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**SOAH DOCKET NO. 473-13-5207
PUC DOCKET NO. 41606**

JOINT APPLICATION OF ELECTRIC TRANSMISSION TEXAS, LLC AND SHARYLAND UTILITIES TO AMEND THEIR CERTIFICATES OF CONVENIENCE AND NECESSITY FOR THE NORTH EDINBURG TO LOMA ALTA DOUBLE-CIRCUIT 345- KV TRANSMISSION LINE IN HIDALGO AND CAMERON COUNTIES	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**COMMISSION STAFF'S STATEMENT OF POSITION ON ROUTE
ADEQUACY**

COMES NOW the staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Statement of Position on Route Adequacy and shows the following:

I. BACKGROUND

On July 3, 2013, Electric Transmission Texas, LLC (ETT) and Sharyland Utilities, LP (Sharyland) (collectively "Joint Applicants") filed an application to amend their certificates of convenience and necessity (CCNs) for a proposed 345-kilovolt (kV) transmission line in Hidalgo and Cameron Counties, Texas (Application). This proceeding was referred to the State Office of Administrative Hearings (SOAH) on July 8, 2013.

On September 17, 2013, several intervenors filed route adequacy challenges and requests for a preliminary hearing on route adequacy. The administrative law judges (ALJs) granted these requests, scheduling a route adequacy hearing on October 8, 2013. On September 27, 2013, Joint Applicants filed their response to the route adequacy challenges.

According to P.U.C. PROC. R. 22.124, statements of position shall be filed no later than three working days before the start of a hearing, the same being October 3, 2013. This pleading, therefore, is timely filed.

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II. DISCUSSION

The route adequacy challenges and testimony filed in this case present unique issues not commonly addressed in previous and typical CCN route adequacy challenges. In large part, the challenges focus on the Joint Applicants' routing of this North Edinburg to Loma Alta transmission line "in proximity to" the South McAllen substation.¹

A. **Challengers' Position**

The Joint Landowners point out that all of the 32 alternative routes proposed cross through a specific "routing circle" that non-concentrically encompasses the South McAllen substation.² As a result, the Application does not contain "an adequate number of reasonably differentiated routes" to give the ALJs and Commission a reasoned choice in selecting the approved route.³ With their challenge, the Joint Landowners included route adequacy testimony from T. Brian Almon, Rudolf K. "Rudi" Reinecke, and James R. Dauphinais.⁴ Several other intervenors also filed individual statements of position challenging the adequacy of the Application's proposed alternative routes.⁵

The Joint Applicants' routing proposals are based on direction from the Electric Reliability Council of Texas (ERCOT) that the transmission line be routed from North Edinburg to Loma Alta "in proximity to" the South McAllen substation.⁶ Because the city of McAllen

¹ See, e.g., Joint Landowners' Statement Challenging the Adequacy of Routes and Request for Preliminary Hearing on Route Adequacy at 2-4 (Sept. 17, 2013) (Joint Landowners' Challenge).

² *Id.* at 2.

³ *Id.* at 3 (citing *Application of Brazos Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Denton County, Texas*, Docket No. 37616, Order (Jan. 21, 2011); *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 8 (Oct. 31, 2006)).

⁴ Direct Route Adequacy Testimony of James R. Dauphinais on behalf of Joint Landowners (Sept. 17, 2013) (Dauphinais Testimony); Route Adequacy Testimony of Rudolph K. "Rudi" Reinecke on behalf of Joint Landowners (Sept. 17, 2013) (Reinecke Testimony); Route Adequacy of T. Brian Almon (Sept. 17, 2013) (Almon Testimony).

⁵ See, e.g., City of McAllen's Statement of Position Challenging Route Adequacy (Sept. 17, 2013); Statement of Position Challenging Route Adequacy on behalf of EIA/Dougherty Properties (Sept. 17, 2013). The Joint Applicants' routing in proximity to the South McAllen substation appears to be the underlying basis for most, if not all, of the challenges.

⁶ See generally Joint Applicants' Statement in Response to Route Adequacy Challenge (Sept. 27, 2013) (Joint Applicants' Response).

creates a significant routing constraint, the routes must exit North Edinburg and loop around the city on both sides to enter the South McAllen “circle” before proceeding in an eastern direction towards Loma Alta.

According to the Joint Landowners, the deposition of ERCOT staff member Jeff Billo demonstrated that there is no critical need requiring that a line running from North Edinburg to Loma Alta be connected to South McAllen.⁷ Specifically, the Joint Landowners argue that the South McAllen-connection aspect of ERCOT’s directive was based on uncertain needs that might only arise several years in the future, including assumptions regarding an additional 250 megawatts of load in the Brownsville area at some future point in time.⁸ Mr. Almon testified that the “critical need” identified by ERCOT for this project can be resolved by constructing the line from North Edinburg to Loma Alta regardless of any connection to South McAllen.⁹

The Joint Landowners also assert that ERCOT did not define “in proximity to” and the Joint Applicants therefore unilaterally developed, without sufficient justification, the circular area through which all 32 proposed alternative routes must pass.¹⁰

In his testimony, Mr. Reinecke discusses some potential routing alternatives that he believes could have been noticed and proposed had the Joint Applicants not focused on routing through the South McAllen circular area.¹¹ Mr. Reinecke asserts that his proposed “Canal Link” and a modified version of Link 169 would create more geographic diversity in the alternative routes and compare favorably to the Application’s routes when considering the routing criteria, like habitable structures.¹²

Similar to Mr. Reinecke, Mr. Dauphinais asserts that the Application, by proposing that all routes pass within the circular area, unreasonably denies the ALJs and Commission the chance to consider alternative proposals that would result in lower cost and less impact.¹³ Mr.

