



Control Number: 41606



Item Number: 963

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

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

**JOINT LANDOWNERS'**  
**STATEMENT CHALLENGING ADEQUACY OF ROUTES AND REQUEST FOR**  
**PRELIMINARY HEARING ON ROUTE ADEQUACY**

NOW COMES, Joint Landowners,<sup>1</sup> Intervenors in this proceeding, and file this Statement Challenging Adequacy of Routes and Request for Preliminary Hearing Route Adequacy (Statement and Request), and in support thereof would show:

**I.**

Pursuant to Order No.4, testimony and statements of position challenging the adequacy of routes presented to the Administrative Law Judge (ALJ) and the Commission and requests for a preliminary hearing to determine the adequacy of presented routes are due September 17, 2013. This Statement and Request is timely filed.

<sup>1</sup> The Joint Landowners are: Paramount Citrus II LLC; Paramount Citrus Packing Company LLC; Michael Rhodes; ML Rhodes, Ltd.; Rhodes Enterprises, Inc.; Jimmie and Barbara Steidinger; Anthony E. Gray; G and M Real Estates Co.; Durango Development, Inc.; Richard L. Gillett; Richard Gillett Family Trust; and Jean D. Strait Family LLC (collectively "Rhodes Alliance"); together with Fortco Properties, Ltd., Rio Fresh, Juan Lino Garza, and Garza Family Living Trust. The Joint Landowners are aligned for the purpose of challenging the adequacy of the routes presented by the Joint Applicants but may not be aligned at all later stages of this case; the alignment of the Intervenors for purposes of this Statement and Request should not be construed as an alignment for any other purpose.

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The Joint Landowners are filing expert testimony challenging route adequacy in conjunction herewith.<sup>2</sup>

## II.

### STATEMENT CHALLENGING ADEQUACY OF ROUTES

The Joint Landowners make the following statements of position regarding the geographic diversity of the routes Electric Transmission Texas (ETT) and Sharyland Utilities (Sharyland) (together, Joint Applicants) have proposed for consideration by the ALJ and Commission:

a. All of the routes proposed by the Joint Applicants are designed to pass through a designated "routing circle" that encompasses (though not concentrically) the South McAllen Substation. However, the relationship between the location of the existing South McAllen Substation and any of the alternative routes proposed by the Joint Applicants for the new North Edinburg-Loma Alta 345 kV line is not relevant for this Application. In fact, the "critical need" designation approved by the ERCOT Board of Directors for this Project did not include any connection of the South McAllen Substation to the proposed transmission line from North Edinburg to Loma Alta to be made as part of this project. Additionally, ERCOT Staff's analysis of the project assumed that the future connection to the North Edinburg to Loma Alta line would occur at the South McAllen Substation, not at a new substation as proposed in the Application. Therefore, the benefits of a connection at a new substation somewhere in an undefined proximity of the South McAllen station to the North Edinburg to Loma Alta transmission line has not been modeled by ERCOT staff or considered in the ERCOT stakeholder process. Given these facts, it is unreasonable for the North Edinburg to Loma Alta transmission line to be routed by considering a set of routes that are all designed to pass through a unilaterally designated "routing circle."

b. The Application unreasonably denies the ALJs and the Commission the opportunity to examine route alternatives of potentially significantly lower cost and routing impact than those that can be assembled from the route links that have been noticed in this

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<sup>2</sup> Expert Testimony being filed in conjunction with the Statement and Request is as follows; Route Adequacy Testimony of James Dauphinais, Route Adequacy Testimony of Rudi Reneike, and Route Adequacy Testimony of Brian Almon.

proceeding. Although there are some combination of links that can be assembled in a generally forward progressing manner from the Application that do not pass through the “routing circle”, these links are few and geographically constrained to a narrow corridor east of the City of McAllen. The Commission has previously provided guidance as to what it considers to be an adequate number of routes. “The Commission requires that a CCN application contain an adequate number of *reasonably differentiated* routes that allows a reasoned choice of route considering all the facts and circumstances presented.”<sup>3</sup> Furthermore, such analysis is not “simply a counting exercise .... Rather, the inquiry must touch on the quality of choice between the proposed routes: whether an adequate number of reasonably differentiated routes has been proposed in the application to allow a reasoned choice of route considering all the facts and circumstances presented.”<sup>4</sup> The Joint Landowners’ position is that these routes do not present a qualitatively diverse set of choices for the ALJ and the Commission.

c. The underlying cause of this issue was the decision by ERCOT to recommend that the proposed 345 kV transmission line be routed “in proximity” to the existing South McAllen 138 kV Substation without considering: (1) the additional dollar cost and other additional adverse routing impacts that would need to be incurred in order to route the proposed transmission line in proximity to South McAllen 138 kV Substation; and (2) the dollar cost that would need to be later incurred to connect the proposed 345 kV transmission line to South McAllen 138 kV Substation (including the cost for a new 345/138 kV transformer at that substation).<sup>5</sup> Although discovery in this case is ongoing,

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<sup>3</sup> *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line Within Denton County*, Docket No. 37616, Order at 1 (Jan. 21, 2011) (emphasis added).

<sup>4</sup> *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, at 5 (signed Oct. 31, 2006; filed Nov. 1, 2006) (“WCEC Order”).

