



Control Number: 40316



Item Number: 1

Addendum StartPage: 0

40316

JOHNNY VINSON

Fort Worth Club Tower, Penthouse II, Suite D
777 Taylor Street

Fort Worth, Texas 76102

Telephone: (817) 870-1483

April 11, 2012

Public Utility Commission of Texas
Attn: Customer Protection Division
P.O. Box 13326
Austin, TX 78711-3326

RECEIVED
12 APR 12 AM 10:45
PUBLIC UTILITY COMMISSION
FILING CLERK

Re: Formal Complaint against Oncor Electric Delivery Company, LLC regarding the Order of the Public Utility Commission of Texas in Docket No. 38324

Dear Public Utility Commission of Texas:

My name is Gary Tidmore, and I am acting as agent for Vinson, as defined below.

After several failed attempts to address with Oncor Electric Delivery Company, LLC ("Oncor") its obligations under the Order of the Public Utility Commission of Texas ("Commission") in Docket No. 38324, Johnny H. Vinson, Eloise Vinson, and Chisholm 2000 L.P., (collectively "Vinson") now seek redress at the Commission through the process established for such complaints in Commission Procedural Rule 22.242. Contact to Vinson regarding this complaint may be made to:

Gary Tidmore
6050 Southwest Blvd., Suite 210
Fort Worth, Texas 76109
(817) 870-1483

Statement of the Facts

Docket No. 38324 addressed the application of Oncor to construct a 345-kV transmission line within Denton, Parker, Tarrant, and Wise Counties (the "Facilities"). Vinson was a party to that docket. As part of the Commission-approved settlement of Docket 38324, a portion of the Facilities (approximately 3 linear miles) would be located on property owned by Vinson. The Commission's order requires Oncor to under build on the Facilities a portion of the existing Brazos 69-kV Newark-Rhyme line, and a portion of the existing Oncor 138-kV Sunset-Rhyme transmission line, both of which are currently located on property owned by Vinson. The specific paragraphs contained in the Commission's Order that address this matter are as follows:

43. Oncor will under build on the same structures as the proposed transmission-line project the existing Brazos 69-kV Newark-Rhyme line

on Link PPPP starting on the western boundary of Tract No. 147 and continuing approximately due east on Link PPPP and Link ZZ until Link ZZ turns to the southeast just west of Farm to Market Road 3433. Oncor also has the option to seek to extend such under build approximately 3,300 feet to the west beginning where the Brazos 69-kV Newark-Rhame line adjoins Link PPPP.

44. Oncor will under build on the same structures as the proposed transmission-line project the existing Oncor 138-kV Sunset-Rhame transmission line on a portion of Link ZZ, and Links BBB and EEE (as those links have been modified by the settlement agreement or by agreement of the landowners) until approximately the southern border of Tract 154.

The eastern portion of Link PPPP, Link ZZ, Link BBB, and the northern portion of Link EEE are located on the Vinson property. Thus, the clear and unambiguous requirements of paragraphs 43 and 44 of the Commission's Order directly address construction of the Facilities on the Vinson property with the under build of the specified segments of the existing Brazos and Oncor transmission lines.

The Commission Order also includes two ordering paragraphs regarding the manner in which Oncor must work with directly affected landowners to make certain route deviations that would minimize the impact of the project on landowners:

9. Oncor shall cooperate with directly affected landowners to implement minor deviations in the settlement route to minimize the impact of the transmission line. Any minor deviations in the settlement route shall only directly affect landowners who were sent notice of the transmission line in accordance with P.U.C. Proc. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation.
17. Oncor shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, Oncor shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line. Unless these two conditions are met, this paragraph does not authorize Oncor to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.

Over the last eight months, Oncor has been in contact with Vinson regarding the construction of the Facilities on the Vinson property. At first, the Oncor representatives complied with the directions of the Commission in Ordering Paragraphs 9 and 17 of the Commission's Order and stated the company's apparent intent to cooperate with Vinson and construct the Facilities in the location and manner on the Vinson property that was reasonably agreeable to Vinson. The route maps shown to Vinson during these initial discussions were consistent with the location of the

Facilities approved by the Commission's Order. At some point during these negotiations, however, Oncor presented Vinson with "new" route maps that were modified from the Commission-approved route, and attempted to re-locate approximately 2500 feet of the Facilities from Tract No. 152 (a non-Vinson owned tract on the approved route) over onto Vinson, and in doing so attempted to coerce Vinson into accepting a greater portion of the Facilities on the Vinson property in a location contrary to the Commission-approved route. Oncor relented only after Vinson obtained the route maps Oncor filed at the Commission that were attached to the Commission Order and which clearly show the location of the Facilities in a different location than on the modified Oncor route maps. Oncor had no reasonable explanation or basis for the movement of the route to a significantly greater portion of the Vinson property. Oncor's negotiation tactics, however, were becoming clear to Vinson.

Intermittently over the next several months, various Oncor representatives discussed with Vinson the location of the Facilities on the Vinson property. Vinson advised the representative on numerous occasions exactly what Vinson would be looking for in terms of compensation, and the representative consistently told Vinson that it would not be a problem. The representative told Vinson that Oncor had in fact paid more than that to other owners in the area.

At some point, Oncor reversed its position regarding compensation and advised Vinson that the compensation that the family was asking for was unacceptable. Oncor then stated it would agree to minor deviations in the Commission-approved route that would minimize the impact of the transmission line wholly on the Vinson property *if and only if* Vinson agreed to the compensation being offered by Oncor and if Vinson granted the right-of-way and/or access to the property through execution of a possession and use agreement. Vinson has carefully reviewed Ordering Paragraphs 9 and 17 of the Commission's Order and found no requirement that route modifications wholly on the Vinson property that would minimize the impact of the Facilities on Vinson and which would maintain a direct path toward the terminus of the line could only be made in exchange for agreement on right-of-way compensation. Notably, and notwithstanding the fact that the Commission's Order does not include such a restriction, the minor route deviations proposed by Vinson would not likely increase the cost of the Facilities and may very likely decrease the cost.

