. Scarborough's

real property interest is improper. *See House of Tobacco, Inc. v. Calvert*, 394 S.W.2d 654, 657-58 (Tex. 1965)

The PUC procedural rule recognizes the vested interest a directly-affected landowner has in the Commission's proceedings. The Commission's rule at 16 TAC §22.104(d)(4) states: "In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, the late intervention shall be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding." Mr. Scarborough never received the notice to which he was legally-entitled as a landowner of the tract identified by WETT as parcel 4-34 and owner of multiple Habitable Structures. Nevertheless, he has a right to intervene under the Commission rules, and the right to meaningful participation in the proceedings under the due process and due course of law protections of the federal and state constitutions. Absent an evidentiary hearing, Mr. Scarborough is denied any meaningful participation.

Despite the 2005 United States Supreme Court 5-4 majority opinion in *Kelo v. City of New London*, 545 U.S. 469, 482, 485 (2005), Texans' property and associated due process rights are still protected by the United States and Texas constitutions.

In the wake of *Kelo*, and under the leadership of the Governor, the Texas legislature created the statutory framework for this novel and extremely swift CREZ proceeding. There is no precedent for the CREZ 181 day proceeding.[1]

Additionally, as a result of *Kelo*, and under the leadership of the Governor, all leading Texas politicians including, but not limited to, Lieutenant Governor David Dewhurst, House

[1] The unprecedented swiftness of the process has infected not only this but other CREZ dockets (see, e.g. 37448 wherein the PUC through out all proposed Routes).

Speaker Joe Straus, Texas Attorney General Greg Abbott, and, in addition, Texas Agriculture Commissioner Todd Staples supported the passage of Proposition 11, which further protected Texans' private property and associated due process rights. See http://www.rickperry.org/media-articles/prop-11-provides-greater-private-property-protection); http://www.toddstaples.com/releases/62);. http://www.texascattleraisers.org/prop11.html. The people of Texas overwhelming voted in favor of Proposition 11. The Texas Constitution was amended.

Despite this history, as currently situated, this novel CREZ proceeding will result in the government-sanctioned taking of Movant's property without due process.

PURA 39.203(e) mandates that in such a proceeding as PUC Docket No. 38484, the Commission must issue a final order before the 181st day after the date the application is filed with the Commission. Tex. Util. Code Ann. §39.203(e). If this order is not issued before this date, the application is approved. *Id.* Thus, the Commission is given the unenviable position of determining whether to grant such a certificate of public convenience and necessity application with a timeline of only 180 days. The unprecedented swiftness of this proceeding requires that the Commission and its staff adequately review the application for conformity with state law, and then decide whether to approve the application based upon its conformity with the law. For a project the size of the WETT CREZ, if done properly, this is a very time consuming process, involving a litany of considerations. These include, but are not limited to, considerations of the property rights for the large amount of persons and property that could be affected by each of the proposed routes, environmental and wildlife concerns for the routes, and other factual determinations. This timeline also necessarily includes the required administrative proceedings, including the conducting of any necessary hearings before SOAH as factual determinations were

necessary and all parties did not agree to the alternative dispute resolution procedure under Commission Rule at 16 TEX. ADMIN. CODE §22.251(n). Such referral to SOAH necessarily includes discovery, voluminous amounts of documents, depositions for the parties and intervenors, as necessary, with a huge number of individuals and witnesses participating. SOAH itself has noted that such process suffers from "time constraints".[2] This has resulted in Scheduling, Protective, and other important Orders being entered even before the deadline for property owners to Intervene. The Commission must then consider the resulting SOAH Findings of Fact and Conclusions of Law and then in turn, issue its own Final Order. The Commission has noted the problems with time and other procedural constraints in other CREZ proceedings with a frequency too numerous to catalogue here.

Here, Movant will be deprived of property interests deserving of protection under the federal and state constitution, as a result of the Final Order of the Commission. Specifically, Movant has real property interests which will be directly affected by the Commission's order, causing economic, recreational, and environmental harms to Movant.

Because he did not receive notice, Mr. Scarborough did not participate in the SOAH proceedings and was not a party to the resulting stipulation supporting the settlement route. He was thus prevented from meaningful participation and presenting any evidence due to his lack of notice. Regardless of the reason for the lack of notice, the rushed nature of a CREZ proceeding leaves the parties and the Commission with little or no opportunity to detect and correct such errors. In fact, WETT's use of first class rather than certified mail left them without any evidence that notice packets had been mailed and actually received. The Commission, its staff, the administrative law judges and the other intervening parties had no way of knowing or being

[2] The SOAH ALJs themselves were aware of the severe "time constraints", and in the interest of completing their task of issuing their Proposal for Decision within those constraints, were forced to "have borrowed liberally from the parties' briefs." (Item 38230 – 1608, p. 4, Footnote 12).

able to determine whether or not all directly-affected landowners had actually received the required notice.

