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**SOAH DOCKET NO. 473-13-5207
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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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PUBLIC UTILITY COMMISSION
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COMMISSION STAFF'S BRIEF ON ROUTE ADEQUACY

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

I. INTRODUCTION

This dispute presents unique issues not commonly addressed in previous and typical certificate of convenience and necessity (CCN) route adequacy challenges.¹ Basically, the controversy focuses on whether the Joint Applicants' routing of all 32 proposed alternative routes through the approximately three-mile "routing circle" encompassing the South McAllen substation deprives the administrative law judges (ALJs) and Commission of an adequate number of reasonably differentiated routes from which to make a selection.² The Joint Applicants argue that all the proposed routes must cross through the routing circle because the Electric Reliability Council of Texas (ERCOT) directed that this project be routed "in proximity to" the South McAllen substation, and this directive is given great weight pursuant to the Commission's CCN rule.³ The route adequacy challengers argue that it is not necessary, at least

¹ Staff refers to its Statement of Position on Route Adequacy (Statement of Position) for its discussion of the background and arguments made on this issue. Commission Staff's Statement of Position on Route Adequacy (Oct. 3, 2013).

² See Primary Links Map, Joint Applicants Ex. 7. Comparing the routing circle to the scale on this map, the circle appears to have a diameter of approximately three miles.

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

at this time, for the line to be routed in proximity to the South McAllen substation.⁴ Further, they contend that the size and specifics of the routing circle were unilaterally developed by the Joint Applicants without sufficient reasoning.⁵

The evidence in this case shows that ERCOT directed that this transmission line be routed “*in proximity to*” the South McAllen substation.⁶ Staff further agrees with Joint Applicants that ERCOT’s directive should be given great weight. This line, therefore, should proceed in a southern/southeastern direction after exiting the North Edinburg substation. What is equally critical for purposes of this proceeding is what ERCOT did not do. Specifically, ERCOT did not define what it meant by “in proximity to” the South McAllen substation. Instead, ERCOT made it clear that such definition should be determined by the transmission service provider *and the Commission* in this proceeding.⁷ That is to say, ERCOT assumed that the Commission and the parties would determine what “in proximity to” meant in light of the Commission’s well-established routing standards for CCN proceedings and the nature of the forecasted need ERCOT identified in its transmission planning process.

As discussed more fully below, proper application of the Commission’s routing practices, particularly when viewed in light of the fact that the need identified by ERCOT for an additional connection to the South McAllen substation will not materialize until as late as 2020, require the phrase “in proximity to” to be construed in a more liberal manner than the approach taken by the Joint Applicants. As stated in its Statement of Position, Staff is concerned that all 32 proposed alternative routes must pass through the small geographical area proposed by the Joint Applicants. Contrary to this overly restrictive reading of “in proximity to,” Staff suggests a broader definition that permits consideration of more forward-progressing routes that also utilize links already proposed in the Application without forcing the ultimate route through the narrowly-defined routing circle. As a result, more reasonably-differentiated routes and geographic diversity will be provided. Accepting Staff’s approach would also allow this “critical

⁴ See, e.g., Route Adequacy Testimony of T. Brian Almon at 8, 15 (Almon).

⁵ See Joint Landowners’ Statement Challenging Adequacy of Routes and Request for a Preliminary Hearing on Route Adequacy at 4 (Sept. 17, 2013).

⁶ Application, Joint Applicants Ex. 1 at Attachment No. 6.

⁷ Billo Deposition Tr. at 72 (Aug. 29, 2013) (attached to the Direct Route Adequacy Testimony of James R. Dauphinais as Exhibit JRD-RA-11).

to reliability” case to proceed without having to dismiss or abate for adding previously-unnoticed links or resubmitting the project to ERCOT for further approval.

So long as the ALJs and the Commission can consider these additional forward-progressing routes that do not pass through the routing circle, Staff believes the Application includes adequate routes.

II. DISCUSSION

A. The Route Adequacy Standard

Commission precedent states that a CCN applicant is required to demonstrate that it has proposed an adequate number of *reasonably differentiated* routes in its application for the ALJ and the Commission to conduct a proper evaluation.⁸ This proceeding’s Order of Referral and Preliminary Order asks:

Is Joint Applicants’ application to amend its CCN adequate? Does the application contain an adequate number of alternative routes to conduct a proper evaluation? If not, the ALJ shall allow Joint Applicants to amend the application and to provide proper notice to affected landowners; if Joint Applicants choose not to amend the application, the ALJ may dismiss the case without prejudice.⁹

A CCN applicant may make a *prima facie* showing of route adequacy through its application and the routes contained therein.¹⁰ After an applicant makes a *prima facie* showing of the application’s adequacy, the burden then shifts to the other parties to present evidence showing the inadequacy of the application or the routes presented. The applicant can then rebut this evidence by offering a *reasoned justification* for why certain other potential routing options were not included in the application.¹¹

In this case, Staff believes the pertinent question is whether the Joint Applicants have a reasoned justification for routing all of the proposed alternative routes through a single three-mile circle. While Staff finds that the Joint Applicants have demonstrated that it is reasonable to

⁸ See *Application of Oncor Electric Delivery Company, LLC for the Riley to Krum West 345-kV CREZ Transmission Line in Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger, and Wise Counties, Texas*, Docket No. 38140, Order No. 9 at 3 (July 19, 2010).

