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APPLICATION OF ONCOR
ELECTRIC DELIVERY COMPANY,
LLC TO AMEND ITS CERTIFICATE
OF CONVENIENCE AND
NECESSITY FOR A PROPOSED 138-
KV TRANSMISSION LINE IN
DENTON, TARRANT AND WISE
COUNTIES (HICKS-ELIZABETH
CREEK CCN)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S RESPONSE TO
JOHNNY H. AND ELOISE VINSON'S AND CHISHOLM 2000, LP'S
PLEA TO JURISDICTION, MOTION TO DISMISS, MOTION FOR SUBMISSION OF
CERTIFIED QUESTION TO COMMISSION, AND PLEA FOR ABATEMENT

Comes now the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Johnny H. and Eloise Vinson's (the Vinsons') and Chisholm 2000, LP's (Chisholm's) Plea to Jurisdiction, Motion to Dismiss, Motion for Submission of Certified Question to Commission, and Plea in Abatement (Vinsons' Motion) and would show the following:

I. BACKGROUND

On February 27, 2014,¹ the Vinsons and Chisholm filed Vinsons' Motion in this proceeding. 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. Therefore, this response is timely filed.

II. DISCUSSION

A. Summary of Vinsons' Motion

In their motion, the Vinsons and Chisholm argued that certain language found in Oncor Electric Delivery Company, LLC's (Oncor's) application renders its notice to landowners

¹ The Plea to Jurisdiction, Motion to Dismiss, Motion for Submission of Certified Question to Commission, and Plea in Abatement (Vinsons' Motion) was file-stamped at 4:01 p.m. on February 26, 2014. Under P.U.C. PROC. R. 22.71(i), all documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer. Generally, documents filed after this 3:00 p.m. deadline are considered to be filed the following business day. Therefore, Vinsons' Motion, which was filed after 3:00 p.m. on February 26, 2014, should be considered filed and received by Staff on February 27, 2014.

insufficient and impairs the Commission's jurisdiction over this matter.² Additionally, Vinsons' Motion asserted that Oncor's application is insufficient and should be dismissed for failure to state a claim or other good cause.³ Finally, Vinsons' Motion requested that the Administrative Law Judge (ALJ) send this issue to the Commission as a certified question and/or abate the proceeding until resolution of this issue.⁴

B. Vinsons' Motion is Untimely Filed

Before considering the merits of Vinsons' Motion, it is necessary to determine whether this motion is procedurally proper. As discussed below, Staff believes that Vinsons' Motion is untimely filed and therefore should not be considered.

The deadline to file comments on the sufficiency of the application and notice has passed. In Order No. 1, the Commission's ALJ set February 3, 2014 as the deadline by which Staff and "[a]ny other party" must file comments on the sufficiency of the application and notice.⁵ Staff timely filed its comments on February 3 and 7, 2014. No other party filed comments. Accordingly, the Commission's ALJ issued Order No. 5 finding the application and notice sufficient.⁶ The Vinsons' Motion, insofar as it objects to the sufficiency of Oncor's application or notice,⁷ is a late-filed comment under the deadline established in Order No. 1.

Similarly, Vinsons' Motion is also late-filed to the extent that it is an appeal of Order No. 5. Under P.U.C. PROC. R. 22.123(a)(2), an appeal of an interim order must be made within 10 days of the order. Under this rule, the deadline for filing an appeal of Order No. 5 was February 20, 2014. Vinsons' Motion was filed after both the deadline to file comments and the deadline to file an appeal.

The Vinsons' Motion did not request leave for its late filing, nor did it request a good cause exception to the deadlines described above. Because no such requests were made, there is

² Johnny H. and Eloise Vinson's and Chisholm 2000, LP's Plea to Jurisdiction, Motion to Dismiss, Motion for Submission of Certified Question to Commission, and Plea in Abatement at 2,3,6-11 (Feb. 27, 2014) (Vinsons' Motion). *See, e.g.*, Vinsons' Motion at 8 ("The Commission lacks authority to deny landowners due process. Thus, without notice, the Commission lacks authority to decide the request and to grant the requested relief.")

³ *Id.* at 11-12.