While a 180-day statutory requirement might be sufficient for minor hearings, it does not provide sufficient due process as applied in the CREZ multi-party evidentiary hearings affecting interests in real property. The exact procedure due in a given situation is measured by a flexible standard that depends on the practical requirements of the circumstances. *Bell v. Tx. Worker's Compensation Comm'n,* 102 S.W.3d 299, 304 (Tex. App—Austin 2003). This flexible standard balances three factors: "(1) the private interest affected by the state action; (2) the risk of erroneous deprivation of a constitutionally protected interest under the procedures used and the likely benefit of any additional procedures; and (3) the government's interest, including the fiscal and administrative burdens that additional procedural requirements would entail." *Id.* (citations omitted). In reviewing due process claims, the courts weigh the risk of erroneous deprivation of a constitutionally-protected interest under the procedures used and the likely benefit of any additional procedures against any additional administrative burdens such procedures would entail.

Here, the private interests affected by state action are the constitutionally-protected rights of an individual to hold and quietly enjoy his real property. The State is prohibited from interfering with this right without due process and just compensation under the Compensation Clause of the Fifth Amendment, as applied to the State of Texas through the 14th Amendment. *See* U.S. Const. amend. V, XIV. It is furthermore well-established that government action may not unreasonably interfere with a landowner's use and enjoyment of property. *See Hallco Tex., Inc. v. McMullen County*, 221 S.W.3d 50, 56 (Tex.2006), *Sheffield Dev. Co., Inc. v. City of*

Glenn Heights, 140 S.W.3d 660, 671-72 (Tex.2004) (quoting *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978)).

The risk of erroneous deprivation results from the Commission being under pressure to proceed through its statutory 180-day deadline without complying with adequate notice requirements. As noted, Mr. Scarborough was not and to this day has not been noticed by WETT and any findings by the SOAH ALJs and the Commission to the contrary are wrong. As a result, Mr. Scarborough was not afforded an opportunity to present his case. Furthermore, the Commission has not extended deadlines for intervention nor extended the deadline for Commission action on the application as is required under PUC Rule 22.52(a)(5). In short, Mr. Scarborough's real property is about to be taken from him without his ever having had the opportunity to appear and be heard during the proceedings that selected his property for taking.

In addition, since this case was resolved by settlement route, the Commission's Final Order rests not upon a developed evidentiary record, but on a stipulation which did not include one of the very landowners that was selected for taking. Mr. Scarborough's property rights were "agreed away" by other parties because he was not notified of the proceedings or the potential settlement and thus had no opportunity to voice his objections and insist on an evidentiary hearing.

By contrast, the administrative burden on WETT and the PUC of additional procedural safeguards is minimal. Simply by using certified mail, return receipt requested, rather than first class mail would provide some evidence and assurance that all landowners had actually received notice. In addition, requiring another round of notice, by mail or other means, to landowners potentially impacted by a proposed settlement route would not constitute an unreasonable burden when compared to the real property interests at stake. To the extent that the statutory time

constraint of 180 days prevents even the simplest procedural safeguards from being used, the statute itself could be violative of due process.

Weighing the private interests at stake against the government's interest, and the risk that this procedure has led to an erroneous decision, one must come to the conclusion that the due process rights of Mr. Scarborough and possibly other landowners have been violated. As a result, the case should be considered anew and all parties restored to the positions they occupied before the SOAH and Commission Orders. *See Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 87, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988).*

WHEREFORE, PREMISES CONSIDERED, Brian H. Scarborough requests that he be allowed to intervene and that this case should be considered anew by SOAH and all parties restored to the positions they occupied before the SOAH and Commission Orders.

By: _____
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Robert F. Johnson III
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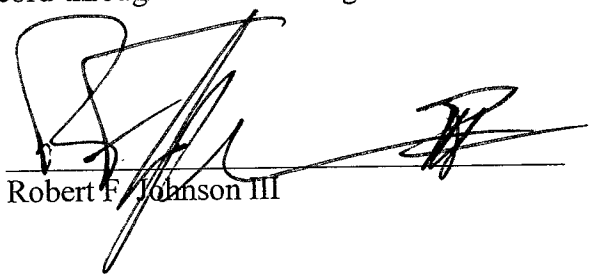
COUNSEL FOR INTERVENOR
BRIAN H. SCARBOROUGH

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2011, a true and correct copy of the foregoing document was served on all parties of record through the Interchange or as otherwise required.



