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APPLICATION OF ONCOR ELECTRIC §
DELIVERY COMPANY, LLC TO AMEND §
A CERTIFICATE OF CONVENIENCE AND §
NECESSITY FOR A PROPOSED 138 KV §
TRANSMISSION LINE IN DENTON, §
TARRANT AND WISE COUNTIES, TEXAS § OF ADMINISTRATIVE HEARINGS

BEFORE THE STATE OFFICE

**REPLY OF ONCOR ELECTRIC DELIVERY COMPANY LLC TO
JOHNNY H. & ELOISE VINSON'S AND CHISHOLM 2000, LP'S
RESPONSE TO ONCOR'S FIRST AMENDED APPLICATION**

COMES NOW Oncor Electric Delivery Company LLC ("Oncor"), by and through its attorneys of record, and files its Response to Johnny H. and Eloise Vinson's and Chisholm 2000, LP's ("Vinson") Response to Oncor's First Amended Application. Oncor hereby incorporates by reference Oncor's original Response to Vinson's Plea to Jurisdiction, Motion to Dismiss, Motion for Submission of Certified Question to Commission, and Plea in Abatement ("original Response") as if fully set forth herein.

I.

1. Vinson's Complaints Regarding Oncor's Notice and Application Remain Barred by the Commission's Procedural Rules.

Vinson waived any objection to Oncor's notice or application. As detailed in Oncor's Response to the Vinson's Motion to Dismiss, Vinson failed to file objections prior to the deadline established in Order No. 1. Further Vinson failed to timely appeal Order No. 5 which found Oncor's notice and Application to be sufficient. Vinson provided no good cause for the untimeliness of its objections. Under the Public Utility Commission of Texas ("Commission") Procedural Rules, this fact alone requires dismissal of Vinson's Plea to Jurisdiction, Motion to Dismiss, Motion for Submission of Certified Question to Commission, and Plea in Abatement ("Motion to Dismiss").

2. None of the Issues Raised by Vinson Require a Commission Policy Determination at This Stage of the CCN proceeding.

All of the Vinson complaints focus on Oncor's authority after Commission approval of a route. Because the Vinson's policy question implicates activities *following* approval of Oncor's Certificate of Convenience and Necessity ("CCN"), resolution of this issue will have no impact

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on the processing of this CCN proceeding. The question Vinson wishes to pose to the Commission is:

Under a CCN Order, does an electric utility have the latitude to refine a Commission approved route to avoid an engineering constraint during the design and construction phase of a project?

Resolution of this alleged issue will have no impact on the process of determining if Oncor's application should be approved and which route, if any, should be selected.¹ The Honorable Administrative Law Judges ("ALJs") in this proceeding are tasked with making the factual determinations necessary to select which of Oncor's proposed routes, if any, should be approved. The CCN process through which the Honorable ALJs recommend a route to the Commission is well established and understood. Nothing in this process requires an answer to the policy question Vinson wishes to address.

Oncor proposed no modifications to any of its filed routes, is currently unaware of any conditions that would require modification, and isn't seeking approval for any specific modification. All of the standard information necessary for the Honorable ALJs and the Commission to make a project and route determination is provided in Oncor's application. As discussed in Oncor's original Response, Vinson and any other party that desires will have an opportunity to comment on and debate the scope of the final order in this docket through the proposed order and special exceptions process. Prior to this point of the proceeding, there is no need to address the Vinson policy question because the policy question will not impact the application approval or route selection process.

3. Vinson's Complaints and Concerns Have Already Been Heard and Recommended for Dismissal in Vinson's Private Complaint Docket.

As discussed at numerous places in Vinson's various Motions and Pleas, Vinson instituted a complaint proceeding against Oncor based on Oncor's construction of the Willow Creek – Hicks transmission line on Vinson's property.² Vinson advanced the same arguments in its complaint docket that it is advancing here. In both dockets Vinson claims that routes contain pinpoint precision when approved by the Commission and that no latitude exists for refinement of a Commission approved route even when engineering constraints are identified post-CCN

¹ Oncor contends no there is no uncertainty regarding the Commission's policy on this point.

² *Complaint of Johnny H. and Eloise Vinson Against Oncor Electric Delivery Company, LLC*, Docket No. 40953.

approval. In that proceeding, the Honorable ALJ Richard R. Wilfong recommended to the Commission that Vinson's complaint proceeding be dismissed. This decision was based on the facts presented during the hearing and an interpretation of the Commission's Final Order in the Willow Creek – Hicks CCN. In his Proposal for Decision ("PFD"), Judge Wilfong found that the Commission's Final Order provided flexibility to make adjustments after CCN approval when engineering constraints are encountered.³ Further, the PFD finds that modification to approved routes when necessary to avoid engineering constraints is standard utility practice and to find otherwise would be to disrupt the process for efficient construction of transmission lines in Texas.⁴ The full PFD is attached as Exhibit 1. Vinson should not be permitted to utilize this important reliability project as a method to get a second bite at the apple on his complaints regarding Oncor and Commission policy. Vinson's request for a certified question should be denied.

4. Vinson's Motion Seeks to Impose Requirements Beyond the Commission's Rules.

Vinson demands a precision to the CCN process that the Commission's Rules do not provide and the Commission's orders do not support. Commission Rules do not require that CCN applications contain legal descriptions of proposed routes or that an electric utility identify all engineering constraints. Such a requirement would both be impractical and physically impossible. As detailed in Oncor's original Response and in the attached PFD, electric utilities do not have access to private property when filing a CCN application. This legal limitation precludes a utility from conducting on-the-ground surveys to prepare metes and bounds legal descriptions of proposed routes. Without this data/description, a route cannot be precise and fixed as demanded by Vinson. Further, without on-the-ground surveys, the utility can only identify those engineering constraints that are open and apparent on the property or recorded in public record. Obscured constraints such as underground pipelines⁵, unmarked graves, obstacles hidden under tree canopy, endangered species habitat, or any number of other potential issues can only be identified when access to private property is available. The Commission is aware of this fact and commonly recognizes it in its Final Orders. For example, the findings of fact and

³ *Id.*, Proposal for Decision at 27 (Mar. 25, 2014).

⁴ *Id.* at 25 and 28.

⁵ While Oncor and other utilities utilize Railroad Commission and other publically available data to identify pipelines and oil/gas facilities, this data is commonly inaccurate and incomplete requiring in-the-field verification and adjustment.

conclusions of law contained in the Final Order approving Oncor's recent Brown – Newton CCN in Docket No. 37464 demonstrate that Vinson's demanded precision is inconsistent with Commission rules and practice.

Findings of Facts 95 and 96 identify that 1) the Commission doesn't require all obstacles to be identified during the CCN process, and 2) that Oncor has the flexibility to adjust an approved route to the extent necessary to accommodate obstacles.

95. There are some locations where elevation changes, road crossings, and river crossings will require consideration throughout the engineering design and construction phases of the project.

96. Oncor has sufficient flexibility to modify the route to address issues such as elevation changes, road crossings, and river crossings.⁶

In that same Final Order, referring to potential species habitat, the Commission recognized that Oncor would only do detailed investigations after approval of a final route, since investigation prior to route selection would be impractical. These same principals apply to engineering constraint investigations on private property.

131A. It is impractical prior to the approval of a route, for Oncor to make a determination of impact on the federally listed endangered whooping crane.

131G. TPWD's recommendation that Oncor perform a biological assessment before preferred routes are selected would require Oncor to assess the entire study area. It is impractical and unnecessary to undertake a comprehensive biological assessment of a study area before a final order identifying a route is issued by the Commission.⁷

Finally, the Commission's guidance on how Oncor should address archeological artifacts demonstrates that Vinson's demand that all routes must be precise, fixed, and all potential constraints identified is inconsistent with the Commission's rules and practice.

2. In the event Oncor or its contractors encounter any archaeological artifacts or other cultural resources during construction of the project, Oncor shall cease work immediately in the vicinity of the resource and report the discovery to the Texas Historical Commission (THC) and take action as directed by the THC.⁸

This Ordering Paragraph clearly contemplates that additional constraints may be identified after Commission approval and require action to be taken. The requirements Vinson is

⁶ *Application of Oncor Electric Delivery Company, LLC to Amend its Certificate of Convenience and Necessity for the Brown-Newton 345-kV CREZ Transmission Line in Brown, Mills, Lampasas, McCulloch, and San Saba Counties, Texas*, Docket No. 37464, Order at 17 (Apr. 5, 2010).

⁷ *Id.* at 22-23.

⁸ *Id.* at 27.

seeking to impugn on the CCN process are simply not contemplated in the Commission's rules and are inconsistent with the Commission's prior orders and practice.

5. The Language Included in Oncor's Application is Consistent with Commission Rules, Orders and Practice.

Oncor's application simply states that "[t]o the extent engineering obstacles are encountered after Commission approval, routes may be modified to the extent necessary to avoid the encountered obstacle." These two sentences are consistent with the Commission's Rules, orders, and practice. Further, these two sentences articulate the standard practice of electric utilities throughout the state. Oncor does not intend to change or alter Commission practice or policy. This language is merely an acknowledgment and notice to potential parties that all variables cannot be identified in a CCN application and that some obstacles may require additional action during the engineering and construction process following CCN approval.