⁴ *Id.* at 12-15

⁵ Order No. 1 at 4 (Jan. 8, 2014).

⁶ Order No. 5 at 1 (Feb. 10, 2014).

⁷ *See* Vinsons' Motion at 5-11.

no basis for a good cause exception for this late filing. Moreover, both the Vinsons and Chisholm filed motions to intervene within one week of Oncor's application being filed.⁸ Accordingly, these parties knew or should have known of the deadline established in Order No. 1 and the deadline to appeal Order No. 5. For these reasons, Staff does not believe that good cause exists for the lateness of Vinsons' Motion.

C. Notice and Application are Sufficient

Staff believes that Oncor's application and notice is sufficient, contrary to the assertions in Vinsons' Motion. The language that forms the basis for Vinsons' Motion is found in response to question 17, where Oncor states:

All routes filed with the application to be considered for Commission Approval are indicative in nature and are subject to modification during the construction and engineering phase of the project. The precise location of the route will be determined after access to property is granted and on-the-ground surveys are complete.⁹

Vinsons' Motion claimed that Oncor, by including this language, seeks to change the statutory and regulatory requirements governing Certificate of Convenience and Necessity (CCN) applications.¹⁰ Staff disagrees with this assertion. In fact, the standard language in Final Orders approving CCN applications confirms that routes may undergo minor modifications or deviations under certain circumstances.¹¹ Oncor's response to question 17, referenced above, acknowledges this fact. Accordingly, Staff does not believe that Oncor has changed the statutory or regulatory requirements by including the above-referenced language in its application.

⁸ Oncor's application was filed on January 7, 2014. The Vinsons and Chisholm filed motions to intervene on January 13, 2014.

⁹ Application of Oncor Electric Delivery Company, LLC to Amend Its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Denton, Tarrant and Wise Counties (Hicks to Elizabeth Creek CCN) at 13 (Jan. 7, 2014).

¹⁰ Vinsons' Motion at 3.

¹¹ See, e.g., Docket No. 40728, *Application of Electric Transmission Texas, LLC to Amend Its Certificate of Convenience and Necessity for the Proposed Lobo to Rio Bravo to North Edinburg 345-kV Double-Circuit Transmission Line in Webb, Zapata, Jim Hogg, Brooks, Starr, and Hidalgo Counties, Texas*, Final Order at 24 (May 9, 2013) ("ETT shall cooperate with directly affected landowners to implement minor deviations in the approved route ETT shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. . . .") (Emphasis added.)

D. Requests for a Certified Question and Abatement Should Be Denied

The request for a certified question to the Commission should be denied. As discussed above, Oncor's application presents no new question of policy, nor is an interpretation of the Commission's rules or applicable statutes necessary. Given that Oncor's application and notice are sufficient, and given that no need exists for a certified question, it follows that abatement is also unnecessary.

III. CONCLUSION

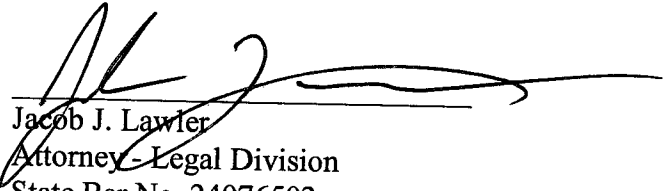
Staff recommends that Vinsons' Motion be rejected as a late-filed motion without good cause shown. If Vinsons' Motion is considered, Staff recommends that the motion be denied on the merits for the reasons stated above.

Dated: March 4, 2014

Respectfully Submitted,

Joseph P. Younger
Division Director
Legal Division

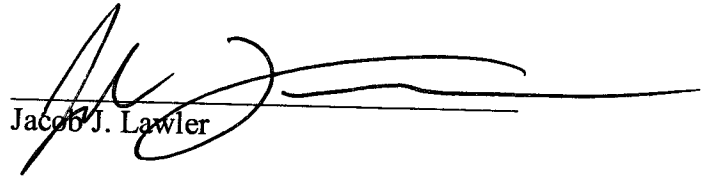
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 4, 2014 in accordance with P.U.C. Procedural Rule 22.74.



Jacob J. Lawler