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

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JOINT APPLICATION OF ELECTRIC	§	BEFORE THE STATE OFFICE
TRANSMISSION TEXAS, LLC AND	§	
SHARYLAND UTILITIES TO AMEND	§	
THEIR CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY FOR	§	OF
THE NORTH EDINBURG TO LOMA	§	
ALTA DOUBLE-CIRCUIT 345-KV	§	
TRANSMISSION LINE IN HIDALGO	§	
AND CAMERON COUNTIES, TEXAS	§	ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 4
SETTING NEW DEADLINES;
INFORMING PARTIES OF PROCEDURAL MATTERS;
AND RULINGS ON CHALLENGES TO PARTY STATUS;

I. INTRODUCTION

On August 30, 2013, Administrative Law Judges (ALJs) Lilo Pomerleau and Paul Keeper convened a second prehearing conference. The prehearing conference was held following the issuance of written notice to the parties by the State Office of Administrative Hearings (SOAH). Electric Transmission Texas, LLC and Sharyland Utilities, Applicants; the staff (Staff) of the Public Utility Commission of Texas (Commission or PUC); and many intervenors who travelled from the Rio Grande Valley entered an appearance and participated at the prehearing conference.

This order includes important information and should be kept for future reference.

II. NEW SCHEDULE AND DEADLINES

The ALJs found good cause existed pursuant to P.U.C. Proc. R. 25.101(b)(3)(D) to extend the procedural schedule by approximately two months given the 45-day intervention date, the potential for the proposed transmission lines to impact approximately 500 to 1,500 habitable structures, and the hope that, if the application is approved, additional time may allow Applicants

to resolve issues associated with approval of the application. In a September 3, 2013 filing, Applicants agreed to extend the deadline for 52 days.¹

The following schedule **shall now apply** (important filing deadlines; conference dates; and the hearing date are highlighted).

Objections to Applicant's Direct Testimony	September 10, 2013
Replies to Objections	September 17, 2013
Discovery Deadline for Applicant's Direct Testimony	September 27, 2013
Statement Challenging Adequacy of Routes and Request for Preliminary Hearing on Route Adequacy	September 17, 2013
Testimony or Position Statement Challenging Route Adequacy (if any)	September 17, 2013
Testimony or Statement in Response to Route Adequacy Challenge	September 27, 2013
Preliminary Hearing on Adequacy of Routes (if necessary)	October 8, 2013
ALJ Ruling on Route Adequacy	October 18, 2013
Intervenor Direct Testimony (or Statement of Position)	October 25, 2013
Objections to Intervenor Direct Testimony	November 1, 2013
Replies to Objections	November 8, 2013
Discovery Deadline for Intervenor Direct Testimony	November 8, 2013
Settlement Conference	November 12, 2013
Staff Direct Testimony	November 8, 2013
Objections to Staff's Direct Testimony	November 15, 2013
Replies to Objections to Staff's Testimony	November 22, 2013
Discovery Deadline for Staff's Testimony	November 22, 2013
Intervenor Cross-Rebuttal Testimony	November 15, 2013
Objections to Intervenor Cross Testimony	November 22, 2013
Replies to Objections	December 2, 2013
Applicant's Rebuttal Testimony	November 15, 2013

¹ The ALJs note it is highly unusual to find good cause to extend an ERCOT-critical line. In this case, the ALJs believe the proposed routes affect a significant number of habitable structures and additional time is necessary to allow Applicants and intervenors time to conduct discovery and discuss any possible minor or major route adjustments. Applicants and Commission Staff did not object or oppose the ALJs' finding of good cause to extend the procedural schedule. All intervenors indicated support to extend the procedural schedule.

Objections to Applicant's Rebuttal Testimony	November 22, 2013
Replies to Objections to Applicant's Rebuttal Testimony	December 2, 2013
Discovery Deadline for Cross-Rebuttal Testimony	November 22, 2013
Discovery Deadline for Applicant's Rebuttal Testimony	November 22, 2013
Filing to Cross-Examine an Intervenor Witness	November 22, 2013
Hearing on the Merits	10:00 a.m., December 3-7, 2013
Initial Brief	December 13, 2013
Reply Brief	December 20, 2013
Proposal for Decision (PFD) Issued	January 30, 2014
Exceptions to PFD	February 6, 2014
Replies	February 13, 2014
Open Meeting	February 20, 2013

Settlement Conference. The settlement conference will be held at a location and time to be determined by Applicants, who will notify all parties. The ALJs do not participate in the settlement conferences.

The hearing is scheduled to last for five days (possibly into Saturday) but may conclude earlier. The hearing place will be determined in a future order, which will include more information about the hearing.