II.

For the foregoing reasons, Oncor respectfully requests that Your Honor deny 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. Oncor further requests that it be granted such other and further relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been hand-delivered or sent via courier service, email, fax, overnight delivery, or first class United States mail, postage prepaid, to all parties of record in this proceeding, on this the 27 day of March, 2014.

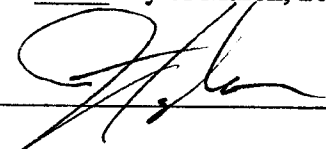


EXHIBIT 1

**SOAH DOCKET NO. 473-13-2490
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COMPLAINT OF JOHNNY H. AND ELOISE VINSON AGAINST ONCOR ELECTRIC DELIVERY COMPANY, LLC	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**SOAH DOCKET NO. 473-13-2490
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COMPLAINT OF JOHNNY H. AND ELOISE VINSON AGAINST ONCOR ELECTRIC DELIVERY COMPANY, LLC	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROPOSAL FOR DECISION
PHASE I**

I. INTRODUCTION

Johnny H. and Eloise Vinson (Vinsons) filed a complaint with the Public Utility Commission of Texas (Commission) against Oncor Electric Delivery Company, LLC (Oncor) alleging that Oncor deviated from the route approved by the Commission in Docket No. 38324¹ for the portion of the Willow Creek to Hicks 345 kilovolt (kV) Competitive Renewable Energy Zone (CREZ) transmission line (WC-Hicks Line) constructed across the Vinsons' property. The Administrative Law Judge (ALJ) finds that Oncor designed and constructed the WC-Hicks Line consistent with the route approved by the Commission considering the engineering constraints encountered by Oncor's engineers and good utility practice for safe and reliable operation.

II. BACKGROUND

The Vinsons own more than 3,500 acres of land northeast of Eagle Mountain Lake in Wise County, Texas.² Their ranch is used primarily for cattle and oil and gas production.³ When Oncor filed Docket No. 38324 to amend its Certificate of Convenience and Necessity (CCN) to construct the 40-mile WC-Hicks Line, multiple routes crossed the Vinsons' property.⁴ It was

¹ Application of Oncor Electric Delivery Company, LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek – Hicks 345-kV CREZ Transmission Line in Denton, Parker, Tarrant, and Wise Counties, Docket No. 38324 (Dec. 13, 2010).

² See *e.g.* Vinson Ex. 1, depicting the Vinsons' property (which includes the Rolling V Ranch) in Wise County, Texas; Oncor Ex. 1 (Buck Direct) at 12.

³ Tr. at 101-02.

⁴ Docket No. 38324, Application (Jun. 16, 2010).

inevitable that the WC-Hicks Line would cross the Vinsons' property due to its proximity to the terminus, location adjacent to the lake, and vast size.⁵ Because the proposed CREZ line affected their property, the Vinsons intervened and actively participated in that docket.

As the hearing on the merits commenced in Docket No. 38324 on October 4, 2010, the Vinsons, Oncor, and other affected parties announced that a unanimous settlement had been reached regarding the routing of the CREZ line.⁶ Ultimately, the agreement was memorialized in a written settlement agreement (Settlement Agreement) filed by Oncor on October 14, 2010.⁷ The Settlement Agreement included as Exhibit A, a detailed map (Settlement Map) that showed the location of the settlement route. The settlement route was based on Route 368 in Oncor's Application and was referred to as "Modified Route 368." It included modified Links ZZ, BBB, and EEE. These modified links were realigned to allow Oncor to under-build existing transmission facilities. The portion of the proposed line that crossed the northwest corner of the Vinsons' property was to be moved and realigned with an existing 69-kV transmission line owned by Brazos Electric Cooperative, Inc. (Brazos).

Between the hearing on the merits and November 5, 2010, the Vinsons and Oncor continued to negotiate several issues, including the routing of the transmission line. For example, on October 6, 2010, counsel for the Vinsons⁸ informed Oncor of several "deal points" needing finalization before the Vinsons would be able to sign the "main settlement agreement."⁹ On October 13, 2010, counsel for the Vinsons acknowledged, among other things, that the number and location of gas pipelines on the Vinsons' property was unknown and discussed possible routing options across certain Vinson tracts.¹⁰ On November 4, 2010, counsel for the Vinsons sent Oncor another possible route modification and stated that they hoped to get the

⁵ Oncor Ex. 1 (Buck Direct) at 12.

⁶ Docket No. 38324, Settlement Agreement at 1 (Oct. 14, 2010).

⁷ *Id.*

⁸ In Docket No. 38324, the Vinsons, Randy Scroggins, and Bud Vinson were represented by Mike Warren, while the Rolling V Ranch Water Control Improvement District No. 1, a Vinson-affiliated entity, was represented by Stephen Dickman. Tr. at 31. While technically serving different parties, Messrs. Warren and Dickman jointly represented the Vinson-related interests throughout Docket No. 38324. *Id.*

⁹ Oncor Ex. 10 at 4.

¹⁰ Oncor Ex. 7 at 5.

matter fully settled the next day.¹¹ The Vinsons signed the Settlement Agreement shortly thereafter.¹²

On November 2, 2010, while negotiations with the Vinsons were still ongoing, Oncor submitted a proposed final order to Commission Staff (Proposed Order) taking into consideration input from the settling parties and giving them an opportunity to file proposed corrections or exceptions.¹³ The Vinsons notified Oncor that they would seek to have the following underlined language added to Finding of Fact No. 44 in the Proposed Order:

44. Oncor will underbuild on the same structures as the Proposed Transmission Line Project the existing Oncor 138-kV Sunset - Rhome transmission line on a portion of Link ZZ, and Links BBB and EEE (as those links have been modified by the Settlement Agreement or by agreement with landowners) until approximately the southern border of Tract 154.¹⁴

Oncor did not object, and the Vinsons filed their Joint Request for Corrections, stating that the parenthetical language was needed to reflect that Links ZZ, BBB, and EEE are “modified,” as depicted in the map attached to the Settlement Agreement.¹⁵ The Vinsons requested no other changes to the Proposed Order. Specifically, they did not object to or ask the Commission to: (1) change the order to reflect that any other route links were modified; (2) modify Finding of Fact No. 43 (which discusses underbuilding on non-modified Link PPPP); or (3) modify Finding of Fact No. 78 (which discusses Oncor’s ability to “resolve” engineering constraints during the “design and construction phase” of the WC-Hicks Line).

¹¹ Oncor Ex. 8 at 5.

¹² Tr. at 38-40, 355-56. The Settlement Agreement did not change once it was originally filed on November 14, 2010.

¹³ Docket No. 38324, Proposed Order at 1 (Nov. 2, 2010).

¹⁴ Oncor Ex. 9 at 5.

¹⁵ Oncor Ex. 12 at 2-4.

On December 13, 2010, the Commission adopted the Vinsons' request and entered its Final Order in Docket No. 38324 (CCN Order).¹⁶ The CCN Order adopted the Settlement Route referring to it as both the "settlement route" and the "approved route." Having completed the CCN process, Oncor proceeded with the final stages of the CREZ project: design and construction.¹⁷

This complaint case centers upon Oncor's design and construction of the WC-Hicks Line in the northwest corner of the Vinsons' property.¹⁸ Early in the design phase of the project, Oncor's engineers identified numerous gas and water pipelines in the vicinity of the Brazos 69-kV transmission line on the Vinsons' property.¹⁹ Despite the parties awareness that pipelines existed in the immediate vicinity, these pipeline easements were not all recorded and the exact locations were unknown until Oncor's surveying crews were able to make a physical inspection and survey the Vinsons' property.²⁰ The physical location of the pipelines and their easements created an engineering constraint for construction of the WC-Hicks Line. Based on these routing constraints and a shortage of right-of-way to the north of the pipeline corridor, Oncor determined that the WC-Hicks Line could not be safely constructed on top of the Brazos 69-kV transmission line, as the Vinsons contend the Commission ordered.²¹ Instead, Oncor sited the line in an unobstructed area located, on average, approximately 150 feet south of the existing Brazos 69-kV transmission line, parallel to the existing gas and water pipelines.²² After extensive negotiations with the Vinsons, Oncor proceeded to condemnation for the right-of-way.²³ The Special Commissioners' award in that proceeding included compensation for the taken easement

¹⁶ Docket No. 38324, Order (Dec. 13, 2010). Commissioner Kenneth Anderson proposed inclusion of the Vinsons' change in a memo filed in Docket No. 38324 on December 1, 2010, in anticipation of discussion of the case at the next open meeting. *See* Docket No. 38324, Memo from Commissioner Anderson (Dec. 1, 2010). The memo was discussed and agreed to by the other Commissioners at the December 8, 2010 Open Meeting. *See* Open Meeting Tr. at 77-78 (Dec. 8, 2010).

