Control Number: 41606

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

JOINT APPLICATION OF ELECTRIC TRANSMISSION TEXAS, LLC AND SHARYLAND UTILITIES, L.P. TO AMEND THEIR CERTIFICATES OF CONVENIENCE AND NECESSITY FOR THE PROPOSED NORTH EDINBURG TO LOMA ALTA DOUBLE-CIRCUIT 345-KV TRANSMISSION LINE IN HIDALGO AND CAMERON COUNTIES, TEXAS	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

JOINT APPLICANTS' RESPONSE TO JOSE RODRIGUEZ'S MOTION FOR REHEARING

On April 30, 2014, Jose Rodriguez filed a Motion for Rehearing. Pursuant to Rule 22.264 and Texas Government Code § 2001.146(b), Joint Applicants' reply is due May 12, 2014. This response is therefore timely filed.

I. INTRODUCTION AND BACKGROUND

Mr. Rodriguez was sent notice of this proceeding on July 3, 2013,[1] timely filed his request to intervene on July 29, 2013,[2] filed a statement of position on October 24, 2013,[3] filed a brief on December 27, 2013,[4] and presented oral argument before the Commission on March 6, 2014. Mr. Rodriguez's position has been the same throughout this proceeding: he opposes the use of Links 278, 279, and 281, which affect his property, and supports the use of other links, which do not affect his property. He also alleges that he has not consistently received adequate service of pleadings and orders (particularly as it relates to the Agreed Parties' route devised by a vast majority of the landowner intervenors), and therefore is entitled to another evidentiary hearing. Notably, however, Mr. Rodriguez elected not to file any testimony or attend the evidentiary hearing, where the Agreed Parties' route was discussed at length. Despite this, the

[1] Electric Transmission Texas, LLC and Sharyland Utilities L.P.'s Proof of Notice, Attachment 2g at 155 (Jul. 30, 2013) (listing "Jose C Rodriguez" and "Jose C Rodriguez et ux," both at 25337 Pennsylvania Avenue in San Benito, as persons to whom notice was sent).

[2] Jose C. Rodriguez's Request to Intervene (Jul. 29, 2013).

[3] Jose C. Rodriguez's Statement of Position (Oct. 24, 2013).

[4] Jose C. Rodriguez's Brief (Dec. 27, 2013).

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ALJ considered his opposition to any route using Links 278, 279, and 281 and rejected his arguments.[5] (The Agreed Parties' route uses Links 278 and 279.) He re-asserted these same arguments in a post-hearing brief and then before the Commission orally on March 6, 2014.

Having elected not to participate in the hearing held on December 2 and 3, Mr. Rodriguez now requests rehearing of this case—in the Lower Rio Grande Valley—on a variety of grounds so that he can present new evidence regarding notice, venue, supplemental routes, Link 362 (which does not cross his property or come within 500 feet of any of his habitable structures), community values, prudent avoidance, and unconstitutional takings, most of which could and should have been presented months earlier.

As detailed below, each of these claims lack substance considered on their own merits. But they all also suffer from an overriding flaw: Mr. Rodriguez had an opportunity to present evidence in this proceeding either in pre-filed direct and rebuttal testimony or during cross-examination, but he declined to do so and did not attend the evidentiary hearing. In short, Mr. Rodriguez waived his right to present evidence and raise factual disputes in this proceeding when he declined to file testimony, present evidence, or attend the evidentiary hearing.

II. SPECIFIC POINTS OF ERROR

Mr. Rodriguez alleges seven specific points of error: (1) lack of service, (2) failure to change venue, (3) lack of notice of supplemental routes, (4) lack of notice of Link 362, (5) inadequate consideration of community values, (6), inadequate consideration of prudent avoidance, and (7) the line constitutes an unconstitutional taking. As detailed below, each of these claims lacks merit.