⁹ Order of Referral and Preliminary Order at 3 (July 8, 2013).

¹⁰ Docket No. 38140, Order No. 9 at 4.

¹¹ *Id.*

route this project near South McAllen before proceeding east towards Loma Alta, the Joint Applicants have not sufficiently shown that “in proximity to” should be so limited as to require that *all* 32 proposed alternative routes must pass through such a small geographic area.

B. The Routing Circle

As mentioned above, the South McAllen routing circle is approximately three miles in diameter, with the South McAllen substation located in its upper portion.¹² Because of the Joint Applicants’ position that all of the proposed routes pass within the circle, the routes must loop around the city of McAllen on both sides.¹³ The routes that exit from the east side of the North Edinburg substation proceed in a southeastern direction, then turn west to reach the circle. Those routes then turn back around to the east to proceed towards the Loma Alta substation.¹⁴ Aside from the obvious concern that landowners within only a three-mile geographic circle are guaranteed to be impacted by this line, the non-forward-progressing links and “backtracking” occurring in the routes create additional length and cost.

Staff believes that an interpretation of “in proximity to” should be more expansive than the Joint Applicants’ restrictive three-mile circle. ERCOT did not have any role in delineating the circle.¹⁵ Rather, Joint Applicant witness Mark E. Caskey testified that the size and location of the circle are based on the fact that the lines connecting the potential future substation to the South McAllen substation would need to be short enough to allow for a low-impedance connection.¹⁶ The Joint Applicants admitted, however, that they did not conduct and provide any specific analysis on this line impedance issue.¹⁷ Further, Mr. Caskey acknowledged that certain other measures can be taken to address impedance if the need arose.¹⁸ Based on this evidence, the Joint Applicants have not sufficiently demonstrated that “in proximity to” can only be limited

¹² See Primary Links Map, Joint Applicants Ex. 7.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ Billo Deposition Tr. at 69–72 (Aug. 29, 2013).

¹⁶ Route Adequacy Testimony of Mark E. Caskey, Joint Applicants Ex. 5 at 25–26 (Caskey).

¹⁷ Tr. at 147–148 (Oct. 8, 2013).

¹⁸ *Id.* at 149.

to a circle with an approximately three-mile diameter. This is particularly so given that requiring all routes to pass through this circle will result in increased route length and costs.

There is also another reason that Staff supports a more liberal construction of “in proximity to.” A significant topic in this dispute was the nebulousness related to ERCOT’s recommendation in regard to this project’s future South McAllen connection.¹⁹ This issue was magnified by ERCOT staff member Jeff Billo’s deposition. While a connection between North Edinburg and Loma Alta appears necessary to address needs in the short-term, an additional connection to the South McAllen substation would only be needed to address potential needs occurring several more years in the future.²⁰ As Mr. Billo’s deposition indicated, projections of future load are inherently uncertain, particularly when the forecast is for several years into the future.²¹

Given this uncertainty, and the fact that the need for the connection to the South McAllen substation may not ultimately materialize, it makes sense to adopt a more liberal reading of the “in proximity to” requirement. Based on the specific nature of the need ERCOT has identified, Staff believes that “expanding” the routing circle is a reasonable and equitable approach in light of the nature of ERCOT’s South McAllen directive. This is particularly the case when such a reading results in a lower cost and shorter routes that is consistent with the Commission’s long-standing practice of favoring forward-progressing routes.

C. Staff’s Position

As mentioned above, Staff’s position is that additional routes that do not have to cross the routing circle should be considered in this case. Specifically, the ALJs and Commission should be able to consider routes that use already-proposed links that exit the North Edinburg substation to the east, run in a southern/southeastern direction along the eastern side of the city of McAllen, and then turn to the east towards Loma Alta by connecting to the “horizontal-running” links in the southern part of the study area.²² Unlike the currently-proposed routes that run to the east of the city of McAllen, these additional routes would not have to “detour” and turn in a non-

¹⁹ See, e.g., Almon at 15–18.

²⁰ *Id.* at 8.

²¹ Billo Deposition at 65–67 (Aug. 29, 2013).

²² See Primary Links Map, Joint Applicants Ex. 7.

forward-progressing direction to reach the routing circle before turning again and heading east towards Loma Alta.²³

One such example of these additional routes would be one that uses Links 142, 149, 166, 170a, and 170b to proceed down the eastern side of McAllen.²⁴ Instead of continuing on Links 352 or 127 in a western direction (for instance, like the currently-proposed Route 22), this route would proceed in an eastern-progressing direction to towards Loma Alta on Links 171, 172, 173a, 173b, and/or 178.²⁵ With the Application's proposed links, several variations of routes similar to this example can be formed.