¹⁷ The transmission line location identification process, including approval of a CCN, design and construction, is reflected on the pyramid diagram used as an exhibit at the Hearing on the Merits. *See* Vinson Ex. 9.

¹⁸ Tr. 44, 93, 279-80, 361-63.

¹⁹ Tr. 439-41.

²⁰ *Id.*

²¹ Tr. 409, 439-41, 580, 639-40, 654.

²² Tr. 409, 439-41, 580, 639-40, 654.

²³ Tr. 98-99.

as well as a narrow strip of land, encompassing approximately 10 acres, located between the right-of-way for the WC-Hicks Line condemned by Oncor and the existing pipeline easements.²⁴ Oncor completed construction of the WC-Hicks Line on June 30, 2013, and it was energized the same day.²⁵ At the present time, the Brazos 69-kV transmission line and the WC-Hicks Line are both running parallel across the Vinsons' property; however, Oncor intends to underbuild the Brazos 69-kV line on the monopoles for the WC-Hicks Line and remove the existing 69-kV structures in accordance with the CCN Order once the disputes between the parties are resolved.²⁶ The right-of-way easement for the existing Brazos 69-kV transmission line will then revert to the Vinsons.

III. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

This case is the third complaint relating to the WC-Hicks Line brought by the Vinsons against Oncor. In the first complaint case, the Vinsons complained that Oncor was refusing to underbuild the Brazos 69-kV transmission line and the Oncor 138-kV Sunset-Rhome transmission line on the new 345-kV monopoles for the WC-Hicks Line.²⁷ When Oncor reaffirmed its intent to underbuild the two transmission lines the case was dismissed.²⁸ In the second complaint case, the Vinsons alleged that Oncor failed to comply with Paragraphs 9 and 17 of the CCN Order by not cooperating with the Vinsons to implement a minor deviation to avoid the creation of a severed area between the existing pipeline easements and the right-of-way

²⁴ Tr. at 812; *see also Oncor Electric Delivery Company, LLC v. Johnny H. Vinson and Eloise Sanders Vinson*, No. CV-5660, Decision and Award of Special Commissioners (Cnty. Ct. at Law No. 2, Wise County, Tex., Aug. 28, 2012).

²⁵ Oncor Ex. 1 (Buck Direct) at 4-5.

²⁶ Tr. at 480.

²⁷ Complaint of Johnny H. Vinson, Eloise Vinson, and Chisholm 2000 LP Against Oncor Electric Delivery Company, LLC, Docket No. 40316, Complaint (Apr. 12, 2012).

²⁸ Docket No. 40316, Oncor's Response at 1-6 (May 7, 2012); Order at 1-2 (Jun. 4, 2012).

for the WC-Hicks Line.²⁹ The complaint was dismissed due to the Vinsons' failure to present their case for informal resolution.³⁰

On November 12, 2012, the Vinsons filed the instant proceeding, re-alleging their claim that Oncor had failed to cooperate to eliminate the severed area between the existing pipeline easements and Oncor's newly acquired right-of-way for the WC-Hicks Line.³¹ Oncor filed a motion to dismiss, the parties briefed the issues, and the Commission entered a Preliminary Order.³² Five days later, on the eve of the first Prehearing Conference in this docket, the Vinsons filed an amended complaint, alleging for the first time that Oncor had deviated from the route approved by the CCN Order.³³ At the Prehearing Conference the following day, the ALJ requested that the parties submit supplemental briefing on whether additional issues needed to be addressed in light of the new claim and additional requests for relief.³⁴ The case was referred back to the Commission, which, after additional briefing, entered its Amended Preliminary Order.³⁵

The Amended Preliminary Order splits this proceeding into two phases.³⁶ The first phase relates to questions surrounding the location of the route approved by the Commission's Order in Docket No. 38324 relative to the location of the CREZ transmission line as constructed, while the second phase relates to questions concerning the Vinsons' consent to the routing of the line.³⁷

²⁹ Formal Complaint Against Oncor Electric Delivery, LLC Regarding the Order of the Public Utility Commission of Texas in Docket No. 38324, Docket No. 40671, Complaint at 1-3 (Aug. 22, 2012).

³⁰ Docket No. 40671, Order No. 2 Dismissing Proceeding at 1-2 (Oct. 15, 2012). Oncor witnesses testified that the severed area is caused by pipelines farther west of the Vinson tracts, which do not run in a straight line, making it impossible for a transmission line right-of-way to fully abut the pipeline easements at every point. Tr. at 639-40.

³¹ Complaint of Johnny H. Vinson and Eloise Vinson Against Oncor Electric Delivery Company, LLC, Docket No. 40953, Complaint at 1-4 (Nov. 12, 2012).

³² Docket No. 40953, Preliminary Order at 1-2 (Mar. 1, 2013).

³³ Docket No. 40953, Amended Complaint at 9-12 (Mar. 6, 2013).

³⁴ Docket No. 40953, SOAH Order No. 2 Requesting List of Additional Issues at 1 (Mar. 11, 2013).

³⁵ Docket No. 40953, Amended Preliminary Order (May 21, 2013).

³⁶ *Id.* at 2, 10-12.

³⁷ *Id.*

The Commission provided five issues to be addressed during Phase I of this proceeding:

- (1) What is the location of the Settlement Route, as it crosses the Vinsons' property, approved by the Commission in Docket No. 38324? In answering this issue, please address the location relative to other existing easements on the property, property lines, and other routes proposed in Docket No. 38324.
- (2) How precisely can the approved Settlement Route be located on the ground given the scale of the maps that identify the Settlement Route?
- (3) Has Oncor begun construction of its transmission line on the Vinsons' property? If so, when did it start and when did it complete construction or when does it anticipate completing construction on the Vinsons' property? If not, when does Oncor anticipate starting and completing construction on the Vinsons' property?
- (4) When does Oncor anticipate energizing the transmission line?
- (5) Has Oncor deviated from, or will Oncor's planned route deviate from, the Settlement Route approved by the Commission in Docket No. 38324 on the Vinsons property? If so, what is the location of the deviated route in relation to the Commission-approved route?

There is no dispute that construction of the WC-Hicks Line is complete and the line has been energized (issues identified as 3 & 4 above).³⁸ As to each of the remaining Phase I issues: (1) the location of the Settlement Route as approved by the Commission, (2) how precisely the approved route can be located on the ground, and (3) whether the as-built location of the WC-Hicks Line deviates from the Commission-approved route, the ALJ finds it necessary that they be considered in relation to an over-arching issue: *What latitude, if any, did the CCN Order provide for Oncor to adjust the as-constructed location of the WC-Hicks Line to avoid engineering constraints encountered during the design and construction phases of the CREZ project?* These issues are addressed below.

The Phase I hearing on the merits was held at the State Office of Administrative Hearings (SOAH) on December 12, 13, and 16, 2013, before SOAH ALJ Richard R. Wilfong. Oncor was represented by Matthew C. Henry and Myles F. Reynolds, attorneys. The Vinsons were represented by James Z. Brazell, attorney. Commission Staff was represented by Kristi J.

³⁸ Oncor Ex. 1 (Buck Direct) at 4-5.

Denny, staff attorney. The record closed on February 4, 2014, following the parties' post-hearing briefing.

Notice was not contested, so those matters are addressed in the findings of fact and conclusions of law without discussion. The Commission has jurisdiction over Vinsons' complaint pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code §§ 14.001, 14.051, 15.051, 17.157(a), and 36.004. SOAH has jurisdiction to conduct a hearing and issue a proposal for decision pursuant to PURA § 14.053 and Texas Government Code §§ 2001.058 and 2003.049.

IV. FIRST PHASE ISSUES

- A. **What is the location of the Settlement Route, as it crosses the Vinsons' property, approved by the Commission in Docket No. 38324? In answering this issue, please address the location relative to other existing easements on the property, property lines, and other routes proposed in Docket No. 38324.**

1. **Evidence and Argument**

The Vinsons argued the evidence is undisputable that the location of the Settlement Route approved by the Commission in Docket No. 38324 is on the Brazos 69-kV transmission line right-of-way where it crosses the northwest corner of their property.