III. TESTIMONY AND STATEMENTS OF POSITION

Looking at the deadlines set out above, before the hearing on the merits is a period when parties are entitled to conduct discovery of each other's case. There are also deadlines set during this period. For instance, there is a deadline for intervenors to file their "direct testimony" or "statement of position." **This is one of the most important deadlines for intervenors because if an intervenor fails to file either testimony or a statement of position by the deadline, the intervenor will be dismissed as a party to this case and prohibited from further participation.**

In a traditional trial, a party offers their evidence through direct witness testimony, followed by a round of cross-examination. In this proceeding, however, parties will pre-file their

direct testimony and then be subject to cross-examination at the trial. Pre-filing direct testimony makes the hearing on the merits move much faster. For instance, because all parties will have the direct testimony of each witness before the hearing on the merits, any party or party representative that intends to cross-examine a witness must have all of their questions prepared before the hearing on the merits begins.

Intervenors may opt to file a statement of position instead of testimony. A statement of position is simply an intervenor's position in this case in support of or opposition to a particular link and/or route. A statement of position is not sworn-to, is not considered evidence, and is not subject to cross-examination. However, so long as an intervenor timely files a statement of position, they will be permitted to participate at the hearing on the merits, cross-examine witnesses, and file post-hearing briefing, if they wish. **Any intervenor who does not file with the Commission a statement of position or prefiled testimony by October 25, 2013, will not be allowed to participate further.**

Intervenors must understand that **the initial comment or letter you sent in to intervene is not a statement of position or testimony.** You may wish to use the same information again; however, you must file it and label the information as either a statement of position or testimony. Questions about this (or other matters) can be directed to the Commission Staff Jacob J. Lawler at 512-936-7275 or jacob.lawler@puc.texas.gov and John M. Zerwas, Jr. at 512-936-7297 or john.zerwas@puc.texas.gov. Commission Staff cannot provide legal advice or represent landowners or intervenors, but they can answer questions about the process and direct you to other examples of similar cases for reference. Attached to this order is the handout that the ALJs provided to parties.

Testimony and statements should address the Commission's rule, P.U.C. PROC. R. 25.107, and law, Public Utility Regulatory Act § 37.056, which the ALJ will consider in this case. The rules and applicable law are found at the Commission's website www.puc.state.tx.us.

The filing of testimony or a statement of position must be made with the Commission or PUC filing clerk—and not with SOAH or with the Applicants. The intervenor must file 13 copies of the documents with the Commission's filing clerk. Every document filed in this case must include the SOAH docket number (473-13-5207) and the PUC docket number (41606) at the top of the first page.

IV. SUSPENSION OF TRADITIONAL SERVICE REQUIREMENTS

Because there are a large number of intervenors, the ALJs have changed traditional service requirements.² As stated in SOAH Order No. 1, all documents filed in this case must be filed at the PUC. Normally, when a party files a document with the PUC, that party is required to serve or give a copy of that document to every other party. Traditional service, however, will not be required in this case. Instead, all parties are required to log onto the PUC's interchange as often as possible to see what has been filed and respond, if necessary.³ The ALJs strongly recommend checking the interchange daily or, at a minimum, once per week. Instructions for logging onto the interchange are found below.

Exceptions to the suspension of traditional service:

1. Any discovery request, response to a discovery request, motion, or response to a motion must be served on the party or parties that are the target of the motion or response. Service of these documents can be accomplished by email. However, if the emailing party is notified that there is a problem with an email delivery, the emailing party will immediately provide the document (serve it) by standard mail.
2. A party that is not represented by counsel may file a "motion for good cause to use traditional service." Parties that do not have access to the internet will be granted a good cause exception. **Motions for an exception must be filed no later than September 20, 2013.**

If a motion to use traditional service is granted, that party's contact information will be added to a traditional service list, which is a mailing list of all the parties

² See PUC Procedural Rule 22.5(b).

³ For most intervenors, there are only two matters to be concerned with before the hearing on the merits: (1) sending out or responding to discovery requests; and (2) meeting the deadline to file testimony or a statement of position.

who have been granted the right to use and be served by traditional service methods. Any time a document is filed in this case, it must be sent to every party on the traditional service list, using one of the official service methods set out in the PUC's procedural rules and attached to this order.

3. Parties that did not attend the hearing and did not provide an email address for the service list should immediately contact the ALJs' assistant, Ms. Hurley, at erin.hurley@soah.texas.gov and provide the SOAH docket number, your name, and email address. The ALJs will update the service list as necessary.

To retrieve a document from the PUC's Interchange on the internet, take these steps:

- Go to the Commission's website at <http://interchange.puc.state.tx.us>;
- Click "login" and type in the control number 41606 and press "enter";
- A list of documents filed in this docket will appear and you may access those documents by clicking on the document number.