Robert F. Johnson III

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SOAH DOCKET NO. 473-10-5919
PUC DOCKET NO. 38484

APPLICATION OF WIND ENERGY TRANSMISSION TEXAS, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED SCURRY COUNTY SOUTH – LONG DRAW – GRELTON – ODESSA 345-KV CREZ TRANSMISSION LINES IN SCURRY, MITCHELL, BORDEN, HOWARD, DAWSON, MARTIN, MIDLAND, AND ECTOR COUNTIES	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

AFFIDAVIT ATTESTING TO THE NOTICE OF BRIAN SCARBOROUGH

STATE OF ARIZONA §

COUNTY OF Maricopa §

BEFORE ME, the undersigned authority, personally appeared Leslie McFadden known to me to be the person whose name is subscribed below who, upon oath deposed and stated as follows:

1. My name is Les McFadden. My business address is 5626 South Sailors Reef Road, Tempe, Arizona, 85283. I am over eighteen (18) years of age and have never been convicted of a felony. I have personal knowledge of the facts contained herein and they are true and correct.
2. I am currently a contract employee of kp environmental (kpe) which is engaged as a consultant for Wind Energy Transmission, Texas, LLC (WETT), and I am authorized to make this Affidavit on behalf of WETT.
3. I am personally responsible for physically inspecting the notices that kpe sends on WETT's behalf and ensuring they are accurate. In the regular course of my job duties, I have personal and actual knowledge of the inspection and mailing process.

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4. Specifically, I ensure that notices are sent to the correct addresses by physically and personally matching addresses on notice lists to addresses on letters and on mailer envelopes.

5. Additionally, I physically and personally inspect the contents of each mailer before it is sealed to ensure notices are accurate.

6. On WETT's behalf, and as part of my job, I have personally and physically inspected two notices that were mailed via first-class mail to:

Brian H Scarborough
C/O Scarborough and Company
P.O. Box 2474
Midland, Texas 79702-2474.

7. These two notices include the following:

a. An invitation to attend WETT's Open House in Big Spring, Texas, in July of 2010, sent July 25, 2010; and

b. Notice of the filing of WETT's *Application of Wind Energy Transmission Texas, LLC for a Certificate of Convenience and Necessity for Scurry County South – Long Draw – Grelton – Odessa 345-kV CREZ Transmission Lines in Scurry, Mitchell, Borden, Howard, Dawson, Martin, Midland, and Ector Counties* pursuant to Public Utility Commission Procedural Rule §22.52 (a)(3), sent August 18, 2010.

8. There is no record of Mr. Scarborough participating in any Open House or related function.

9. To reemphasize, all notices listed above were sent to the exact same address, which is also the address used when kpe sent all notices to Mr. Scarborough.

10. Typically, when a piece of mail cannot be delivered, the Post Office returns the mail to WETT and kpe attempts to redeliver.

11. None of Mr. Scarborough's mailers have ever been returned to sender.

Leslie McFadden

SUBSCRIBED AND SWORN TO before me on this the 15 day of Febuary, 2014, to certify which witness my official hand and seal of office.

Deanna McNew
Notary Public
Maricopa County, Arizona
My Comm. Expires 11-5-14

Deanna McNew
Notary Public, State of Arizona

My Commission Expires
11-5-14

AFFIDAVIT OF BRIAN H. SCARBOROUGH

I, Brian H. Scarborough, being fully sworn, depose and state as follows:

"I am over 21 years of age and am competent to make this Affidavit. I have personal knowledge of the facts stated in this affidavit, they are true and correct to the best of my knowledge, and if called to testify, I would testify to the same.

1. I am the owner of several parcels of land in Midland County, Texas. I recently received a notice in the mail from WETT, informing me that the Public Utility Commission issued a Final Order that a CREZ transmission line be built across my property which contains my vineyard and my house. The notice letter was dated February 4, 2011, and was the second letter I had ever received from WETT. The first was dated February 2, 2011, announcing that the WETT application had been considered.

2. I never received any notice or invitation to an open house to discuss WETT's CREZ project. I never received any notice that WETT had filed an application in August 2010 to build a CREZ line. Prior to the February 2, 2011 letter, I had not received notice that WETT was considering a potential route across my property.

3. My principal mailing address is P.O. Box 2474, Midland, Texas 79702-2474. I check that mail box every day for both my personal and business mail. Prior to the February 2, 2011 letter, I have never received any mail from WETT in P.O. Box 2474. I have never refused delivery of any mail from WETT. To my knowledge, there has never been any disruption in mail delivery to P.O. Box 2474.

4. Prior to the February 2, 2011 letter, I had never been contacted by any employee or representative of WETT, nor had I ever contacted WETT.

5. Had I been notified at any time that a CREZ transmission line might be built on my property, I would have objected and participated in any hearings or other proceedings to keep the line off my property. As soon as I received the February 4 letter, I sought legal counsel to protect my property. The only reason I did not have legal counsel represent me and participate in

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the proceedings in PUC Docket 38484 is the fact that I never received any notice from WETT and did not know that my property was being considered.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct and that this declaration was executed in Midland, Texas on February ____, 2011."

Further, Affiant sayeth naught.

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared BRIAN H. SCARBOROUGH, who being first duly sworn stated that every statement contained in the foregoing affidavit is within his personal knowledge and is true and correct.

BRIAN H. SCARBOROUGH

SUBSCRIBED AND SWORN TO BEFORE ME, this 23rd day of February, 2011, to certify which witness my hand and seal of office.

MAURENE Y. MCDANIEL
MY COMMISSION EXPIRES
May 4, 2014

Maurene McDaniel
Notary Public in and for the state of Texas