Gary O. Tidmore, the Vinsons' personal representative, testified that the Settlement Map clearly shows the WC-Hicks Line was to be constructed on or along the centerline of the Brazos 69-kV transmission line.³⁹ He explained that the Brazos 69-kV transmission line was and is an existing feature on the ground that can be physically located without any question or difficulty. Oncor drew the brown dashed line on the Settlement Map to represent that existing location. Oncor's drawing shows the dashed, tan Brazos 69-kV line coming in from the west and lining up directly on center with the dashed green line that depicts the Settlement Route. It then shows the Brazos line exiting the Settlement Route just to the west of FM 3433 where the CREZ line turns

³⁹ Vinson Ex. 2 (Tidmore Direct) at 30; Exhibit GOT-4.

and goes in a southeasterly direction.⁴⁰ Oncor's drawing then shows the Brazos 69-kV line continuing almost due east just to the north of the Rhome Water Tower. Mr. Tidmore testified that the Settlement Map is very clear: it shows the Settlement Route where the line was moved northward to be located on or along the centerline of the existing Brazos transmission line. It shows this with a significant, and perceptible, degree of precision and accuracy.⁴¹ The map's legend clearly identifies the section of the Settlement Route and the Brazos 69-kV transmission line. The Vinsons further argued that neither the Settlement Agreement nor the Settlement Map include any qualifications, disclaimers, notes, caveats, or warnings indicating that the WC-Hicks Line might move or deviate from the route depicted on the Settlement Map.⁴²

Mr. Tidmore pointed out that Oncor prepared the Settlement Agreement, the Settlement Map, and the Draft Order. Thus, he argued, Oncor unequivocally represented to the parties to the Settlement Agreement and to the Commission that the WC-Hicks Line was to be constructed on or along the centerline of the Brazos 69-kV transmission line.⁴³

Mr. Tidmore asserted there was nothing in the Settlement Agreement or on the Settlement Map indicating that the Settlement Route was "merely indicative," "general," "imprecise," subject to "adjustment," subject to "reroute," advisory, or merely suggestive, as claimed by Oncor. The parties relied on the Settlement Map in joining the Settlement Agreement. Thus, Mr. Tidmore concluded that the Settlement Map fixes the precise location of the Settlement Route to which the parties agreed.⁴⁴

Mr. Tidmore further testified that regardless of what Oncor may now contend about the accuracy of the Settlement Map, Oncor represented to the Commission, to the Staff, to the Vinsons, and to all the parties to the Settlement Agreement that the WC-Hicks Line was to be

⁴⁰ *Id.*

⁴¹ Vinson Ex. 2 (Tidmore Direct) at 30; Exhibit GOT-4.

⁴² See Tr. 466-70 (Oncor witness Ellen Buck acknowledged that there were no warnings or caveats advising landowners that the as-built location could be different than the location approved in the Order).

⁴³ Vinson Ex. 2 (Tidmore Direct) at 34-36; Tr. at 393-94 (Buck cross).

⁴⁴ Vinson Ex. 2 (Tidmore Direct) at 12-13, 34-36; Exhibit GOT-4.

located on or along the centerline of the existing Brazos 69-kV transmission line.⁴⁵ The Vinsons and the other parties relied on that representation and entered into the Settlement Agreement on the basis of that representation. The Commission also relied on Oncor's representation and issued the Order based on that same representation.

As further evidence that the approved Settlement Route was aligned with the centerline of the Brazos 69-kV transmission line, Mr. Tidmore explained that Oncor built a segment of the new WC-Hicks Line directly on or along the centerline of an existing Oncor 138-kV line south and east of the Brazos segment on the Vinson property and underbuilt the 138-kV line on the new WC-Hicks Line on that segment. The Settlement Map showed the representation of Oncor's 138-kV transmission line in precisely the same manner (as a green dashed line aligned on the same alignment as the existing transmission line) as it showed the representation of the Brazos 69-kV transmission line. When Oncor built the WC-Hicks Line on the 138-kV segment, Oncor did exactly as it had represented on the Settlement Map: it built the WC-Hicks Line on or along the centerline of the existing 138-kV transmission line as depicted in the Settlement Map.⁴⁶ Vinsons argued that because the representations of the alignments of the two segments are the same, both segments should have been given the same treatment, indicating that the Brazos segment was intended to be built on the centerline of the Brazos 69-kV transmission line just as the 138-kV segment was intended to be built on the centerline of the 138-kV transmission line.

Additionally, Vinsons argued that the Brazos 69-kV transmission line stands in place and is operating in close proximity to the existing pipelines which is conclusive evidence that locating the WC-Hicks Line on or along the centerline of the Brazos 69-kV transmission line as agreed in the Settlement Agreement, is feasible and not prohibited by any code, standard, or engineering practice.

Vinson witness Harold L. Hughes, Jr. opined that maps are the most important item in the preparation of a CCN application, explaining that their importance is indicated by the Commission's requirement for a map to be submitted with a CCN Application, prepared in the

⁴⁵ *Id.*

⁴⁶ Vinson Ex. 1; Vinson Ex. 2 (Tidmore Direct) Exhibit GOT-4.

manner set forth in Paragraph 19 of the CCN Application Form. Mr. Hughes went on to note that, as stated in CCN Order Finding of Fact No. 29, the Commission approved the Settlement Route as depicted in the Settlement Map attached to the Settlement Agreement:

29. During the first day of the hearing on the merits, which commenced on October 4, 2010, Oncor reached an agreement with all parties participating in the hearing that resolved all the routing issues in this docket. As part of this agreement (settlement agreement) the settling parties agreed to support approval of alternative route 368 (settlement route), **as depicted in the map attached to the settlement agreement.** (Emphasis added.)

Mr. Hughes testified it is evident from Finding of Fact No. 29 that both the parties and the Commission relied on the Settlement Map as showing the precise location of the Settlement Route. He further testified that if a utility determines that it is necessary to adjust the actual location of the transmission line during the design and construction phase of the project due to an engineering constraint, the utility must either obtain the consent of the landowner, or the approval of the Commission, to make the adjustment, or otherwise be in violation of the CCN Order.⁴⁷

Vinson witness and former Commission Chairman, Robert W. Gee supported the Vinsons' claim that the location of the Settlement Route is on the right-of-way of the Brazos 69-kV transmission line. Mr. Gee recounted the importance of the mapping process in Commission CCN proceedings, observing that mapping is critical to resolving the interests between the utility and the affected landowners in such proceedings.⁴⁸ He opined that the parties' ability to rely on maps to determine the final route of a contested transmission line in a certification proceeding is essential to resolving disputes between the utility and the affected landowners in CCN proceedings. He noted that the certification process is by necessity an extended, highly fact-intensive process because, ultimately, it results in the taking of private property by eminent domain. For that reason, maps used during the process must clearly articulate the positions of the parties, as well as the line ultimately agreed upon in a settlement to allow the Commission to render a decision. Mr. Gee noted that if the Commission were to

⁴⁷ Tr. at 256-58.

⁴⁸ Vinson Ex. 5 (Gee Direct) at 4-6.

approve a settlement agreement to resolve the location of a contested line but employ an ambiguous map that allowed differing interpretations regarding the exact location of this approved line, as claimed here by Oncor, such an outcome would thwart the settlement and certification process, and potentially render meaningless a Commission order determining the line's location.⁴⁹

Mr. Gee observed that sound public policy:

- entitles parties to rely on settlements and on Commission orders approving those settlements;
- requires the Commission to ensure the finality of its orders so that parties know where they stand once a Commission order is entered. that do not leave their meaning open to interpretation; and
- requires that the Settlement Agreement be regarded as the final authority determining the ultimate location of a "settled" transmission line.⁵⁰

He further opined that if parties entering Commission settlement agreements cannot rely on such agreements to determine their adjudicated rights and responsibilities, they would be discouraged from entering into such settlement agreements, a result that would be antithetical to sound public policy.⁵¹

Mr. Gee concluded that the Vinson witnesses, Mr. Tidmore, Mr. Hughes, and Mr. Poth, relied on the express language of the CCN Order approving the settlement in Docket No. 38324, the Settlement Map referenced by that order, or both to determine which route was chosen by the Commission.⁵² In his opinion, the Vinson witnesses, exercising good faith, read the language of the CCN Order approving the Settlement Agreement and the referenced Settlement Map in reaching their conclusions regarding the location of the Settlement Route and whether Oncor

⁴⁹ Vinson Ex. 5 (Gee Direct) at 5.

⁵⁰ Vinson Ex. 5 (Gee Direct) at 5-7.

⁵¹ Vinson Ex. 5 (gee Direct) at 5-6.

⁵² Vinson Ex. 5 (Gee Direct) at 6-7.

deviated from that route. Absent extraordinary circumstances, he opined, these conclusions should be accorded significant weight.⁵³

Neither Oncor nor Commission Staff disputed that the Settlement Route is depicted on the Settlement Map and that it is clear from the text of the CCN Order that the Commission approved a modified version of Alternate Route 368. Rather, both argued that the entirety of the CCN Order, including the findings of fact and ordering paragraphs, are important in determining how the route shown on the Settlement Map was to be constructed. According to Oncor, the route approved by the Commission is defined by more than a map. While maps are important to gain understanding of the location where a transmission line will be constructed relative to other proposed routes in a CCN application, Oncor believes that all of the provisions of a CCN order (as well as Commission regulations, industry standards, design and construction principles, and good utility practice) guide and direct the electric utility's activities during the post-CCN process and have an influence on the as-constructed location of a transmission line.⁵⁴ Oncor and Commission Staff argued this is standard industry practice and consistent with Oncor and Commission practice.⁵⁵ Once utilities receive a CCN order from the Commission, they are obligated to build transmission facilities in a safe, reliable, and cost-effective manner.⁵⁶

According to Oncor, the Commission approved an indicative route, the exact location of which would only be established after the design and construction phase of the project, which can only take place after the CCN Order was issued.⁵⁷ Oncor asserted that it designed and constructed the WC-Hicks Line on a route consistent with the route approved by the Commission taking into consideration the engineering constraints identified when the post-CCN on-the-ground surveys were conducted on the Vinsons' property.⁵⁸

⁵³ Vinson Ex. 5 (Gee Direct) at 6.