V. HELPFUL TOPICS DISCUSSED AT THE PREHEARING CONFERENCE

Hearing Location

One intervenor suggested holding the hearing in the Rio Grande Valley as opposed to Austin. The Commission's rules provide that all hearings are to be held in Austin unless the Commission determines it is in the public interest to hold a hearing elsewhere.⁴ While the ALJs recognize that there are a large number of landowners who may wish to attend the hearing, there will be significant cost to the State of Texas to hold the hearing outside of Austin. The ALJs further note that there will be a date in the schedule requiring all parties to indicate whether they have cross examination for a witness who has filed testimony. If no party requests cross examination, a witness need not appear. Several entities that have intervened noted there are public facilities in the Rio Grande Valley and video conferencing could be set up. On or before September 20, 2013, a party may file a motion to change the venue of the hearing from Austin to a suitable location in the Rio Grande Valley. The motion should state the good cause for the change in venue and the location for the hearing. Alternatively, on or before September 20, 2013, a party with access to or a suggested location for video conferencing may propose such.

⁴ P.U.C. Proc. R. 22.201.

The Transmission Line Route

In this case, the Applicants have described many alternate routes for the proposed transmission line. The Applicants have stated that any of the proposed routes will meet the requirements of law. When the hearing is over, the ALJs will examine the facts in evidence and the PUC's statutory and regulatory criteria. The ALJs will issue a written proposal for decision (PFD). In the PFD, the ALJs will recommend to the PUC a route that the ALJs conclude best meets those criteria. The PUC has the right to accept the ALJs' recommendation, reject the ALJs' recommendation, or use some parts of the ALJs' recommendation. The PUC may select any route identified by the Applicants.

As noted previously, this line affects a large number of habitable structures, which is one important indication of a community's values. Intervenors are strongly encouraged to submit **evidence** concerning other factors as well, such as environmental integrity, existing land use (for instance, will the line affect the way the land is currently being used for farming, or as an airplane runway, etc.), aesthetics, archeological or historical features, or cost.

Samples from Other Transmission Line (CCN) Cases

At the prehearing conference, Commission Staff noted three previous cases that could provide useful samples for intervenors to view prefiled testimony, statements of position, and the ALJs' recommendations (the Proposal for Decision). Go to the Commission's interchange and type in these PUC docket numbers: 38230 (a Lone Star case with a tight deadline); 40728 (an ERCOT critical case similar to this one, which settled, therefore no Proposal for Decision); and 38597 (a large CCN case filed by Oncor).⁵

⁵ See the steps listed in Section IV. (above) setting out how to retrieve filings in this docket. Instead of using this PUC docket number, use these docket numbers.

Again, questions about the process or about the deadlines and requirements in this Order can be directed to counsel for Commission Staff or to the SOAH paralegal, Ms. Rhonda Faught, at 512-475-4996 or Rhonda.Faught@soah.texas.gov.

Working with the Applicants

In previous cases, the Commission has allowed utilities to make minor adjustments to the route of a proposed line to accommodate a landowner. In rare cases, the Commission has granted a major adjustment after consideration of specific facts and weighing any increase in costs. However, the ALJs strongly encourage a landowner to consult with the Applicants and/or Commission Staff to eliminate any confusion between what is found to be a major and minor adjustment. The ALJs also strongly encourage a landowner to conduct discovery and file testimony if they are requesting any type of adjustment because evidence will be needed for the ALJs to make any extraordinary recommendation.

VI. ADDITIONAL RULINGS MADE AT THE PREHEARING CONFERENCE

The Applicants challenged the party status of these persons (the Applicants listed the corresponding PUC Interchange item numbers): Gloria Gene Moore (Item 385), Betty J. Grubbs (Item 467), Leo Martinez (Item 488), Ruben Ochoa (Item 550), Francisco Leos (Item 566), Maria Leos (Item 567), Rosalinda Reyes (Item 568), Marlene Iverson (Item 635), Robert McLean (Item 648), Randy Rawlings (Item 649), James Searl (Item 650), Garry Richardson (Item 651), Maurine Smith (Item 652), Alphonse & Paulette Briand (Items 653 and 654), Kenneth Teichmeir (Item 675), Judy & Paul Egan (Item 676), Charleen Josifek (Item 677), Jesus Gutierrez (Item 758), Ludy Iturubiate (Item 762), and Yolanda and Thomas Gesswein (Item 793).

None of these persons responded to the Applicants' filed written challenges to these persons' requests for party status. By failing to respond, the persons also failed to demonstrate a

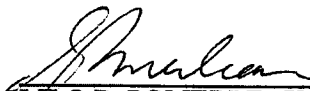
justiciable interest and standing to intervene in this docket. The ALJs sustain the Applicants' challenges to party status, and the ALJs dismiss these persons as parties.

