



Control Number: 38577



Item Number: 12

Addendum StartPage: 0

SOAH DOCKET NO. 473-10-5546  
PUC DOCKET NO. 38354

RECEIVED  
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PUBLIC UTILITY COMMISSION  
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APPLICATION OF LCRA  
TRANSMISSION SERVICES  
CORPORATION TO AMEND ITS  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY FOR THE  
PROPOSED McCAMEY D TO  
KENDALL TO GILLESPIE 345-KV  
CREZ TRANSMISSION LINE IN  
SCHLEICHER, SUTTON, MENARD,  
KIMBLE, MASON, GILLESPIE, KERR  
AND KENDALL COUNTIES

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BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS

PUC DOCKET NO. 38577

PUC PROCEEDING TO DETERMINE  
WHETHER TO MODIFY THE CREZ  
TRANSMISSION PLAN

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§  
§  
§

BEFORE THE PUBLIC UTILITY  
COMMISSION  
OF TEXAS

**EMERGENCY JOINT MOTION TO DISMISS DOCKET NO. 38354  
AND TO SHORTEN THE TIME FOR RESPONSE  
AND  
EMERGENCY JOINT MOTION TO ADD AS AN ADDITIONAL ISSUE IN  
DOCKET NO. 38577 EXAMINATION OF THE NEED FOR  
THE PROPOSED MCCAMEY D TO KENDALL TO GILLESPIE  
345 KV CREZ TRANSMISSION LINE**

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS:

COME NOW, the Clear View Alliance,<sup>1</sup> P-Line Intervention Association, Six Mile Ranch and Vander Stucken Ranch, The Alliance for A3, City of Kerrville, Kerr County, Kerrville Public Utility Board, and Cecil R. Atkission, Rafter Z Ranch, LP, Saba Ranch Partners, Preston Interests, Ltd., W&W Legacy Wildlife Investments, LLC and Rockin OC, LLC (“Joint Movants”) and file this Emergency Joint Motion to Dismiss Docket No. 38354, *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity*

<sup>1</sup> The intervenors who have appointed the Clear View Alliance as their authorized representative are listed on Attachment A.

*for the Proposed McCamey D to Kendall to Gillespie 345-KV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr and Kendall Counties, and to Shorten the Time for Response, and Emergency Joint Motion to Add as an Additional Issue in Docket No. 38577, Proceeding to Determine Whether to Modify the CREZ Transmission Plan, Examination of the Need for the Proposed McCamey D to Kendall to Gillespie 345 kV CREZ Transmission Line.*

The proceeding in Docket No. 38354 should be dismissed without prejudice because it is in doubt whether the proceeding will be necessary. Additionally, given the shortened time-frame for CREZ CCN proceedings, the time to respond to this motion should be shortened. Joint Movants propose adding the issue of the need for Docket No. 38354 to Docket No. 38577. If, at the conclusion of Docket No. 38577, the proceeding in Docket No. 38354 is still necessary, LCRA should re-file this application filed in Docket No. 38354. In support of this motion, Joint Movants would show as follows.

#### **I. Motion to Dismiss and to Shorten Time for Response to Motion**

The transmission line that is the subject of Docket No. 38354 was ordered to be constructed by LCRA Transmission Services Company (“LCRA TSC”) as a result of its designation as a CREZ transmission line<sup>2</sup> based on the Commission’s findings that a new 345 kV single circuit, double circuit capable, transmission line was necessary for fulfilling the State Legislature’s mandate for enabling the delivery of energy generated by renewable sources to population centers in the state.<sup>3</sup> That finding is now being reexamined. On August 26, 2010, Chairman Smitherman wrote to H.B. “Trip” Doggett, President and CEO of ERCOT asking ERCOT “to determine the continued need for the McCamey D to Kendall to Gillespie CREZ

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<sup>2</sup> Docket No. 33672, *Commission Staff’s Petition for the Designation of Competitive Renewable Energy Zones*.