⁵⁴ P.U.C. Subst. R. 25.195(b), 25.5(56), and 25.101(d).

⁵⁵ Tr. at 649-50, 659, 686-89, 713-15, 718.

⁵⁶ Tr. at 308-09.

⁵⁷ Oncor Ex. 1 (Buck Direct) at 10-11; Tr. at 383, 403-04, 445-47, 686-87, 693-95, 714-15, 737.

⁵⁸ Oncor Ex. 1 (Buck Direct) at 18; Oncor Ex. 4 at 5, 19.

Oncor explained that once a CCN application is approved, a utility must go into the field and actually build the infrastructure. As part of the design and construction process after the CCN is granted, utilities undertake detailed efforts to evaluate the property upon which the transmission line is to be located.⁵⁹ These activities include soil and geotechnical borings, property ownership searches, endangered species surveys, and cultural and historical surveys to name a few.⁶⁰ These are the very types of surveys that are not undertaken by utilities, including Oncor, until the Commission issues an order granting the CCN or CCN amendment.⁶¹ Some of the primary reasons why utilities do not undertake these surveys before the granting of the CCN are that it would be financially impractical to incur necessary surveying and related costs on all possible alternative routes, and utilities do not have access to or have survey permission on private property at this stage of development.⁶² Other reasons include time limitations and the need to have current information at the time of construction.⁶³ Frequently during surveys, a utility will encounter constraints that impact its ability to safely or efficiently construct, operate, and maintain the proposed project.⁶⁴ These impediments are “engineering constraints” and could consist of almost any physical constraint, including for example, pipelines, property lines, wells, transmission lines, and tombstones.⁶⁵ Oncor claimed that engineering constraints (pipelines and property lines) largely dictated the as-constructed location of the WC-Hicks Line.⁶⁶

Oncor witnesses Jess K. Totten and former Commission Chairman F. Paul Hudson, testified that the CCN Order included a number of provisions that authorize adjustments during the design and construction phase.⁶⁷ Among these, the CCN Order specifically provided for

⁵⁹ Oncor Ex. 1 (Buck Direct) at 8-12; Oncor Ex. 2 (Meaux Direct) at 8-10; Oncor Ex. 3 (Van Dyne Direct) at 5-7; Oncor Ex. 4 (Totten Direct) at 7; Tr. at 336-37.

⁶⁰ Oncor Ex. 1 (Buck Direct) at 8-12; Oncor Ex. 3 (Van Dyne Direct) at 5-7.

⁶¹ Oncor Ex. 1 (Buck Direct) at 8; Oncor Ex. 3 (Van Dyne Direct) at 6-7.

⁶² Oncor Ex. 2 (Meaux Direct) at 8; Oncor Ex. 3 (Van Dyne Direct) at 6-7; Oncor Ex. 4 (Totten Direct) at 7-8; Oncor Ex. 5 (Hudson Direct) at 6-8; Tr. at 243-44, 337.

⁶³ Oncor Ex. 2 (Meaux Direct) at 8; Oncor Ex. 3 (Van Dyne Direct) at 6-7; Oncor Ex. 4 (Totten Direct) at 7-8; Oncor Ex. 5 (Hudson Direct) at 6-8; Tr. at 243-44.

⁶⁴ Oncor Ex. 1 (Buck Direct) at 8-10, 16-17; Oncor Ex. 3 (Van Dyne Direct) at 8-9; Tr. at 414-15, 436.

⁶⁵ Tr. at 855; Oncor Ex. 1 (Buck Direct) at 10, 13-17.

⁶⁶ Oncor Ex. 1 (Buck Direct) at 12-16; Oncor Ex. 3 (Van Dyne Direct) at 10-11.

⁶⁷ Oncor Ex. 4 (Totten Direct) at 11-15; Oncor Ex. 5 (Hudson Direct) at 6.

design and construction flexibility in Finding of Fact No. 78 (as discussed below), which is consistent with an orderly and common-sense approach, Commission rules,⁶⁸ and decades of Oncor and industry practice.⁶⁹ Oncor pointed out that even the Vinsons' witnesses acknowledge that: (1) there is considerable design and construction work to be done after a CCN Order is approved;⁷⁰ (2) Oncor has the flexibility to accommodate engineering constraints in the final design of the line;⁷¹ and (3) those constraints may not be identified or fully understood until after the CCN Order is issued and Oncor gains access to the property and conducts ground surveys.⁷²

Oncor asserted that it is a long-standing practice for the Commission to leave it to the utility to address any unknown engineering constraints during the design and construction phase of the transmission line project using good utility practice. Accordingly, Finding of Fact No. 78 in the CCN Order states, "[t]he settlement route does not present any engineering constraints that cannot be resolved with additional consideration during the design and construction phase of the proposed transmission-line project."⁷³ Oncor explained that as recognized in Finding of Fact No. 78, Oncor did not identify any engineering constraints prior to issuance of the CCN Order that would prevent the WC-Hicks Line from being constructed, but Finding of Fact No. 78 gave Oncor flexibility to address engineering issues in the field. While the language in Finding of Fact No. 78 does not specify what "additional consideration" is authorized, Oncor argued that the practical application of the language can be simply boiled down to the following: when exercising engineering judgment, engaging in good utility practice, and deploying funds for the efficient development of transmission capacity in Texas, the utility has the latitude to construct the project in a manner (including, in a location) that will allow for safe and reliable operation

⁶⁸ P.U.C. Subst. R. 25.195(b) (requiring utilities to construct transmission facilities in accordance with good utility practice), 25.5(56), and 25.101(d).

⁶⁹ Docket No. 38324, Order at FOF No. 78; Oncor Ex. 1 (Buck Direct) at 17; Oncor Ex. 3 (Van Dyne Direct) at 8-9; Tr. at 447, 458, 713-14.

⁷⁰ Tr. at 306 (Vinson witness Mr. Gee testified that under FOF No. 78, it is "a fair conclusion" that "there's additional work to be done after the Company accesses the property and investigates the area") and 337-45 (Mr. Gee testified that there is more work to be done after the Commission approves a route.); Vinson Ex. 9.

⁷¹ Tr. at 255 (Mr. Hughes testified that "given the accuracy of the maps and any problems you may run into construction, there may be a little bit of latitude" provided to the utility.).

⁷² Tr. at 300-09 (Mr. Gee testified that various unknown constraints may arise "and that obviously something would have to be done if there were such constraints to be found at a later date.").

⁷³ Docket No. 38324, Order at FOF No. 78; Tr. at 719.

while taking into consideration the indicative location of the route approved in other parts of the CCN Order.⁷⁴ According to Oncor, this interpretation of Finding of Fact No. 78 is supported in the testimony of the Oncor witnesses Ellen E. Buck, Mr. Totten, and Mr. Hudson.⁷⁵

Ms. Buck, who had responsibility for engineering the WC-Hicks Line, testified that Oncor could not safely build the WC-Hicks Line in the Vinsons' desired location consistent with good utility practice.⁷⁶ Ms. Buck and other Oncor witnesses testified that utilities do not typically overlap gas and high voltage electric easements, as this could create a potentially unsafe condition during construction, operation, and maintenance of the various facilities (transmission lines and pipelines).⁷⁷ According to Oncor, the existence of pipelines in close proximity to the future location of the WC-Hicks Line was the primary reason it could not build the WC-Hicks Line on the centerline of the Brazos 69-kV transmission line (as demanded by the Vinsons) and largely dictated the as-constructed location of the WC-Hicks Line approximately 150 feet, on average, south of the Brazos 69-kV transmission line. Five pipelines (four natural gas and one water) are located in the immediate vicinity of the Brazos 69-kV transmission line, at least one of which (the water line) was not even recorded before the CCN Order was issued.⁷⁸ When the settlement discussions in Docket No. 38324 were being held with the Vinsons, the exact locations of the pipelines in the immediate vicinity of the Brazos 69-kV transmission line were not known by Oncor or the Vinsons.⁷⁹ While Oncor's environmental consultants, POWER Engineers, used data from the Railroad Commission of Texas (RCT) for the purpose of identifying pipeline locations when developing routes to propose in Oncor's CCN Application, the number and exact locations of the pipelines in the corridor were not known.⁸⁰ Oncor claimed that despite being the best source of pipeline data available, it is well known that RCT data has inherent flaws that cannot be overcome without on-the-ground surveying during the design and

⁷⁴ Tr. at 471-72, 714-15, 718-19; Oncor Ex. 4 (Totten Direct) at 11, 15-16; Oncor Ex. 5 (Hudson Direct) at 6-7.