A. Service to Mr. Rodriguez in This Proceeding Was Adequate.

Despite being on the ALJ's service list, Mr. Rodriguez claims in his first point of error not to have received "at least"[6] three documents: (1) SOAH Order No. 6 addressing route adequacy (finding that the application proposed an adequate number of routes if the "routing circle" was disregarded but requiring that Joint Applicants amend the application), (2) the

[5] *See, e.g.*, Proposal for Decision at 29 (Jan. 30, 2014) ("Intervenor Jose C. Rodriguez, who is opposed to the Agreed Route, argues that residences and residential lots will be affected irreparably and detrimentally if the transmission line is routed using Links 278, 279, and 281.").

[6] Because the complete list of documents served in this proceeding is located on the Commission interchange and Mr. Rodriguez is now represented by counsel experienced in practicing before the Commission, Joint Applicants assume that these three documents constitute the exhaustive list of documents Mr. Rodriguez is claiming not to have received.

Amended Application in Response to Order No. 6 (presenting ten additional routes composed of already-noticed links), and (3) the second Joint Stipulation of Agreed and Supporting Parties filed on December 2, 2013 (setting forth Route 3-S (Modified), composed of already-noticed links and proposing a modified link across consenting landowners' property that came to be labeled Link 362).[7] Notwithstanding being apprised of the date of the hearing and the possibility that Links 278, 279, and 281 would be selected, Mr. Rodriguez claims that as a result of these alleged deficiencies in service, 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," and therefore requests a new evidentiary hearing.

There are three flaws in this argument.

First, Mr. Rodriguez was properly served in this proceeding, at least by Joint Applicants. Joint Applicants can attest that they served Mr. Rodriguez via first-class mail of all their filings, including the Amended Application in Response to Order No. 6. Joint Applicants' representative certified that the Amended Application in Response to Order No. 6 was served on all parties of record by various means including by first-class mail, which was the method of service preferred by Mr. Rodriguez.

Second, Mr. Rodriguez had actual notice of all of the links affecting his property, and filed a statement of position and brief opposing those links. He was aware of Links 278, 279, and 281 months before the evidentiary hearing,[8] and he was advised that any combination of links could be selected, as described in the initial notice letter sent to landowners.[9] In other words, the dispositive issue here seems to be that (even by his own admission) Mr. Rodriguez did not give due consideration to the possibility that Links 278, 279, and 281 would be selected as part of the final route,[10] not whether he was properly served.

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[7] Mr. Rodriguez does not allege in his motion that he did not receive the initial notice letter, the procedural schedule, the Proposal for Decision, or the substantively identical first Joint Stipulation of Agreed and Supporting Parties filed on November 22, 2013.

[8] *See* Jose C. Rodriguez's Statement of Position (Oct. 24, 2013) (opposing Links 278, 279, and 281).

[9] Joint Applicants' Ex. 1, Application, Attachment 10a at 1 (noting, in bold, italic, underlined font that "All routes and route segments (links) included in this notice are available for selection and approval by the Public Utility Commission of Texas"); SOAH Order No. 1 at 3-4 (Jul. 12, 2013) (cautioning all parties that any combination of noticed links could be selected).

[10] *See* Jose C. Rodriguez's Statement of Position at 1 (Oct. 24, 2013) ("[Links 278, 279, and 281] seem to be such irrational configurations on the maps provided that it seems patently unlikely that if reason and common sense prevail in determining the final route, my property will not be affected whatsoever."); Jose C. Rodriguez's Brief at 2-3 (Dec. 27, 2013) ("It seemed so unlikely that Links 278 and 279 would be selected for this project as they

Third, Mr. Rodriguez has not alleged any basis for why he might have been prejudiced by failing to receive SOAH Order No. 6 or the Amended Application in Response to Order No. 6. He did not challenge the adequacy of the application or participate in the preliminary hearing on route adequacy, and therefore had no direct interest in SOAH Order No. 6. Similarly, the Amended Application in Response to Order No. 6 proposed additional routes based entirely on previously noticed links, and did not propose any new links or affect any new landowners.