<sup>3</sup> *Id.*, Order on Rehearing, October 6, 2009, at 13-14.

line.”<sup>4</sup> Chairman Smitherman added the following caveats: (1) do not consider upgrading existing transmission infrastructure that is presently contemplated by LCRA TSC as a “route option” in Docket No. 38354; and (2) conduct the analysis with and without the inclusion of the NextERA transmission line known as Gen-Tie.<sup>5</sup>

The Chairman’s letter does not specify a time frame for ERCOT’s response; however, based on the Chairman’s prior request to ERCOT that it examine the need for the Newton to Gillespie 345 kV line,<sup>6</sup> Joint Movants anticipate that a review of the continued need for a 345 kV line between McCamey D and Kendall may require one to two months.

P.U.C. PROC. R. 22.181(a) provides that, upon motion of a presiding officer or any party, a contested case may be dismissed for specified reasons and for good cause shown.<sup>7</sup> Good cause exists here. As a CREZ docket, this case is required to be processed by the State Office of Administrative Hearings (“SOAH”) and the Commission within the 181-day time frame mandated by PURA Section 39.203(e).<sup>8</sup> The procedural schedule ordered in this docket specifies an intervention deadline of August 27 and requires intervenors to file testimony on September 28, 2010.<sup>9</sup> In prior CREZ proceedings, landowners have employed expert witnesses to testify on ecological impact, wildlife impact, airport and air safety, land use issues, impact on

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<sup>4</sup> Letter from Chairman Smitherman to H.B. “Trip” Doggett at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *See*, Letter dated August 17, 2010, from H.B. “Trip” Doggett to Chairman Smitherman.

<sup>7</sup> A proceeding may be dismissed, with or without prejudice, for any of the following reasons:

- (A) lack of jurisdiction;
- (B) moot questions or obsolete petitions;
- (C) res judicata;
- (D) collateral estoppel;
- (E) unnecessary duplication of proceedings;
- (F) failure to prosecute;
- (G) failure to state a claim for which relief can be granted; or
- (H) other good cause shown.

<sup>8</sup> Public Utility Regulatory Act, TEX. UTIL. CODE, Title 2 (West 2007 & Supp. 2009) (PURA).

<sup>9</sup> Order No. 1 at 4.

archeological and historical sites, and transmission line routing. The need to employ experts results in significant expense, in addition to attorney's fees and costs associated with assisting with the filing of expert testimony and assisting with preparing and filing landowner testimony constituting these parties' direct case. Moreover, Staff's testimony and all parties' rebuttal testimony are due in October and the hearing is scheduled for October 25 through November 5, 2010.<sup>10</sup>

The Joint Movants anticipate that ERCOT's examination of need for this line will take approximately as much time to complete as did its determination of need for the Newton to Gillespie 345 kV line. If so, its report to the Commission will not arrive before the hearing on the merits is underway and all parties, Commission Staff and SOAH will have expended significant resources on this docket. Should ERCOT determine that the McCamey D to Kendall to Gillespie 345 kV line is unnecessary, or unnecessary at this time because another option—the Gen-Tie line—could be used, that determination and a Commission decision to examine ERCOT's findings in Docket No. 38577 will not occur early enough to enable any of the parties to avoid the cost of preparing testimony and going to hearing.

Waste of scarce resources should be avoided whenever possible and foreseeable. Many landowners in the Hill Country already have seen a CREZ proceeding dismissed after the hearing was concluded and a Proposal for Decision prepared. Joint Movants, while understanding the circumstances and the Commission's lack of options under PURA's mandated time frame in that case, nonetheless seek to avoid its repetition. The prospect of constructing a 345 kV transmission line through all or portions of the Texas Hill Country has engendered fierce opposition and debate among the affected landowners and communities. As of August 27

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<sup>10</sup> Order No. 1 at 5.

hundreds of parties, most of them individual landowners, filed interventions in this docket. To require these landowners to bear the burden of going forward with this case when there is a very real chance that the transmission line in question will not be built and their efforts rendered moot, or if built will be built differently, such that their efforts will have to be repeated, would be very unfortunate.

Joint Movants urge the Commission to dismiss this proceeding without prejudice to refile. Joint Movants further urge that, after dismissing this proceeding, the Commission reopen Docket No. 36802, *Proceeding to Sequence Certificates of Convenience and Necessity Applications for the Subsequent Projects for the Competitive Renewable Energy Zones*, so that LCRA TSC may refile at an appropriate time in the event that ERCOT's report concludes that the line is necessary.