<sup>5</sup> The Joint Applicants have not proposed to route the proposed 345 kV transmission line to South McAllen 138 kV Substation. Instead, they have proposed to route the 345 kV transmission line within a proximity circle that is placed with South McAllen Substation just inside its northern boundary. This would require

discovery conducted to date raises serious concerns about whether the benefits of a future connection at the South McAllen Substation (as modeled by ERCOT, although that is not what the Joint Applicants propose) are certain enough to justify a 345-kV connection when other transmission upgrade solutions are available to address future issues or concerns. Further, a witness for ERCOT has testified at deposition that there is no critical need for a connection at South McAllen, that the critically needed resolutions to transmission overload issues in the Brownsville area can be resolved by the North Edinburg to Loma Alta line regardless of any connection in the South McAllen area, and that the project was modeled for need solely with the inclusion of the hypothetical addition of 250 MW load in the Brownsville area.<sup>6</sup> The Joint Applicants themselves have admitted that the Commission may determine that there is no need to route the line in this case in proximity to South McAllen.<sup>7</sup> The Application, however, offers no routes for the Commission to approve that have not been designed expressly to traverse into a "routing circle" for which no methodological justification has been offered and was never considered much less endorsed by ERCOT staff or the ERCOT Board of Directors.<sup>8</sup>

### III.

#### PURPOSE FOR HEARING ON ROUTE ADEQUACY

The Order of Referral and Preliminary Order in this proceeding identified the need to determine that a sufficient number of geographically diverse routes are presented for consideration of the Application. SOAH Order No. 4, which establishes the procedural schedule in this docket, contemplates that a preliminary hearing on the adequacy of routes may be requested in this proceeding.

The Commission discussed the scope and purpose of the preliminary hearing on

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an entirely new substation and/or new 138 kV or 345 kV transmission lines to connect to either South McAllen 138 kV Substation or existing 138 kV transmission lines in the area.

<sup>6</sup> Deposition of Jeff Billo at 31-32, 34, 78-79, 101.

<sup>7</sup> Response to RFI Fortco 1-4 (b).

<sup>8</sup> Deposition of Jeff Billo at 69; Response to RFI Fortco 1-32.

adequacy of a CCN application in its Order on Appeal of Order No. 8 in the *Wood County* case.<sup>9</sup> The issue addressed in the *Wood County* appeal was whether the ALJ properly denied a request for a hearing regarding adequacy of routes. That case involved a proposed transmission line to a new substation. A preliminary hearing was requested based on the contention that all proposed routes were inadequate because there were alternative substation sites that would render the proposed routes unnecessary or unnecessarily expensive. The applicant responded that the application contained an adequate number of alternative routes, that the allegations regarding other substation sites were not factually supported, and that substation location certification is not required by the Commission's rules. The ALJ denied the request primarily because Commission certification is not required for substation siting and construction.

In the *Wood County* Order, the Commission ruled that a hearing on the adequacy of the application should be granted and that the location of the proposed substation should be considered in determining whether the application contained an adequate number of alternative routes.<sup>10</sup> The Commission concluded that "the basic intent of any preliminary hearing is to ensure the adequacy of the *application*, not the adequacy of the proposed routes."<sup>11</sup> The Commission defined the limited scope of the preliminary hearing when it stated "the issue to be addressed in the preliminary hearing is whether the application contains an adequate number of alternative routes to conduct a proper

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<sup>9</sup> *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 (signed October 31, 2006; filed Nov. 1, 2006) ("WCEC Order").

<sup>10</sup> WCEC Order at 6.

<sup>11</sup> WCEC Order at 5.

evaluation.”<sup>12</sup> The scope of the preliminary hearing on route adequacy is to eliminate inquiry at the hearing on the merits as to why other routes were not considered.<sup>13</sup> The Commission ruled in *Wood County* that a hearing on route adequacy was appropriate and, in that case, that alternate substation locations should be considered as part of route consideration.<sup>14</sup> Thus, the preliminary hearing is to determine whether the applicant has proposed reasonable alternative routes for the proposed project and, if so, whether the alternative routes are meaningfully different in the context of the relevant CCN criteria.

In its discussion of these hearings, the Commission rejected the proposition that adequacy of the application can be determined by merely counting the number of alternative routes.<sup>15</sup> The Commission explained that if alternative routes were presented each should be qualitatively different so that a real choice is actually presented.<sup>16</sup> The Commission’s examination will become more focused as the number of alternative routes lessens and as the similarity of the alternative routes increases.<sup>17</sup>

#### IV.

#### **REQUEST FOR PRELIMINARY HEARING ON ROUTE ADEQUACY**

The Joint Landowners respectfully request that the ALJs conduct a hearing on the adequacy of the routes proposed on October 8, 2013, as set forth in Order No. 4. The Joint Landowners also respectfully requests that the Joint Applicants be required to attend and to produce the witnesses who have filed testimony in their Direct Case.

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<sup>12</sup> WCEC Order at 5.

<sup>13</sup> WCEC Order at 6.

<sup>14</sup> WCEC Order at 6.

<sup>15</sup> WCEC Order at 5.

<sup>16</sup> *Id.*

<sup>17</sup> *See Id.* at 6.

V.

WHEREFORE, PREMISES CONSIDERED, the Joint Landowners respectfully request that the ALJs take notice of this Statement and the supporting expert route adequacy testimony being concurrently filed, that a preliminary hearing on the adequacy of the routes be conducted on October 8, 2013, that the Joint Applicants be required to produce witnesses as provided herein, and for such other and further relief to which they may be justly entitled.

Respectfully submitted,

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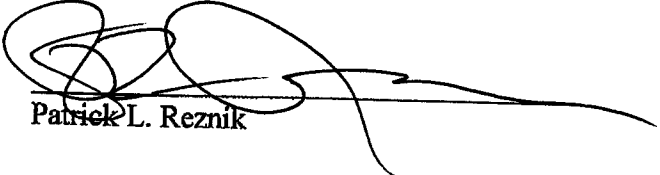
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record on this 17th day of September, 2013, in accordance with P.U.C. PROC. R. § 22.74.

  
Patrick L. Reznik