B. The Change of Venue Was Not Wrongfully Denied.

In his second point of error, Mr. Rodriguez claims that he "would have had a better opportunity to present evidence and participate in this proceeding" if the evidentiary hearing had been held in the Lower Rio Grande Valley instead of Austin. And while he notes the "financial hardship, inconvenience, and expense" to "hundreds of effected landowners," he never alleges that he himself was unable to attend the evidentiary hearing in Austin (and he did attend the open meeting),[11] and therefore his complaint does not justify a new evidentiary hearing.

As an initial matter, Mr. Rodriguez waived this argument by not filing a timely appeal of the order. Rule 22.123(a)(2) requires that interim orders materially affecting the course of the proceeding (other than evidentiary rulings) be appealed to the Commission within ten days of the issuance of the order. Mr. Rodriguez did not do so. This issue should have been raised by an interlocutory appeal *before* the evidentiary hearing, not seven months later after the Commission's final order in the proceeding.

Moreover, the decision to hold the evidentiary hearing in Austin is not only well within the ALJ's discretion, it is also substantively correct from a legal standpoint. P.U.C. PROC. R. 22.201 states:

> All evidentiary hearings shall be held in Austin, unless the commission determines that it is in the public interest to hold a hearing elsewhere.

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seemed extra-ordinarily out-of-the-way, unfeasible and impractical as a route for the Line, that I never anticipated having to fight to protect what I hold so dear at this stage in my life.").

[11] It should be noted that, as an individual, Mr. Rodriguez lacks both standing and authority to assert harm to other intervenors. There are numerous unaligned intervenors in this proceeding (some of whom even live in Austin), and it is not appropriate for any single party to unofficially suggest he is a spokesman for all intervenors.

This rule "clearly requires that all evidentiary hearings shall be held in Austin unless the public interest will be served by moving the location."[12] Thus, before a hearing can be held outside of Austin, Rule 22.201 requires an affirmative determination that it would be in the public interest to do so. "In determining the public interest, the cost and inconvenience to intervenors must be weighed against the cost, inconvenience, inefficiencies, and security concerns that moving the location will cause to the applicant and state agencies."[13] The ALJ considered Mr. Rodriguez's concerns, found that they were "outweighed by precedent, cost to the State, the Austin or Central Texas location of a number of the expert witnesses and counsel representing some landowners, and procedures designed to limit travel," and thus the ALJ's decision is reasonable and consistent with the rule.[14]

C. Notice of Supplemental Routes Was Provided.

For his third point of error, Mr. Rodriguez asserts that he never received notice of the ten supplemental routes filed as part of the Amended Application in Response to Order No. 6. He claims that as a result he was unable to "adequately present evidence" opposing these routes. Thus, he proposes that additional notice of these routes should have been provided, and the lack of such notice is grounds for a new evidentiary hearing.

There are three flaws in this argument.

First, as indicated above, the factual basis of his claim is lacking. Mr. Rodriguez was sent notice of both the links comprising the supplemental routes and the supplemental routes themselves. The supplemental routes were composed entirely of previously noticed links, and Mr. Rodriguez does not assert lack of notice of those links. In fact, he filed a statement of position and brief opposing them to the extent they impacted his property.[15] Further, he was informed that any combination of links could be selected.[16] Therefore, he was both technically and substantively put on notice of the supplemental routes. In other words, Mr. Rodriguez had his chance to dispute these routes.

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[12] *Application of Rayburn County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Henderson and Van Zandt Counties, Texas*, Docket No. 32707, Order No. 33 at 2 (Aug. 7, 2007).

[13] *Id.*

[14] SOAH Order No. 5 at 4 (Sept. 24, 2013).

[15] *See* Jose C. Rodriguez's Statement of Position (Oct. 24, 2013) (opposing Links 278, 279, and 281).

[16] *See infra* note 9.