In addition, the ALJs: (1) grant the Applicants' request to withdraw their challenges to the party status of Thomas E. McLemore, Martha McLemore, and Carla Canales; (2) grant the Applicants' request for an additional week in which to resolve their questions about the party status of Tim Reid of 941 Lion Lake Drive in Weslaco, Texas; and (3) grant the request of James McAllen to withdraw as a party.

SIGNED September 6, 2013



PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

INFORMATION FOR UNREPRESENTED PARTIES

Overview of Contested Case Process

- This contested case hearing will proceed like a trial – with witnesses testifying under oath, subject to cross-examination.
- The administrative law judge (ALJ) presides over this hearing process. The ALJ works for the State Office of Administrative Hearings (SOAH). SOAH is a state agency that provides impartial judges to preside over contested case hearings.
- At the end of the hearing process, the ALJ will make a written recommendation about the transmission line route. This is called a Proposal for Decision (PFD).
- The final decision maker will be the three-member Public Utility Commission (PUC or Commission).
- The staff of the PUC (Staff) participates in the hearing as a party. Staff is distinct from the three-member Commission that will ultimately decide this case.

Today's Prehearing Conference

- At today's prehearing conference, the judge will rule on motions to intervene and set the schedule for prehearing activities and the hearing itself.
- Following the prehearing conference, parties can remain to ask questions of Staff or the Applicant utility, exchange information, and engage in settlement talks.

The Prehearing Phase

- Two primary things happen before hearing: (1) discovery, and (2) filing of direct testimony and/or position statements. Deadlines for these activities will be established today.
- Discovery is the formalized exchange of information among parties.
- Unlike some trials in district court, every witness's direct testimony in this case will be in written form and filed prior to the hearing. At the hearing, each witness will take the stand and be sworn in, and the witness's direct testimony will be admitted if it complies with the rules of evidence. The witness will then be subject to cross-examination by the parties. (Sometimes, parties will waive cross-examination of a witness.)
- *Every party in this case must file either **testimony** or a **statement of position** according to the schedule that will be established.* Parties failing to do so will be dismissed and not allowed to participate further.
- **Testimony** is evidence and includes assertions of fact (for example, about the location of property, the history and use of property, etc.). A **position statement** is argument, not evidence. There will be no cross-examination at the hearing of a party who has only filed a position statement. Assertions of fact in a position statement cannot be considered by the ALJ unless they are in some other document or testimony admitted in evidence. A party filing a position statement may ask questions of testifying witnesses.

The Hearing

- The hearing will be convened in Austin at 10:00 a.m. on Tuesday, December 3, 2013 and is scheduled to last four days, through 5:00 p.m., Saturday, December 7, 2013.
- All witnesses who pre-filed testimony must appear at the hearing unless all parties waive cross examination.

- Pre-filed testimony will be admitted (subject to objections based on the rules of evidence), and witnesses will be cross-examined. Testimony not admitted because the witness failed to appear will be treated as a statement of position.

The Post-Hearing Phase

- After the hearing, parties will file written closing arguments (briefs) according to the deadlines that will be established in the schedule.
- The ALJ will issue the PFD recommending an outcome, including a route for the transmission line if the application is granted.
- The ALJ's analysis will be based on the facts (established through evidence introduced in the hearing) and the applicable law (involving a consideration of factors such as community values, number of habitable structures, recreational and park areas, historical and aesthetic values, environmental integrity, and use of compatible rights of way).
- The preferred route carries no special weight in the analysis. Any route consisting of identified links may be recommended and approved.
- Parties who disagree with the ALJ's proposal will be able to file written objections (exceptions) to the PFD.
- The Commission will make a decision at a meeting open to the public. The Commission can adopt or reject the ALJ's proposal. If the Commission rejects the ALJ's proposal, it will likely choose another route.

Filing and Serving Documents in the Case

- Whenever any party formally **files** any document in this case (such as a motion, request for discovery, response to discovery, testimony, or statement of position), it must file the document with the PUC.
- Filings at the Commission shall occur by 3:00 p.m. on the date in question unless otherwise specified.
- The procedures regarding **filing** are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper numbers of legible copies are presented to the PUC filing clerk for filing. All pleadings must contain both the SOAH and PUC Docket numbers to allow for efficient processing. (See the top of the first page of this information sheet.)
- Discovery requests and responses must be **filed** with the PUC, but only have to be **served** on the party to whom the request or response is directed.
- The PUC maintains an on-line document interchange that is a convenient way of keeping track of documents filed in a case. All PUC filings are available for viewing and downloading from the Commission's website at <http://interchange.puc.state.tx.us>. Once there, click "login" and type in the control number 41606 and press "enter." A list of documents filed in this docket will appear and you may access those documents by clicking on the document number, provided that the document number is underlined and in blue font.