It is also reasonable to find that these additional routes would be "in proximity to" the South McAllen substation, as ERCOT directed. A route similar to the one described in the preceding paragraph would pass as close as six miles to the South McAllen substation.²⁶ Other link configurations would create routing proposals running as close as 11 miles to the substation.²⁷ The Commission's transmission citing authority gives it the right to determine "in proximity to," and it is reasonable to decide that a distance of only 6 to 11 miles would satisfy a definition of that phrase.²⁸

Staff's recommended approach to this dispute offers several advantages. First, by adding to consideration these additional routing options, the ALJs and Commission will have more geographically diverse and reasonably differentiated selections to consider. Although 32 routes represents a satisfactory number to propose in a CCN application, having all the routes pass through only an approximately three-mile area threatens geographic diversity and could thus limit the decision-makers' opportunity to make a reasoned choice. As such, Staff recommends that the artificial routing circle constraint created by the Joint Applicants be rejected.

Second, Staff's approach does not disregard ERCOT's directive that this transmission line run in proximity to the South McAllen substation. Although Staff agrees with some of the

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

²⁶ Tr. at 170–171 (Oct. 8, 2013).

²⁷ *Id.* at 171.

²⁸ See Billo Deposition Tr. at 72 (Aug. 29, 2013).

challengers that ERCOT's basis for routing near South McAllen seems at least somewhat novel, ERCOT is the entity responsible for maintaining electric reliability for a majority of the state, and its recommendation must be given weight.²⁹ Further, the evidence shows that the Commission has not rejected a project that has successfully gone through this particular ERCOT stakeholder process.³⁰

Third, Staff's approach would create routes that adhere to the Commission's policy that transmission line routes should run in a forward-progressing manner.³¹ All of the 32 currently-proposed routes include segments that would run in a non-forward-progressing manner. This is concerning because routes that run "backwards" increase length, thus resulting in additional landowner impacts and cost. Joint Landowner witness T. Brian Almon, who gained extensive CCN experience during his years at the Commission, could recall only one CCN case where the Commission approved a route that had a non-forward-progressing section.³² That route, however, resulted from a settlement.³³ Acceptance of Staff's recommendation would allow the ability to consider routes that are shorter than all of the 32 currently-proposed routes, resulting in less property impact and cost.

Finally, there would be no need to dismiss or abate this case to add additional routing links or to resubmit this project to ERCOT. The routes that Staff wishes to add to consideration in this case all utilize links that have already been proposed in the Application and properly noticed.³⁴ It is a well-known fact in CCN proceedings that the Commission can use any combination of proposed links to develop the approved transmission line route.³⁵ Further, the Joint Applicants have provided in this case routing criteria and information *per link*, so that a route created consistent with Staff's recommendation could be compared to other proposed alternative routes.³⁶ Adding new links to this Application, as suggested by Joint Landowner

²⁹ P.U.C. SUBST. R. 25.101(b)(3)(A)(i).

³⁰ Caskey at 23–24; Tr. at 55–56 (Oct. 8, 2013).

³¹ See Tr. at 61 (Oct. 8, 2013); see also Almon at 14.

³² *Id.* at 62.

³³ *Id.* at 89.

³⁴ See Primary Links Map, Joint Applicants Ex. 7.

³⁵ See SOAH Order No. 1 at 1; Tr. at 171 (Oct. 8, 2013).

³⁶ Tr. at 171–172 (Oct. 8, 2013).

witnesses James R. Dauphinais and Rudolph K. "Rudi" Reinecke, would involve dismissing or abating this case so that the Joint Applicants can evaluate the links and provide new notice to landowners directly affected by such links.³⁷ Staff disagrees with delaying this proceeding, as the evidence indicates that a transmission connection between North Edinburg and Loma Alta is necessary to address imminent needs.³⁸ Further, as discussed above, Staff believes the links already proposed can be configured to form routes "in proximity to" South McAllen, as requested by ERCOT, without having to pass through the small routing circle.

III. CONCLUSION

Staff believes that there are a sufficient number of differentiated routes in the Application. However, this is *only* the case provided that ERCOT's instruction to route the proposed transmission line "in proximity to" the South McAllen substation be construed more liberally than the Joint Applicants have done. That is to say, there are a sufficient number of proposed routes so long as the ALJs and Commission are able to consider eastern-progressing routes that do not pass through the approximately three-mile "routing circle" the Joint Applicants have proposed. These routes, comprised of already-proposed routing links, would pass within 6 to 11 miles of the South McAllen substation, which is a reasonable interpretation of ERCOT's "in proximity to" directive.

³⁷ Direct Route Adequacy Testimony of James R. Dauphinais, Joint Landowners Ex. 12; Route Adequacy Testimony of Rudolph K. "Rudi" Reinecke on behalf of Joint Landowners, Joint Landowners Ex. 13.

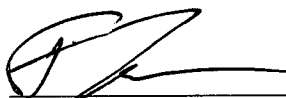
³⁸ Billo Deposition at 77-78.

Date: October 11, 2013

Respectfully Submitted,

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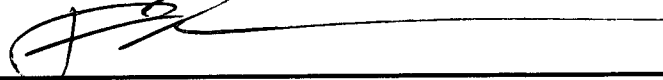


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 11th day of October, 2013, in accordance with SOAH Order No. 4.



John M. Zerwas, Jr.