Second, Mr. Rodriguez has not indicated what types of arguments, if any, he would make against the supplemental routes that he would not have made against the initial routes. His objection to the supplemental routes is substantially the same as his objection to the initial routes: they use Links 278, 279, and/or 281. (Indeed, Mr. Rodriguez has stated that he has "no quarrel with the agreed route, except through Links 278 and 279,"[17] and thus the material issue is whether Links 278 and 279 are used in any particular route, not the composition of the other links). The ALJ considered this objection during the evidentiary hearing, and he raised it in his post-hearing brief and during oral argument before the Commission. In other words, not only did he have a chance to dispute routes using these links, he actually did so.

Third, he alleges no legal basis for his claim that additional notice of these supplemental routes composed entirely of already-noticed links was required despite the language of the original notice letters, the ALJ's Order No. 6, and the Joint Applicants service of the Amended Application in Response to Order No. 6 on October 28, 2013. He cites no statute, case, rule, or order supporting this claim, and does not set forth any legal theory supporting its validity. His failure to notify the Commission of the legal basis for his complaint constitutes a waiver of that issue.[18]

D. Mr. Rodriguez Was Not Prejudiced by Link 362.

In his fourth point of error, Mr. Rodriguez complains that he was entitled to notice of Link 362 because it "directly impacts" him because it comes within 50 feet of his property.[19] This alleged failure to provide him with additional notice, he claims, is grounds for a new hearing.

There are two flaws in this argument.

First, Link 362 does not "directly affect" his property. "Land is considered 'directly affected' under [Rule 22.52] 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

[17] Open Meeting Tr. at 60 (Mar. 6, 2014); *see also id.* at 61 ("We're beseeching the Court to simply avoid Links 278 and 279.").

[18] *Scally v. Texas State Board of Medical Examiners*, 351 S.W.3d 434, 444-45 (Tex. App.—Austin 2011, pet denied) (TEX. GOV'T CODE § 2001.145(e) requires the movant to set forth the legal basis of the complaint with sufficient clarity to put the Commission on notice).

[19] Jose Rodriguez's Motion for Rehearing at 3.

centerline of a transmission project greater than 230kV."[20] No portion of the proposed right-of-way for Link 362 crosses his property.[21] Further, at no point does the centerline of Link 362 come within 500 feet of any habitable structure.[22] This link only affects consenting landowners.[23] As a result, the creation of Link 362 complies with the Commission's notice rules and the Commission's standard ordering paragraphs relating to "minor deviations" and "more-than-minor deviations."[24] To the extent he believes that mere proximity to the line, without more, entitles him to notice and is grounds for resetting this proceeding, there is no legal basis for that claim. Moreover, if Mr. Rodriguez's arguments on this point were accepted, it would give all adjacent landowners a basis for objection that does not currently exist under the Commission's rules, significantly disrupting the resolution of CCN cases.

Second, any issue is primarily attributable to his decision not to attend the hearing in this case. This segment of the line in general, and Link 362 in particular, were discussed in detail. Had he attended, he could have cross-examined witnesses regarding this link, presented his arguments to the ALJ at the hearing, and briefed the issue for the Proposal for Decision. It is unclear what else, if anything, Mr. Rodriguez wishes he had been able to do, in light of his decision not to file any testimony or to attend the hearing.

E. The Agreed Route Adequately Reflects Community Values.

In his fifth point of error, Mr. Rodriguez asserts that the near-unanimous agreement of all the intervenors in this proceeding does not constitute any evidence of community values. Rather, he believes that a new evidentiary hearing should be held so that he can present "actual evidence supporting an actual expression of the full community's values."

There are three flaws with this argument.

First, Mr. Rodriguez waived his opportunity to present this evidence—three times. He could have presented his "actual evidence" of an "actual expression of the full community's values," by either (1) filing direct testimony and supporting exhibits to that effect, (2) attending

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[20] *McMaster v. Public Utility Commission of Texas*, 03-11-00571-CV, 2012 WL 3793257 (Tex. App.—Austin Aug. 31, 2012, no pet.) (P.U.C. PROC. R. 22.52(a)(3)).