⁷ Joint Landowners’ Challenge at 4.

⁸ *Id.* at 4; Almon Testimony at 8, 15–17.

⁹ Almon Testimony at 15–17.

¹⁰ *Id.* at 10–11; Joint Landowners’ Challenge at 4.

¹¹ *See generally* Reinecke Testimony.

¹² *Id.* at 8–12.

¹³ *See generally* Dauphinais Testimony.

Dauphinais' testimony describes how the recommendation to route the line in proximity to South McAllen would have negative effects on both cost and the landowners.¹⁴ Further, Mr. Dauphinais describes additional alternative routes that could be noticed and proposed if the specification to route in proximity to South McAllen is eliminated.¹⁵ For instance, his Route BAI-5, which includes Mr. Reinecke's unnoticed Canal Link, would compare favorably to the Application's Route 32 when considering the routing criteria.¹⁶

Finally, several intervenors argue in their challenges that the Joint Applicants' approach to routing creates "chokepoints."¹⁷ For instance, the City of McAllen points out that all 32 proposed routes must utilize either Link 84b or Link 137b.¹⁸ As a result, City of McAllen argues that there is not an adequate number of reasonably differentiated routes because the Commission is limited to essentially two choices.¹⁹

B. Joint Applicants' Position

The Joint Applicants filed their response to these challenges by presenting testimony from two witnesses: Rob D. Reid and Mark E. Caskey.²⁰ Specifically, the Joint Applicant witnesses assert that the Joint Applicants have a reasoned justification for their routing decisions.²¹ In their response, the Joint Applicants maintain that ERCOT directed that this critical line be routed in proximity to South McAllen and such directive must be given "great weight."²² The Joint Applicants explain that it would be harmful from a policy perspective if utilities chose to disregard ERCOT's recommendations, especially in "critical need" CCN cases such as the present proceeding.²³ According to Mr. Caskey, ruling in favor of the route adequacy

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 7–8.

¹⁷ *See, e.g.*, City of McAllen's Statement of Position Challenging Route Adequacy at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Joint Applicants' Response at 8–10.

²¹ Route Adequacy Testimony of Rob D. Reid (Sept. 27, 2013) (Reid Testimony); Route Adequacy Testimony of Mark E. Caskey (Sept. 27, 2013) (Caskey Testimony).

²² P.U.C. SUBST. R. 25.101(b)(3)(A)(i).

²³ Joint Applicants' Response at 6; Reid Testimony at 6, 8; Caskey Testimony at 14–15.

challengers would be the first time the Commission has rejected a project that ERCOT has deemed “critical to reliability.”²⁴

The Joint Applicants also explain that the so-called routing “chokepoints” exist because of the unusually high number of constraints in this area.²⁵ These constraints include: highly-populated areas; the international boundary; flood-control areas; state and federal parks and refuges; private conservation lands; and historical landmarks and cemeteries.²⁶ These circumstances, according to the Joint Applicants, give further reasoned justification for any limitations in the routing proposals.

Finally, the Joint Applicants also argue that there is reasoned justification for the specific development of the circular area where all the proposed alternative routes pass near South McAllen.²⁷ Mr. Caskey’s testimony states that in order to achieve the benefits sought by ERCOT, this transmission line must be close enough to the substation to allow for a low-impedance 138 kV connection.²⁸ This means the line can only be a few miles away from the South McAllen substation.²⁹ Further, the Joint Applicants state that the intervenors’ reliance on the fact that ERCOT never reviewed this circle is ill-founded, as ERCOT’s role is giving technical analysis. According to the Joint Applicants, ERCOT leaves interpretation of “proximity” to the utilities and the Commission.³⁰

C. Staff’s Position

As discussed above in the preceding subsections, this route adequacy dispute involves significant issues that have not typically been raised in previous route adequacy challenges or hearings. Commission precedent demonstrates that a CCN applicant must show “reasoned justification” for limited routing proposals.³¹ In light of this standard, Staff does have a degree

²⁴ Caskey Testimony at 24.

²⁵ Joint Applicants’ Response at 8; Reid Testimony at 12–13.

²⁶ *Id.*

²⁷ Joint Applicants’ Response at 10; Caskey Testimony at 24–26.

²⁸ Caskey Testimony at 24–25.

²⁹ *Id.*

³⁰ Joint Applicants’ Response at 10 (citing Billo Deposition Tr. at 44, 100 (Aug. 29, 2013)).

³¹ See, e.g., *Application of Oncor Electric Delivery Company, LLC to Amend Its Certificate of Convenience and Necessity for the Riley to Krum West 345-kV CREZ Transmission Line in Archer, Clay, Cooke, Denton, Jack,*

of concern that all 32 proposed alternative routes pass through a relatively-small circular area. Further, this circle is definitely not within a forward-progressing pathway from North Edinburg to Loma Alta. On the other hand, ERCOT has deemed this project as critical to reliability and directed that the routing proposals pass within proximity to the South McAllen substation. There also appears to be significant routing constraints within the area. Further, the question as to what constitutes “in proximity to” remains to be answered. This dispute presents a difficult decision for both the ALJs and the Commission, especially in light of the policy implications.

Because of the unique nature of this controversy and the need for further development of facts, Staff believes it is prudent to reserve taking a formal position on this issue until after Staff has evaluated and considered the evidence presented at the upcoming route adequacy hearing, in which Staff will fully participate.

Montague, Wichita, Wilbarger, and Wise Counties, Texas, Docket No. 38140, SOAH Order No. 9 at 4 (July 19, 2010).

Date: October 3, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 3rd day of October, 2013, in accordance with SOAH Order No. 4.



John M. Zerwas, Jr.