



Control Number: 41606



Item Number: 1290

Addendum StartPage: 0

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

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**JOINT APPLICATION OF ELECTRIC §  
TRANSMISSION TEXAS, LLC AND §  
SHARYLAND UTILITIES, L.P. 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  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMISSION STAFF'S REPLY TO PETITIONER'S MOTION FOR REHEARING**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (PUC or Commission), representing the public interest, and files this Reply to Petitioner's Motion for Rehearing, and would show the following:

**I. BACKGROUND**

On April 10, 2014, the Commission issued its Order approving the proposal for decision's (PFD's) recommendation of the agreed parties' route (Agreed Route). On April 30, 2014, Jose C. Rodriguez filed a Motion for Rehearing.

Under P.U.C. PROC. R. 22.78(a), parties may file responsive pleadings within five business days of receipt of the pleading to which response is made. Staff timely files this response.

**II. STAFF'S ANALYSIS**

The Commission's Order in this docket is supported by substantial evidence, is in the public interest, and is in compliance with the law. Accordingly and as discussed in detail below, Mr. Rodriguez's Motion for Rehearing should be denied.

**a. Point of Error No. 1: Traditional Service**

Mr. Rodriguez argues that, because he did not receive certain filed pleadings in this case, he was "unable to provide the Commission with evidence in support of his position, or in

opposition to the Stipulation of which he was not aware.”<sup>1</sup> This argument is inconsistent with the facts of this case.

First, the timing of the Stipulation made it impossible for Mr. Rodriguez to oppose it, unless he attended the hearing. The Intervenor’s direct testimony was due on November 8, 2013. The Stipulation was not filed until November 22, 2013. Thus, the direct testimony deadline made it impossible for Mr. Rodriguez to file direct testimony (*i.e.*, evidence) opposing the Stipulation, even if he were served a copy of the Stipulation. Moreover, a revised Stipulation was filed on the eve of the hearing on the merits, December 2, 2013. Because Mr. Rodriguez chose not to attend the hearing, he would not have been able to respond to the revised Stipulation even if it had been mailed to him when it was filed on December 2, 2013.

Second, Mr. Rodriguez chose not to file direct testimony, instead choosing to file a statement of position despite knowing that several noticed links affected his property.<sup>2</sup> By not filing testimony, Mr. Rodriguez voluntarily limited the evidentiary value of his opposition to those links. The decision not to file testimony is particularly important because, as discussed under Point of Error No. 3, Mr. Rodriguez knew or should have known that any combination of noticed links could be selected to form the approved route.<sup>3</sup>

#### **b. Point of Error No. 2: Change of Venue**

In the Motion for Rehearing, Mr. Rodriguez makes an untimely appeal of SOAH Order No. 5, wherein the Administrative Law Judge (ALJ) denied the motion for a change of venue to the Rio Grande Valley.<sup>4</sup> Under P.U.C. PROC. R. 22.123(a)(2), a party must file its appeal within 10 days of the issuance of the written order. SOAH Order No. 5 was filed on September 25, 2014. Therefore, the 10-day deadline expired on October 7, 2013, well before Mr. Rodriguez’s April 30, 2014 Motion for Rehearing.<sup>5</sup>

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<sup>1</sup> Petitioner’s Motion for Rehearing at 2 (Apr. 30, 2014) (Motion for Rehearing).

<sup>2</sup> [Jose C. Rodriguez’s] Statement of Position at 1 (Oct. 24, 2013).

<sup>3</sup> See SOAH Order No. 1 at 3-4 (Jul. 12, 2013).

<sup>4</sup> SOAH Order No. 5 at 3-4 (Sep. 25, 2014).

<sup>5</sup> The deadline would have been October 5, 2013; however, because that was a Saturday the deadline automatically rolls over to the next working day, per P.U.C. PROC. R. 22.4(a), which was Monday, October 7, 2013.

In addition to the procedural defect, this point of error is substantively deficient. The Motion for Rehearing alleges that Mr. Rodriguez and other intervenors “would have had a better opportunity to present evidence and participate in this proceeding” had the hearing taken place in the Rio Grande Valley.<sup>6</sup> However, this allegation ignores the fact that many of these intervenors – including Mr. Rodriguez – chose not to file testimony (*i.e.*, evidence).<sup>7</sup> Instead, these intervenors filed statements of position, or in the case of 185 intervenors, filed nothing at all.<sup>8</sup> Because the requirement to pre-file testimony does not depend on the location of the hearing, an allegedly more convenient hearing location would not have provided a better opportunity for intervenors to file evidence.<sup>9</sup>

**c. Point of Error No. 3: Supplemental Routes**

Mr. Rodriguez argues that, because he was not aware of the 10 supplemental routes, he could not adequately contest these routes. This argument does not succeed in light of the warning issued in SOAH Order No. 1. The ALJ instructed all intervenors, in a capitalized section entitled “CAUTION TO INTERESTED PARTIES” that “[a]ny proposed route, or any combination of properly noticed proposed routes, could be selected. It is the duty of interested parties to intervene and provide the decision makers the information needed to reach a just and reasonable decision.”<sup>10</sup> Because all intervenors were made aware that combinations of properly noticed links may be selected as the approved route, and because the 10 supplemental routes are combinations of properly noticed links, Mr. Rodriguez knew or should have known that the approved route may be a route other than the originally filed routes.