[21] *See* McNair (Cardenas Realty)'s Ex. 2, Map of Link 362.

[22] *Id.*

[23] Tr. at 187.

[24] Order at 23-24 (Ordering Paragraph 11) (Apr. 11, 2014).

the evidentiary hearing and presenting evidence there, or (3) offering any additional material (e.g., a petition from residents in his community) either before or during the open meeting.[25] He did not do so and has not presented any valid reason why he did not. His failure to do so in a timely manner is not an adequate ground for finding he is now entitled to do so.

Second, the near-unanimous agreement of all the intervenors in this proceeding does in fact constitute evidence of community values, as has been historically determined by the Commission.[26] All interested and affected parties were given a chance to participate in this proceeding, but only those parties who actually intervene or provide comments (either to the Commission or to Joint Applicants as part of the open-house process) can serve as the basis for determining community values. The parties that participated in this proceeding reflect a diverse array of interests, from farmers to developers to local residents to cities. The Commission reasonably concluded that this diverse collection of interests in the Lower Rio Grande Valley constitutes evidence of community values.

Third, the Commission has broad authority to balance the various statutory factors. "Community values" is one of nine factors to be weighed under PURA § 37.056(c), and none of these statutory factors is intended to be absolute.[27] Thus, it is legally untenable to claim that the Commission erred in not giving sufficient weight to one factor over another.[28]

F. The Agreed Route Adequately Minimizes the Effect on Habitable Structures.

In his sixth point of error, Mr. Rodriguez claims that the Commission erred in not selecting the route which has the fewest number of habitable structures because that is not in accordance with the policy of "prudent avoidance," as set forth in Rule 25.101(b)(3)(B)(iv).

There are three flaws with this argument.

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[25] Open Meeting Tr. at 60 (Mar. 6, 2014) (alluding to a petition from 63 landowners as a reflection of community values, but noting "I'm not going to go ahead and present this petition, Your Honor").

[26] *See, e.g., 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) in Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger, and Wise Counties, Texas*, Docket No. 38140, Order at 9-10 (FoF 37 and 38) (Oct. 29, 2010) (citing support of the parties and accommodation by affected landowners as evidence of community values).

[27] *Dunn v. Public Utility Commission of Texas*, 246 S.W.3d 788, 794 (Tex. App.—Austin 2008, no pet.) (citing *Public Utility Commission of Texas v. Texland Electricity Co.*, 701 S.W.2d 261, 267 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

[28] *Id.* ("We will not substitute our judgment for that of the PUC on whether the mere potential of an environmental integrity issue should outweigh the PUC's findings of fact on such other statutory factors.").

First, it misstates the policy of prudent avoidance. Prudent avoidance is defined as "limiting of exposures to electric and magnetic fields that can be avoided with reasonable investment of money and effort."[29] In other words, it is a route-design standard against which routes are assessed (comparable to using or paralleling existing compatible rights-of-way and other linear features), not a metric that requires the selection of one route over another.[30] The question is not whether the route minimizes the number of habitable structures when compared to other routes, but instead whether each particular route properly limits exposure to all those electric and magnetic fields that can be avoided by reasonable investment of money and effort. So long as there is evidence that the agreed route takes into consideration and makes accommodation for these types of routing factors, there is no basis for rejecting the route on those grounds.[31] Here, there is ample evidence that the Agreed Parties' route conforms to the policy of prudent avoidance, including (1) the expert testimony to that effect,[32] and (2) the fact that the agreed route affects fewer than 1,000 habitable structures despite being routed through a densely populated and rapidly growing urban/suburban area.[33]

Second, as noted above, the Commission has broad authority to balance the various factors set forth in the rules.[34]

Third, as noted above, Mr. Rodriguez has already had two opportunities to present evidence on this point (in testimony or at the hearing), and has waived them both.