Similarly, and in defiance of the Commission Order, Oncor has informed Vinson that it would only agree to under build the existing Oncor and Brazos transmission lines—as required in Paragraphs 43 and 44 of the Commission Order—in exchange for Vinson agreeing to certain compensation terms or property access rights. This amounts to nothing more than bullying tactics on the part of Oncor. Vinson has carefully reviewed the settlement agreement filed at the Commission and Commission Order in Docket 38324 and found no provision which states that the under builds addressed in Paragraphs 43 and 44 of the Commission Order were conditioned upon Vinson agreeing to compensation terms for the right-of-way or execution of the possession and use agreement demanded by Oncor. With respect to the Brazos portion of the under build, Oncor attempted to claim that it could not condemn right-of-way for the use of another utility and therefore Vinson had to agree to the provision of the right-of-way for the Oncor Facilities. In response, Vinson clearly explained to Oncor that it would be willing to grant Brazos any rights necessary to co-locate the Brazos transmission line on the Oncor Facilities after Oncor legally obtained the right-of-way for its Facilities by either agreement or condemnation.

Ultimately, due to Vinson's decision not to agree to sell Oncor the right-of-way for the Facilities at a price that Oncor demanded and/or execute a possession and use agreement, Oncor has refused to agree to construct the Facilities in the location proposed by Vinson or with the under build specified in the Commission Order. Stated another way, Oncor has, at every stage of the discussions with Vinson, attempted to use the under build and route modifications that are mandated by Commission Order as leverage to obtain concessions from Vinson regarding compensation or possession of the property.

On March 13, 2012, Oncor served Vinson with a formal offer to acquire the right-of-way on the Vinson property. Oncor has steadfastly refused, however, to provide any commitment or assurance that it will under build the existing transmission lines specified in the Commission Order. In fact, even though Vinson has specifically requested that Oncor acknowledge its obligation to under build as established under paragraphs 43 and 44 of the order, Oncor has refused to commit to whether it will comply with the Order.

Complaint and Requested Relief

For the reasons set forth above, Oncor has no basis by which it can disregard the clear and unambiguous Order of the Commission regarding the manner and location in which it must construct the Facilities on the Vinson property. Notwithstanding the clarity of the Commission's order, Oncor persists in attempting to use an agreeable, minor route deviation wholly on the Vinson property and the under build of the existing Oncor and Brazos transmission lines as leverage to attempt to force Vinson to agree to compensation terms and grant Oncor possession of the Vinson property to construct the Facilities.

In order to address right-of-way compensation and property access issues with Oncor on an even-handed basis, Vinson has requested that Oncor state its intent to comply with the terms of the Commission order, including, but not limited to, the under build of the Oncor and Brazos transmission lines. Despite several attempts from Vinson to obtain such an affirmation, Oncor has informed Vinson that it has "not reached a resolution as to how we intend to proceed regarding Mr. Vinson's issues. Therefore, we will not be providing Mr. Vinson with the statement he demanded." Oncor further declared the Vinson should "take whatever action he feels is appropriate."

At this time, Oncor has provided Vinson with no assurance that it intends to comply with the clear and unambiguous terms of the Commission's Order. Likewise, Oncor is continuing to attempt to use its compliance with the Commission's Order as leverage to force Vinson to agree to terms on issues that the Commission does not have jurisdictional authority, namely property access and right-of-way compensation. Vinson hereby formally complains of Oncor's use of its compliance with a Commission Order as leverage in its property acquisition activities and requests that the Commission direct Oncor to comply in all respects with the clear and unambiguous terms of the Order issued in Docket 38324.

This Issue is Outside of Municipal Jurisdiction

The matters addressed herein, and the activities of Oncor that are complained of, are associated with the Commission's sole jurisdictional authority, specifically with respect to the matters

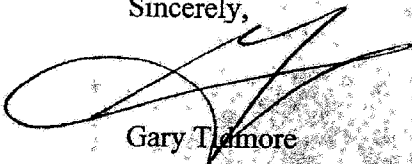
address in the Commission's Order in Docket 38324. Thus, this complaint is outside of the jurisdictional bounds of any municipality.

Failure of Informal Resolution

As set forth above, Vinson has been in ongoing discussions with Oncor regarding the terms of the Commission's Order in Docket 38324. Oncor has, as recently as April 4, 2012, continued to refuse to provide Vinson with any requested assurances regarding the Company's compliance with the Commission's Order with respect to the under builds and has not stated an intent to proceed with condemnation on an agreeable routing. While Vinson is not opposed to an informal process that will provide resolution of this matter, Oncor has not yet provided any assurances that would lead Vinson to believe that anything short of further formal action by the Commission will resolve the issues set forth in this complaint. Furthermore, Vinson has every reason to believe that Oncor will continue to make every effort to use its compliance with the Commission's Order as leverage in further negotiations with Vinson regarding property access and compensation.

Thus, short of Oncor agreeing expeditiously to comply with the terms of the Commission's Order, Vinson would seek a good cause exception to the need for any informal processing of this complaint and requests a processing of this docket pursuant to P.U.C. Procedural Rule 22.242(e) that will quickly result in a declaration of the Commission's intent that Oncor fully comply with each and every aspect of the Commission's Order in Docket 38324.

Sincerely,



Gary T. Lamore

Cc: Allen Nye, General Counsel, Oncor Electric Delivery Company, LLC