⁷⁵ *Id.*

⁷⁶ Oncor Ex. 1 (Buck Direct) at 14-16.

⁷⁷ Tr. at 441-442, 580, 669-70.

⁷⁸ Oncor Ex. 14; Oncor Ex. 15 at 8; Oncor Ex. 1 (Buck Direct) at 15, EEB-3.

⁷⁹ Tr. at 580-82; Oncor Ex. 3 (Van Dyne Direct) at 7; Tr. at 674-75.

⁸⁰ Oncor Ex. 2 (Meaux Direct) at 7-8; Vinson Ex. 10 at 153; Tr. at 376, 582; Oncor Ex. 3 (Van Dyne Direct) at 11.

construction process after the CCN Order is issued.⁸¹ Once Oncor undertook detailed surveys on the Vinsons' property, it became apparent that the location of several of the pipelines not only did not match up with the RCT data, but actually crossed over the Brazos 69-kV transmission line easement at various locations.⁸²

Ms. Buck testified that Oncor was also constrained by property availability to the north on the Vinsons property. While doing its due diligence, Oncor investigated its ability to construct the WC-Hicks Line north of the Brazos Line and determined that a different property owner owns the property immediately north of the Brazos 69-kV transmission line.⁸³ This landowner was not a party to Docket No. 38324, was not a signatory to any form of settlement agreement, and would not give Oncor an easement across his property to locate the WC-Hicks Line north of the Brazos 69-kV transmission line.⁸⁴

2. ALJ's Analysis

The Commission's CCN Order did not contain any maps but referred to the Settlement Route (also referred to as the approved route) as the Modified Route 368, including Modified Links ZZ, BBB, and EEE as depicted on the Settlement Map attached to the Settlement Agreement. Looking only at the Settlement Map, it is undisputable that the Settlement Route is coincident with the Brazos 69-kV transmission line where it crosses the Vinsons' property. However, the ALJ agrees with Oncor and Commission Staff that the precise location where the Commission's CCN Order authorized Oncor to construct the WC-Hicks Line must be determined from more than just the Settlement Map. The findings of fact and ordering paragraphs in the CCN Order, as well as engineering constraints and good utility practices, are all important in determining where the Commission authorized Oncor to construct the WC-Hicks Line.⁸⁵

⁸¹ Tr. at 204-05, 231; Oncor Ex. 3 (Van Dyne Direct) at 8.

⁸² Oncor Ex. 14; Tr. at 198, 560-61, 577-580; Oncor Ex. 1 (Buck Direct) at EEB-3.

⁸³ Oncor Ex. 1 (Buck Direct) at 15.

⁸⁴ *Id.*; Tr. at 368-70.

⁸⁵ The ALJ found Commission Staff's briefs well reasoned and particularly helpful concerning Commission policy, and relied on them heavily in writing this PFD.

There is considerable language in the CCN Order directing how and where the WC-Hicks Line was to be constructed. The subsection of the CCN Order entitled "*Routing of the Proposed Transmission-Line Project*" speaks directly to how the line is to be located and constructed. With respect to the portion of the WC-Hicks Line crossing the Vinsons' property, Finding of Fact No. 43 requires Oncor to under-build the existing Brazos 69-kV transmission line on Link PPPP and Link ZZ until Link ZZ turns southeast on Farm to Market Road 3433. Finding of Fact No. 44 also instructs Oncor to underbuild an existing Oncor 138-kV transmission line on modified links ZZ, BBB, and EEE crossing the Vinsons' property. The CCN Order also directs Oncor to construct a portion of the WC-Hicks Line on monopoles, including all the links crossing the Vinsons' property.⁸⁶ These are all important narrative provisions that speak to the location and construction of the WC-Hicks line.

The CCN Order also contains numerous directions for Oncor to work with landowners during siting and construction of the WC-Hicks Line. Specifically, the Commission directed Oncor to cooperate with directly affected landowners to implement minor deviations and to obtain the consent of all affected landowners for deviations that are more than minor.⁸⁷ The Commission also acknowledged in the CCN Order, at the request of the Vinsons, that the approved route may include modifications made by agreement of landowners.⁸⁸

Further, it is significant that the CCN Order has several paragraphs that explicitly acknowledge a need for flexibility when Oncor runs into obstacles routing the line post-order.⁸⁹ The provision of the Order that is especially pertinent to this dispute is the paragraph providing

⁸⁶ Docket No. 38324, Final Order at 6-7.

⁸⁷ Docket No. 38324, Final Order at 15, 17, 18.

⁸⁸ The parenthetical language in Finding of Fact No. 44 of the Final Order was added at the request of the Vinsons' attorney. See Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek to Hicks 345-kV Transmission Line in Denton, Parker, Tarrant, and Wise Counties, Docket No. 38324, Joint Request for Corrections to Proposed PUC Order (Nov. 15, 2010). The Preliminary Order has expressly reserved matters regarding the Letter Agreement and consent for Phase II of this proceeding. Staff would note that the route depicted in the Letter Agreement between the parties is arguably representative of the route approved by the Commission. Thus, Staff would request that should this matter proceed to Phase II, the issue of the "approved route" could be re-visited with the evidence regarding the route in the Letter Agreement.

⁸⁹ See e.g. Docket No. 38324, Final Order at 9, 17 (directing Oncor to take action as directed by the Texas Historical Commission if artifacts are encountered); Final Order at 9, 14 (directing Oncor to coordinate with U.S. Fish and Wildlife Service if threatened or endangered species are identified during field surveys and determine mitigation measures *after on-the-ground surveys are completed*).

that Oncor has some latitude to make adjustments to accommodate engineering constraints. Finding of Fact No. 78 of the CCN Order states:

The settlement route does not present any engineering constraints that cannot be resolved with additional consideration during the design and construction phase of the proposed transmission-line project.⁹⁰

Notably, the Final Order does not direct Oncor to return for approval if the line needs to be re-routed or adjusted due to an engineering constraint.

Based on the entirety of the evidence and the better reasoned policy arguments, the ALJ concludes that the Settlement Route is, as shown on the Settlement Map, on or along the centerline of the Brazos 69-kV transmission line as it crosses the Vinsons' property, but the location is subject to adjustment as necessary to avoid engineering constraints encountered in the design and construction phases of the project after the CCN Order was issued. While utilities are encouraged to cooperate with landowners and obtain consent for certain siting adjustments, policy considerations favor efficient completion of safe and reliable transmission lines, which necessarily requires some flexibility for the utility to adjust without landowner consent when necessary to avoid engineering constraints. This is a sensible balance that recognizes landowner interests and costs to ratepayers.

B. How precisely can the approved Settlement Route be located on the ground given the scale of the maps that identify the Settlement Route?

1. Evidence and Argument

The Vinsons argued that the Commission defined the Settlement Route with a very fine degree of precision because the Settlement Route is located on the Brazos 69-kV transmission line, which is represented on the Settlement Map as a dashed tan or light brown line. More importantly, the Brazos 69-kV transmission line is an existing line, physically in place at a precise location on the ground, and capable of being located by visiting the site where it enters,

⁹⁰ Docket No. 38324, Final Order at 11 (emphasis added).

travels across, and exits the Vinsons' property.⁹¹ Thus, by fixing the alignment of the Settlement Route on the existing Brazos 69-kV transmission line, the parties agreed to and the Commission approved a route that is precisely located and capable of precise location on the ground.

In response to Oncor's argument that the Settlement Route cannot be precisely located because it is "merely indicative," "general," "imprecise," and was not located by a metes and bounds survey in the CCN proceeding, Vinsons pointed out that Oncor's witness Ms. Buck acknowledged, that a metes and bounds survey would allow a line to be located on the ground within hundredths of a foot (a distance that is approximately the width of a pencil lead).⁹² However, Vinsons argued there is no issue in dispute in this proceeding that relates to an error measured in hundredths of a foot. Rather, Vinsons' complaint is that Oncor moved the line 170 feet from the Approved Route and it does not require a metes and bounds description to determine the location of the Settlement Route. It also does not require a metes and bounds survey to determine that Oncor deviated from the Settlement Route by moving the line 170 feet and building it on the other side of the pipelines fully outside the Settlement Route. The deviation is not the width of a pencil lead but is almost twice the width of the entire condemned right of way.

Andrew D. Poth, Vinsons' mapping expert, testified that the Settlement Map generally depicted features with a margin of error of +/- 10-12 feet.⁹³ This was based on the position that the WC-Hicks Line was to be constructed on or along the Brazos 69-kV transmission line and determining that the measured distance between the existing Brazos 69-kV transmission line and the centerline depicted on the Settlement Map averaged 10.96 feet as it crossed the Vinsons' property.⁹⁴

Lisa Barko Meaux, Oncor's mapping expert, testified that the mapping scale translates into an accuracy level of +/- 50 feet for 90 percent of the measurements, but this may vary

⁹¹ Vinson Ex. 22A (Tidmore Rebuttal) at 4-5, 12.