G. The Agreed Parties' Route Does Not Constitute a Private Taking.

In his last point of error, Mr. Rodriguez asserts that the Agreed Parties' route constitutes a taking not for public use, *i.e.*, a taking of property for transfer to a private entity for the primary purpose of economic development and enhancement of tax revenue,[35] because one purpose of the

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[29] P.U.C. SUBST. R. 25.101(a)(4).

[30] *See* P.U.C. SUBST. R. 25.101(b)(3)(B)(i)-(iii).

[31] *See Dunn v. Public Utility Commission of Texas*, 246 S.W.3d 788, 795-96 (Tex. App.—Austin 2008, no pet.) (rejecting a substantively identical challenge based on the "use of existing rights-of-way" criteria).

[32] Joint Applicants' Ex. 4, Direct Testimony of Rob R. Reid at 36-37; *see also* Joint Applicants' Ex. 1, Application, Attachment 1 at Section 4 (detailing the mitigation measures reviewed and considered to decrease the potential impacts of the Project).

[33] *See* Joint Applicants' Ex. 22, Environmental Data for Route 3S Modified/Revised – Agreed Route.

[34] *Dunn v. Public Utility Commission of Texas*, 246 S.W.3d 788, 795 (Tex. App.—Austin 2008, no pet.).

[35] TEX. CONST. art. I § 17(b).

line will be to provide additional transmission capacity to Brownsville to accommodate future projected load growth, particularly industrial load growth near the Port of Brownsville.

There are five flaws with this argument.

First, the taking of property by public utilities in general for transmission lines to serve the public is a "public use." Where the Legislature has declared a certain use to be a public use, such a declaration will be binding upon the courts "unless such use is clearly and palpably of a private character," *i.e.*, the condemnor's decision was "fraudulent, in bad faith, or arbitrary and capricious."[36] The Legislature has granted electric utilities the right to condemn rights-of-way and easements.[37] There is no evidence of fraud or bad faith here. Therefore, the Legislature's policy decision that transmission lines constitute a public use should stand.

Second, this particular use by Joint Applicants is a public use. A use is public when the public obtains some definite right or use in the undertaking to which the property is devoted.[38] It is immaterial whether the use is limited to a particular area (*i.e.*, the Lower Rio Grande Valley) or a limited number of people are likely to avail themselves of the use (*i.e.*, customers in the Lower Rio Grande Valley), so long as it is open to all who choose to do so.[39] In light of this, and because the character of the right inures to the public, transmission and distribution lines constitute public uses.[40]

Third, there is no legitimate basis for asserting the line is "primarily" private in character. The transmission line has been deemed "critical" to the reliability of the ERCOT grid,[41] is needed to provide additional transmission infrastructure to the City of Brownsville,[42] will strengthen both the short- and long-term integrity of the existing transmission network in the Lower Rio Grande Valley (including scenarios for catastrophic load shed and voltage collapse),[43] is intended to accommodate load growth and defer upgrades in both the western and eastern

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[36] *City of Austin v. Whittington*, 384 S.W.3d 766, 777 (Tex. 2012).

[37] TEX. UTIL. CODE § 181.004.

[38] *Whittington*, 384 S.W.3d at 789.

[39] *Id.*

[40] *Dyer v. Texas Electric Service Co.*, 680 S.W.2d 883, 884-85 (Tex. App.—El Paso 1984, no pet.).

[41] Joint Applicants' Ex. 1, Attachment 6 at 1; Order at 6 (FoF 29) (Apr. 11, 2014).

[42] Joint Applicants' Ex. 1, Attachment 6 at 6-8; Order at 6 (FoF 32) (Apr. 11, 2014).

[43] Joint Applicants' Ex. 1, Attachment 6 at 24; Order at 6 (FoF 31) (Apr. 11, 2014).