**d. Point of Error No. 4: Link 362**

Mr. Rodriguez erroneously claims that Link 362 directly affects his property. This claim is based on the alleged fact that Link 362 “comes within 50 feet of [Mr. Rodriguez’s]

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<sup>6</sup> Motion for Rehearing at 2-3.

<sup>7</sup> See [Jose C. Rodriguez’s] Statement of Position.

<sup>8</sup> See Commission Staff’s Exceptions to the Proposal for Decision at 3, footnote 4 (Feb. 13, 2014).

<sup>9</sup> P.U.C. PROC. R. 22.225(a)(1) (“Unless otherwise ordered by the presiding officer upon a showing of good cause, the **written direct and rebuttal testimony** and accompanying exhibits of each witness **shall be prefiled**.”) (emphasis added).

<sup>10</sup> SOAH Order No. 1 at 3-4 (Jul. 12, 2013).

property.”<sup>11</sup> However, Mr. Rodriguez has not shown that Link 362 directly affects his property. The notice requirements in P.U.C. PROC. R. 22.52(a)(3) provide a clear explanation of what directly affected means:

For the purposes of this paragraph, land is directly affected if an easement or other property interest 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 centerline of a transmission project greater than 230kV.

Because Mr. Rodriguez has not alleged that the transmission line will be on his property or within 500 feet of a habitable structure on his property, there is insufficient basis to support this point of error. As the applicable standards make clear, a property is not directly affected simply because a transmission line comes within 50 feet of the property.

**e. Point of Error No. 5: Community Values**

Finding of Fact 61 correctly describes the support of intervening landowners whose land is directly affected by the agreed route. Mr. Rodriguez and one other landowner are the only two intervening landowners who own property on the agreed route who did not support the agreed route. The subject of community values is a statutorily-mandated criterion<sup>12</sup> that both the ALJ and the Commission spent significant time analyzing and considering.<sup>13</sup> Although Mr. Rodriguez disagrees with the conclusion reached by both the ALJ and Commission, he has presented no evidence to show that the final order approving the agreed route lacked substantial evidence.

**f. Point of Error No. 6: Habitable Structures**

The Commission’s policy on prudent avoidance does not require that the Commission simply choose the route with the fewest habitable structures. If this were true, then PURA § 37.056(c) and P.U.C. Subst. R. 25.101(b)(3)(B) would not list several factors, all of which must be considered and weighed by the Commission in selecting a route. The statute, Commission rules, and precedent all support the consideration of multiple factors in selecting a route.

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<sup>11</sup> Motion for Rehearing at 3.

<sup>12</sup> PURA § 37.056(c)(4)(A).

<sup>13</sup> See, e.g., Proposal for Decision at 26-47 (Jan. 30, 2014); Open Meeting transcript at 34-84 (Mar. 6, 2014); Order at 8-10 (Apr. 11, 2014).

**g. Point of Error No. 7: Unconstitutional Taking**

The transmission line approved in this proceeding was designated by ERCOT as critical to reliability.<sup>14</sup> Even without the 250 MW of industrial load near the Port of Brownsville, ERCOT identified additional base-case and contingency-based need for this project.<sup>15</sup> In fact, no witness in this proceeding disputed the need for the Project to resolve reliability issues in the Brownsville area.<sup>16</sup> As the totality of the evidence makes clear, this transmission line will serve the entire Valley area and cannot be considered an unconstitutional taking.

**III. CONCLUSION**

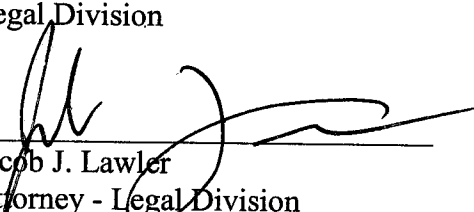
For the reasons stated above, and because the Commission's Order in this docket is supported by substantial evidence, is in the public interest, and is in compliance with the law, the Motion for Rehearing should be denied.

**Dated: May 7, 2014**

Respectfully Submitted,

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<sup>14</sup> Order at 6, FoF 29.

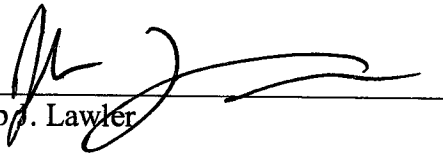
<sup>15</sup> *Id.*, FoF 34.

<sup>16</sup> Proposal for Decision at 23.

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all applicable parties of record in accordance with SOAH Order No. 4 on May 7, 2014.

  
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Jacob J. Lawler