⁹² Tr. at 380-83, 427.

⁹³ See, Vinson Ex. 3 (Poth Direct) at 12 (describing a margin of error of 10.96 feet based upon the average distance between the depicted Settlement Route and the existing Brazos 69-kV transmission line); Tr. at 206-07.

⁹⁴ *Id.*

depending upon the particular data set.⁹⁵ However, Oncor argued that while maps can be accurate within certain margins of error inherent in scale, real-world constraints can only be known after thorough on-the-ground surveys, which are not feasible until a route is selected by the Commission.⁹⁶ Any maps used during the CCN proceedings are merely indicative and represent an accurate, but relatively generalized location of where the line will be built. In every instance when a transmission line is built, there are variances between the data in the digitized map files and the final constructed route.⁹⁷

Oncor argued that the maps presented by electric utilities to support a CCN application have to be taken for what they really are – visual aids used to assist the Commission, landowners, and the utility in litigating cases and making educated decisions regarding the future placement of a transmission line relative to other proposed routes and significant geographic features. Constraint maps should not be considered the last word when it comes to the ultimate location of a transmission line because the maps do not have the benefit of on-the-ground-surveys. Rather, constraint maps include a natural level of imprecision and rely on data that, while the best available, may contain flaws or be incomplete at the routing stage of the project. Oncor witness Mark A. Van Dyne testified that the as-built centerline for a transmission project is finalized as post-order surveys, studies, and landowner negotiations occur.⁹⁸ He stated that this type of adjustment, with some variation from the precise centerline depicted on a map, was standard industry practice.⁹⁹ Ms. Meaux agreed that in her experience, constructed alignments of transmission line projects do not precisely match an approved route depicted on a map due to margins of error implicit in the underlying data and mapping.¹⁰⁰

Ms. Meaux testified that:

The purpose of Figure 6-97, and all constraints maps that I have prepared or overseen preparation of in support of an application for a CCN or CCN amendment in Texas, is to provide a visual

⁹⁵ Oncor Ex. 2 (Meaux Direct) at 6-8.

⁹⁶ *Id.*

⁹⁷ *Id.* at 16-17; Oncor Ex. 2 (Meaux Direct) at 9; Oncor Ex. 3 (Van Dyne Direct) at 8-9; Tr. at 437.

⁹⁸ Oncor Ex. 3 (Van Dyne Direct) at 8-9.

⁹⁹ Oncor Ex. 3 (Van Dyne Direct) at 8-10.

¹⁰⁰ Oncor Ex. 2 (Meaux Direct) at 9.

representation of the study area, the constraints identified, and the general location of the proposed alternative transmission line routes.¹⁰¹

* * *

The purpose of Figure 6-97 was never meant to be an exact representation of where the centerline of the transmission line would be located. Many activities are required before the "design" centerline can be determined. These activities include geotechnical surveys, resource surveys, and other engineering evaluations, none of which can be performed until the Commission issues an order on the CCN application and an actual route is formally identified for the transmission line.¹⁰²

According to Oncor, this type of approach is not only common, but standard for the industry.¹⁰³

Regarding standard engineering practices, Oncor witness Ms. Buck testified that a Commission-approved route can only be a somewhat general location because of inherent inaccuracies in data sets used to create maps or a lack of data to describe the real-world constraints.¹⁰⁴ Ms. Buck described a series of typical steps that Oncor undertakes to construct and energize a transmission line once a CCN amendment is approved.¹⁰⁵ She testified that during each of these steps, the utility may need to adjust the precise location of the transmission line to accommodate new information obtained during these post-order steps, including additional surveys, environmental data, and input from landowners.¹⁰⁶ She testified that, in general, as-built transmission lines vary from the mapped route in most instances.¹⁰⁷

Oncor concluded that while the maps themselves can deliver a certain level of precision, within a margin of error and subject to other data quality limitations, they are subject to the terms of the CCN Order and after-the-fact ground surveys before any final, precise route can be

¹⁰¹ Oncor Ex. 2 (Meaux Direct) at 8.

¹⁰² *Id.*

¹⁰³ Vinson Ex. 9; Tr. at 589, 644-62, and 713-14; *see* Oncor Ex. 3 (Van Dyne Direct) at 8-9.

¹⁰⁴ Oncor Ex. 1 (Buck Direct) at 4.

¹⁰⁵ Oncor Ex. 1 (Buck Direct) at 8-12.

¹⁰⁶ Tr. at 434-37.

¹⁰⁷ Tr. at 437.

determined. Fundamentally, the maps are intended to allow the Commission and landowners to understand the relative location of the various links and, ultimately, the approved route, knowing full well that maps themselves are not perfect and there is much more work to be done after the order issues. Oncor explained that the routing maps and on-the-ground surveys each have a specific role to play in the process. Routing maps provide the Commission and landowners a relatively detailed visual aid that depicts an indicative location of a route. On-the-ground surveys and detailed engineering identify physical, real-world obstacles to construction and solutions thereto. Oncor argued these roles, while necessary, are separate and distinct and cannot be used interchangeably.

Oncor further pointed out that in the design and construction phase of a transmission line project, a utility is charged with the responsibility of constructing a safe and reliable facility to avoid potentially dangerous and costly consequences. The utility's obligation to use "good utility practices" is incorporated in the Commission's Substantive Rules.¹⁰⁸ The term "good utility practice" as defined in Commission Substantive Rule 25.5(56) is as follows:

Good utility practice — Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.¹⁰⁹

2. ALJ's Analysis

The ALJ finds that the Settlement Route as shown on the Settlement Map is coincident with the existing Brazos 69-kV transmission line. Therefore, it can be precisely located on the ground. However, the ALJ also finds, based on the preponderance of the evidence and the better reasoned policy arguments, that the CCN Order authorized Oncor to adjust the as-constructed

¹⁰⁸ See, e.g., P.U.C. Subst. R. 25.195(b) (specifically requiring utilities to construct transmission facilities in accordance with good utility practice) and 25.101(d).

¹⁰⁹ P.U.C. Subst. R. 25.5(56).

location of the WC-Hicks Line as necessary to avoid engineering constraints encountered during the design and construction phases of the project. Because of the latitude granted Oncor to adjust the as-constructed location of the WC-Hicks Line, the route depicted on the Settlement Map must be viewed as an indicative location subject to adjustment and modification as necessary to accommodate engineering constraints encountered when the route is surveyed and investigated on-the-ground during the design and construction phases after the CCN Order is issued.

- C. Has Oncor deviated from, or will Oncor's planned route deviate from, the Settlement Route approved by the Commission in Docket No. 38324 on the Vinsons' property? If so, what is the location of the deviated route in relation to the Commission-approved route?**

The Vinsons argued that Oncor deviated by building the WC-Hicks Line approximately 135 to 170 feet south of the Settlement Route approved by the Commission. Oncor and Staff disagree. The evidence and the parties' arguments previously discussed in this PFD are adopted by reference with respect to this issue without repetition here.

It is undisputed that Oncor constructed the WC-Hicks Line approximately 150 feet, on average, south of the Settlement Route as shown on the Settlement Map (the route approved in the CCN Order) where it crosses the Vinsons' property. Rather, the dispute centers on whether the CCN Order gave Oncor latitude to adjust the as-constructed location of the WC-Hicks Line to avoid engineering constraints encountered during the design and construction phase of the project.

The Vinsons make numerous arguments that Oncor's construction of the WC-Hicks Line, approximately 130-170 feet south of the mapped Settlement Route is a deviation that violates the CCN Order. However, witnesses for both the Vinsons and Oncor generally agreed that deviation is a fact-specific inquiry.¹¹⁰ The ALJ agrees. When the CCN Order is considered in context and applied to the facts of this case, the ALJ concludes that Oncor did not deviate in constructing the

¹¹⁰ See. Tr. at 343-44, 661-62, 713.

WC-Hicks Line across the Vinsons' property 150 feet, on average, south of the Settlement Route depicted on the Settlement Map.

Oncor presented persuasive evidence that it is standard practice in the utility industry to make adjustments to the line's precise location during the design and construction phases that occur after a route is approved. Oncor witness Ms. Buck, an engineering manager for construction of the WC-Hicks Line, described Oncor's standard practices once a route is approved by the Commission.¹¹¹ She testified that during post-order construction activities, adjustments to the precise location of the line occur routinely,¹¹² and this practice comports with industry standard.¹¹³ Oncor witnesses Ms. Meaux and Mr. Van Dyne concurred that it is standard industry practice to make adjustments to the precise location of a route, thus resulting in slight variation from a route depicted on an approved map.¹¹⁴ The Vinsons' assertion to the contrary is unpersuasive.¹¹⁵ Oncor's witnesses established that industry practice includes minor adjustments to the precise location of a transmission line after a route is approved, as on-the-ground conditions warrant. The Vinsons failed to rebut Oncor's testimony with any of their own experts. In fact, the Vinsons' own witnesses acknowledged that a utility must have some latitude in locating a transmission line.¹¹⁶

The evidence demonstrated that the engineering constraint caused by multiple, overlapping pipelines along the route of the WC-Hicks Line across the Vinsons' property necessitated adjusting the location of the line. The evidence makes clear that in addition to the existing Brazos 69-kV transmission line, five other pipelines traversed this same utility corridor.¹¹⁷ The evidence further shows that at least one of the pipelines was not recorded at the

¹¹¹ Oncor Ex. 1 (Buck Direct) at 8-12.