Lower Rio Grande Valley,[44] and will benefit electric customers throughout the Lower Rio Grande Valley and the entire ERCOT system.[45] These reasons all constitute factual bases for a finding that this transmission line will be for public use.

Fourth, this argument misunderstands Article I, Section 17 of the Texas Constitution. While providing adequate transmission service facilitates economic development, this sort of benefit is not the type prohibited by Article I, § 17 of the Texas Constitution. That provision, which was enacted after the *Kelo* decision,[46] is designed to prevent a robbing-Peter-to-pay-Paul situation, where the condemnor (such as a municipality) condemns land in order to "transfer [it] to a private entity" for the primary purpose of economic development.[47] Here, the utilities are not condemning easements in order to transfer them to a third-party entity for urban redevelopment or any other purpose. They will use the easements in order to build transmission lines for the good of the entire ERCOT system. In short, this provision does not apply.

Fifth, to the extent this issue is an appropriate consideration in this proceeding, it could have and should have been raised earlier. The application, testimony, and ERCOT Independent Review make clear the purpose of this transmission line. Despite the record, Mr. Rodriguez declined to raise it at any point in this proceeding, including when he appeared before the Commission. Not only does this mean that he has likely waived this issue, it also means that he is not entitled to a new hearing. Because he did not attend the hearing on the merits, he has no right to demand the Commission to order a new evidentiary hearing for him to present arguments he could have and should have presented months ago.[48]

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[44] Joint Applicants' Ex. 1, Attachment 6 at 22; Order at 6 (FoF 31-32, 35) (Apr. 11, 2014).

[45] Order at 6 (FoF 39) (Apr. 11, 2014).

[46] *See* Megan James, *Checking the Box Is Not Enough: The Impact of Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC and Texas's Eminent Domain Reforms on the Common Carrier Application Process,* 45 TEX. TECH L. REV. 959, 980 (2013) ("In direct response to the United States Supreme Court's invitation in the *Kelo* decision for a state to limit its utilization of eminent domain authority, and despite the broad interpretation of federal authority, the Texas Legislature amended the takings clause of the Texas Constitution."). *See also Kelo v. City of New London*, 545 U.S. 469, 489 (2005).

[47] TEX. CONST. art. 1 § 17.

[48] *Lone Star Gas Co. v. Sheaner*, 157 Tex. 508, 305 S.W.2d 150, 153 (1959) (non-fundamental errors cannot be asserted for the first time in a motion for rehearing); *Wells Fargo Bank, N.A. v. Leath*, 05-11-01425-CV, 2014 WL 1141248 (Tex. App.—Dallas Mar. 21, 2014, no. pet. h. ("Generally, we do not base our rulings on arguments raised for the first time on rehearing"); *Cajun Constructors, Inc. v. Velasco Drainage Dist.*, 380 S.W.3d 819, 821 n.1 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (courts do not consider non-jurisdictional issues raised for the first time on rehearing); *St. Luke's Episcopal Hosp. v. Poland*, 288 S.W.3d 38, 46 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (same); *Keightley v. Republic Insurance Co.*, 946 S.W.2d 124, 126 (Tex.

III. CONCLUSION AND PRAYER

Joint Applicants respectfully request that the Commission deny Mr. Rodriguez's motion for rehearing and grant Joint Applicants any other relief to which they have shown themselves justly entitled.

Respectfully submitted,

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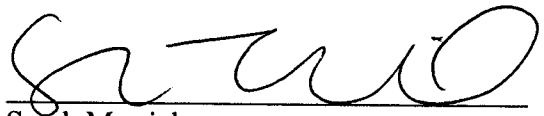
May 9, 2014

App.—Austin 1997) *judgment withdrawn*, 03-96-00073-CV, 1997 WL 420787 (Tex. App.—Austin July 24, 1997, no writ) (same).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record this 9th day of May, 2014 via the Commission's filing interchange, e-mail, or first-class mail in accordance with Order No. 4.



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