Joint Movants are aware that P.U.C. PROC. R. 22.181 provides that a motion to dismiss is to be filed with the presiding judge, and that the applicant's response is due in 20 days from the date the motion is filed. The exigencies of time do not permit adherence to the normal procedure, however, and constitute good cause for waiving the requirements of the Commission's Procedural Rules.<sup>11</sup>

The accelerated schedule for CREZ proceedings results in Commission review of SOAH orders on pretrial motions at a time that is too late to relieve intervenors from the cost of testimony and hearing, even under the compressed deadlines for responses to such motions that are part of the procedural requirements SOAH has established in these cases. For example, in Docket No. 38140,<sup>12</sup> the Henry Family's appeal of SOAH's order denying dismissal was

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<sup>11</sup> P.U.C. PROC. R. 22.5(b) permits the Commission to waive its Procedural Rules for good cause.

<sup>12</sup> *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 (Formerly Oklaunion to West Krum) for Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger and Wise Counties.*

promptly considered by the Commissioners, but although they orally granted a hearing on route adequacy that hearing could not be held before July 12, the same day intervenor testimony was due. The ALJ issued his order on July 20, finding that although the question was a close one, the proposed routes were adequate.<sup>13</sup> The potential existed for the ALJ to have concluded otherwise; indeed the ALJ anticipated that his order would be appealed to the Commission, yet the landowners and Commission Staff had no option but to proceed to file their testimony and prepare for hearing as required by the procedural schedule.

Joint Movants recognize that LCRA TSC has the right to respond to this pleading within a reasonable timeframe. Given the urgency of this motion, Joint Movants request that LCRA TSC file a response to this pleading as soon as possible, and the Commission consider this pleading as soon as possible. Joint Movants believe that a ruling on this motion must be made by the Commission as soon as possible, but no later than the September 15 Open Meeting, to enable the Hill Country landowners and other intervenors to avoid the significant expenses they will incur to develop and submit testimony in this case.

## **II. Motion to Add Examination of Need for McCamey D to Kendall to Gillespie 345 kV CREZ Line to Docket No. 38577**

Following receipt of ERCOT's report stating that in its view the proposed CREZ 345 kV transmission line between Newton and Gillespie is not necessary, and that modifications to an existing 138 kV line could be constructed instead, the Commission created a new docket—Docket No. 38577—to determine whether, based on ERCOT's analysis, the line between Newton and Gillespie still is necessary and the extent to which other cost-effective options exist. The Chairman has requested the same analysis and report from ERCOT regarding the need for the McCamey D to Kendall to Gillespie 345 kV line. ERCOT's report, when it is received,

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<sup>13</sup> Docket No. 38140, Order No. 9.

should be submitted in Docket No. 38354 as well and the question of need for this transmission line, also proposed to go through the Hill Country, should be examined in this new docket. Horse Hollow's Informational Filing on this date supports the same expansion of the scope of Docket No. 38577.

Joint Movants urge the Commission to add the issue of need for the McCamey D to Kendall to Gillespie 345 kV line to Docket No. 38577.

WHEREFORE, PREMISES CONSIDERED, Joint Movants respectfully request that the Commission issue an order waiving the requirements of P.U.C. PROC. R. 22.181(a) and directing that responses to this Motion to Dismiss be filed as soon as possible but no later than September 8 so that the Commission can consider the Motion to Dismiss at its Open Meeting on September 15, 2010. Joint Movants further request that the Commission grant the Motion to Dismiss for good cause shown, without prejudice to LCRA TSC to refile and that Docket No. 36802 be reopened to select an appropriate date for it to do so if ERCOT's report affirms the need for the McCamey D to Kendall to Gillespie 345 kV line. Finally, Joint Movants request that the Commission order that the matter of the need for a 345 kV transmission line from McCamey D to Kendall to Gillespie be added as an issue to be addressed in Docket No. 38577.

Respectfully submitted,



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AND CECIL R. ATKISSON**

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FOR A3

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LP, SABA RANCH PARTNERS,  
PRESTON INTERESTS, LTD., W&W  
LEGACY WILDLIFE INVESTMENTS,  
LLC AND ROCKIN OC, LLC

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document is being served pursuant to SOAH Order Nos. 1 and 2 on this 31<sup>st</sup> day of August, 2010.

Bradford W. Bayliff  
Bradford W. Bayliff

**Attachment A**

**Complete List of Intervenor Who Have Appointed  
Clear View Alliance, Inc. as Their Authorized Representative**

LAST NAME	FIRST NAME
Adcock	Jim
Adcock	Koy
Allison	Lavoin
Andrews	Janet Pope
Armstrong	Dennis
Armstrong	Ola Mae
Arrott	Milton Y.
Bargas	Alma
Bennett	Tommy & Katie
Berkshire	James
Bernhard	Felix
Berry	Ronald
Black	Carolyn
Bluestem Conservancy, Ltd.	F. S. Scofield, Manager
Bockhorn	Glen & Carol
Bonn	Carey
Booker	Clay & Jane
Boos	Dwayn
Borland	Patricia
Broughton	Earnest
Brown	Van
Brown	William G.
Byars	George
Cain (Gary L. Cain Exempt Trust)	Gary
Carsey (formerly Collins)	Marian
Childs	Charlie & Ann
Chionsini	Jim & Macy
Cleo Ranch; Huggins Ranch, Ltd.; Llano River Ranch	Carolyn Huggins Michnoff, Business Manager
Clowe, Jr. (CEW Ventures, LLC)	C. Thomas
Conger	Thomas
Corbett	Keith & Sherry
Corn	Larry
Cooper	Terry
Cowie	Shirlene
Crawford & Collins I, Ltd.	Marian Collins, Managing Partner
Crenwelge	Jacquelyn
Crenwelge	Jeannie Bel
Croy	Donna

LAST NAME	FIRST NAME
DRW Land Company, Ltd.	Robert H. White, Manager, DRW Land Company Management, LLC, General Partner
Deal	Judy
Dendy	William
Dittmer, Jr.	Martin (M. J.)
Doise	Philip
Donahue	Lorna
Dreiss	Jimmy
Dunagan	Mary Leigh
Dutton	Tony R.
Ellebracht	Levi
Ernst	Stanley & Doris
Ernst	Peggy
Fargason	Roxanne
Fields	Ken & Nancy
Fraser	Randie Lester
Fritze	Kathie S. Duderstadt
Fritze, Jr.	Vernon
Fusilier	Dennis
Gager	L. David & Dianne H.
Gartrell	Harry
Garza	Juan & Wendy
Gardiner	Heidi
Gleinser	John & Melinda
Gosney	Billy
Gosney	Mary
Gosney	Matthew
Gosney	Michael
Graham	John
Graham	Tim
Granite Publications, LLC	
Grona	Thomas
Hall, Jr.	Frederic
Harrell	Jimmy W.
Harris	Scott & Tammy
Hartmann	David F.
Hartt	Alan & Patricia
Hausenfluck	Billy (William)
Heinemann	Eugene
Heinemann	Leo
Heinemann	Linda
Heinemann	Roy
Heinen Family Limited Partnership	Barbara Heinen, General Partner

LAST NAME	FIRST NAME
Helbig	Dan
Henderson	Shane
Hengst	Pamela Meador
Henneke	Jaye
Herrera	Anissa
Holifield	Steve L.
Hollemon	Dabs
Howell	Janice
Estate of Hope W. Huffman	J. Huffman
Hughes	Samuel R.
Hutchins	Lane
Immel	Karen
Irvin	Larry & Alice
Itz	Chester Lamar
Jennifer S. Properties LP	Judy G. Vordenboun
Jenschke	Edmund
Jenschke	Rubin
Johnson	Dale
Johnson	Gary B. & Katherine M.
Jones	Anne
Jones	James
Corinne Russell Judkins Trust	Bank of America NA., Successor Trustee Under Agreement for the
Keidel	Albert
Kemp	David
Kensing	Caroline
Kidwell	Joseph D.
King	Kay
Kingston	Ryan and Jonnie
Kinsey (East Quarry Ranch)	Johann
Kirk	Ellen W.
Knotts	Don
Koschak	Ramsey
Kothmann	Cora McGowan
Kott	Russell
Krenek	Emma
Lang	Richard, III & Susan E.
Laratta	Tracy
Laurence	Laird & Karen
Laird W. & Karen Laurence Revocable Living Trust	
Lawrence	Jeff
LeBlanc	Gerard M.
Lee	John & Patricia

LAST NAME	FIRST NAME
Rector Llano Lester, Jr. Estate	Randie Fraser, Executor
Lindecke	Joseph
Long	Tim
Lugaresi	Tarzo
Lumsden	Joe
Lundstedt	Albert
Mangham	Craig
Maurer	Felix
McCarthy	Rebecca
McCord	Doris
McDavid	Ron & Donna
McGowan	Cora
McGowan	Dorothy Anne
McGowan	Ogden
Menzies	Duery
Merritt	Jan & Earl
Meyer	Eileen
Mills	Gloria
Mudge	Arthur
Murrah	Deanna
Nagel	Richard
Napier	Jacqueline
Neiman	Bill
Nelson	Wayne & Dona
New	Alvin
Neuberger	Charles
Niño	Peggy
Noguess	Billie
Orr	Charles K. & Ann G.
Parker	Walter
Perry, Jr.	J. H.
Pfluger	Charles Ray
Pfluger	Walter W.
Pickens	Tom & Jo Beth
Ploch	Gary & Barbara
Plumley	Sammy
Pope IV	Cades
Price Ranch Partnership	A. A. "Sonny" Price, General Partner
Pruett	Nettie
Pugh	Jeff
Rahe	Charles H.
Rahe	Gene
Raines	Mark
The Rainey Family (3R Ranch) Partnership	David Rainey

LAST NAME	FIRST NAME
Reed (Nott Ranch L.P.)	Gayle
Riddle	Debbie
Rieher	Alyssa
Ristau	Rick
Robbins	Cecil
Robinson	C. B. (Robby")
Rogers	L. P. & Vivian
Roye	Mary
Runge	Richard S.
Rutledge	Jay
Rutledge	Timmy
Savage	Roybeth
Scantland	Louis
Scharton	Lida
Schaefer	C. W.
Schneider	Greg
Schooley	Donna
Schubert	Charles L. & Pamela
Schulze	Randie
Schulze	Tooter
Schwiening	Rick
Scott	Reynold (Randy)
Sicker	Sylvia
St. Anne	Jan
Simpson	Keith
Smith	Alan
Smith	Billy V. & Robbie Sue N.
Smith, Jr.	Clint
Smith	Nettie
Spiller	Rob Roy
Springfield	Floyd
Stehling	Mark
Stehling	Nicholas
Stener	Gavin
Stuart B. Properties LP	Judy G. Vordenbourn
Supak	Larry
Swift	Charlie & Joanna
TR Connected Ranches, Ltd.	Tommy Reeh
Tanner	Daryl
Tarr	John
Tatsch (James Jacob Tatsch Family Trust)	Lana
Tatsch	James (Heath)
Tatsch	William
Taylor	Frances

LAST NAME	FIRST NAME
Tillman	Mark
Tottenham	Dennis
Townsend	Michael
Tuck (RRCT Limited)	Reginald
Vauk	Frank & Linda
Vaucher	Karen & Jacques
Vaughan	Stephen
Vinson	Ricky
Wahmund (Circle C Ranch, L.P.)	Melanie & Gary
Waites	Kenny & Ginger
Walker	Hollis W.
Walker	William
Waller	Robert
Warner	David
Warren	Alan
Weaver	John & Carolyn
Webb	Linda
Wheeler	Forrest
Rita White Estate	by Donnie Coleman, Independent Executrix
Whitworth	Ward
Wilham	Kenneth R.
Williams	Alfred
Williams	Eric "Flynn"
Wilson	David
Winter	Bruce
Womack	Christopher
Wortham	Bruce
Zibilski	Ruby