¹¹² Tr. at 434-37.

¹¹³ Tr. at 447.

¹¹⁴ Oncor Ex. 3 (Van Dyne Direct) at 8-10; Oncor Ex. 2 (Meaux Direct) at 9.

¹¹⁵ Vinson Initial Brief at 33-34.

¹¹⁶ Tr. at 205-07 (stating that the line should be constructed in close proximity to the Brazos line, allowing for a reasonable distance of about 20-25 feet); Tr. at 851 (stating that the order provides for limited discretion to accommodate facts that might not be known at the time the order was issued).

¹¹⁷ Oncor Ex. 14 (a survey depicting the five pipelines and transmission line); Tr. at 438-40 (describing the five pipelines depicted in the vicinity of the Brazos line on Oncor Ex. 14); Tr. at 199-200 (looking at Oncor Ex. 14 and agreeing that there are five pipelines in the corridor with the Brazos transmission line); Oncor Ex. 1 (Buck Direct) at

time of the settlement agreement.¹¹⁸ The testimony also demonstrated that the easements are not parallel, and numerous pipeline easements cross under the Brazos 69-kV line.¹¹⁹ Oncor witness Ms. Buck described significant safety concerns, from an engineering standpoint, for not constructing the WC-Hicks Line over the pipelines.¹²⁰ She explained her concern regarding difficulty in maintaining the integrity of pipelines during construction and potential hazardous conflicts that could be encountered during pipeline and transmission line maintenance activities in the future.¹²¹ Vinsons witness Mr. Poth also acknowledged there are potential hazards to constructing transmission lines over pipelines.¹²²

Given these facts, it is clear that Oncor followed good engineering practice in constructing the WC-Hicks Line south of the pipeline easements. In rebuttal to Oncor's evidence, the Vinsons' argued that the co-existence of the Brazos 69-kV transmission line with the pipelines establishes the feasibility of co-locating transmission lines and pipelines.¹²³ Although the Vinsons' argument is facially appealing, upon further consideration, the ALJ finds that the argument lacks merit. The mere co-existence of the Brazos 69-kV transmission line with the pipelines does not negate Oncor's compelling testimony regarding safety. Even if such construction was done in the past, it does not mean that co-locating transmission lines and gas pipelines is safe or that it represents a practice that should be continued. Moreover, there is no evidence regarding the age of the Brazos 69-kV transmission line and no indication whether the pipelines pre-dated the Brazos 69-kV line. Without more, the fact that the Brazos 69-kV line is standing with pipelines beneath it does not rebut the testimony of Oncor's transmission line design and construction experts on the point.

15 (describing five pipeline rights-of-way running generally parallel to the Brazos line, abutting or immediately south of the Brazos easement); Oncor Ex. 3 (Van Dyne Direct) at 10-11 (describing the multiple pipelines along the Brazos transmission line that necessitated moving the line south) and 31-33 (depicting the easement rights-of-way).

¹¹⁸ Oncor Ex. 1 (Buck Direct) at 15 (stating that one of the easements for the five pipelines was not recorded in county records until after the conclusion of Docket No. 38324).

¹¹⁹ Tr. at 199-200.

¹²⁰ Tr. at 441-42 (describing the safety reasons for not constructing transmission lines over pipelines).

¹²¹ Tr. at 441-42. *See also* Tr. at 204 (agreeing that constructing a transmission line over pipelines may present safety concerns).

¹²² Tr. at 204.

¹²³ Vinson Initial Brief at 29.

The preponderance of the evidence also shows that Oncor's construction of the WC-Hicks Line approximately 150 feet, on average, south of the Settlement Route depicted on the map, was reasonably consistent with the terms of the CCN Order. The route approved in the CCN Order is more than the map attached to the Settlement Agreement. The map must be considered in light of the narrative provisions of the CCN Order. Plus, the entirety of the CCN Order must be considered in the context of the regulatory framework and good utility practice for safe and reliable operation.

To the extent that distance would be considered a deviation, it was permitted by Finding of Fact No. 78 in the CCN Order. The existence of multiple pipelines and notice issues with the neighbor to the north¹²⁴ dictated that the WC-Hicks Line be constructed south of the Brazos 69-kV transmission line. In this case, where the evidence shows that an adjustment to the line was necessitated by engineering constraints, such modification is contemplated under Finding of Fact No. 78 and should not be considered an unapproved deviation. Finding of Fact 78 states:

*The settlement route does not present any engineering constraints that cannot be resolved without additional consideration during the design and construction phase of the proposed transmission-line project.*¹²⁵

If the only purpose of the paragraph was to permit the utility to make "tweaks" to structure spacing and placement, as the Vinsons assert,¹²⁶ the paragraph would be superfluous since the utility already has the authority to make those changes. When considered in the broader context of transmission line siting practices in Texas, it is clear that the Commission intended to allow Oncor the flexibility to make adjustments if engineering constraints were encountered. Such provision is necessary to facilitate the efficient construction of transmission lines. Oncor's construction of the WC-Hicks Line was, therefore, consistent with the CCN Order, including Finding of Fact No. 78.

¹²⁴ Oncor Ex. 1 (Buck Direct) at 15; Tr. at 368-69 (explaining that to move the line north, Oncor would have needed consent of the neighboring land owner and he was not willing to consent).

¹²⁵ Docket No. 38324, Final Order at 11 (emphasis added).

¹²⁶ Vinson Initial Brief at 30-31.

Oncor's adjustment to the WC-Hicks Line was reasonable based on the evidence of an engineering constraint caused by multiple pipelines and, therefore, did not constitute an unauthorized deviation in violation of the CCN Order. The Vinsons own more than 3,500 acres of open ranch property. The area of the Vinsons' property at issue in this case has numerous transmission and pipeline easements traversing a similar path.¹²⁷ While a movement of 150 feet, on average, is understandably significant to the Vinsons, they are still able to use their ranch for cattle and oil and gas development,¹²⁸ and have received compensation for the WC-Hicks Line easement, as well as the stranded acreage (approximately 10 acres) between easements.¹²⁹

The CCN Order gave Oncor latitude to adjust the as-constructed location on the WC-Hicks Line where it crosses the Vinsons' property as necessary in accordance with good utility practice to avoid engineering constraints encountered after the CCN Order was issued. Thus, the ALJ finds that Oncor constructed the WC-Hicks Line across the Vinsons' property in accordance with the CCN Order. To find otherwise would disrupt the process for efficient construction of transmission lines in Texas. As the CCN Order states, there must be additional consideration and flexibility for engineering constraints that arise after a final order approving a route. Therefore, the ALJ concludes that Oncor constructed the WC-Hicks Line consistent with the latitude provided by the CCN Order. Thus, Oncor did not deviate from the Settlement Route approved by the Commission in Docket No. 38324.

V. CONCLUSION

Based on the ALJ's findings concerning the Phase I issues, the ALJ further finds there is no need to consider the Phase II issues. Accordingly, the ALJ recommends that the Commission deny the Vinsons' complaint against Oncor.

¹²⁷ Oncor Ex. 1 (Buck Direct) at 12 (describing the Vinsons' property as a 3,200 acre ranch); Oncor Ex. 14 (depicting the transmission and pipeline easements across the Vinsons' property).

¹²⁸ See Tr. at 101-02; Tr. at 813-14.

¹²⁹ Although the Vinsons are appealing the amount of the condemnation award, they admit that it was intended to compensate for the stranded acreage. See Tr. at 812.

VI. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

A. Findings of Fact

Procedural History

1. On November 12, 2012, Johnny H. and Eloise Vinson (Vinsons) filed a formal complaint against Oncor Electric Delivery Company, LLC (Oncor) before the Public Utility Commission of Texas (Commission). The complaint alleged that the planned construction of the Competitive Renewable Energy Zone (CREZ) Willow Creek to Hicks transmission line (WC-Hicks Line) on the Vinsons' property was creating a gap between easements encompassing approximately 10.9 acres and requesting that Oncor be ordered to cooperate with the Vinsons to address the concern. The WC-Hicks Line was approved in *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek-Hicks 345-kV CREZ Transmission Line in Denton, Parker, Tarrant and Wise Counties*, Docket No. 38324 (Dec. 13, 2010).
2. On February 11, 2013, the Commission referred this complaint case to the State Office of Administrative Hearings (SOAH).
3. On March 1, 2013, a Preliminary Order was issued by the Commission with the following two issues:
 - (a) *Did Oncor violate ordering paragraph nos. 9 or 17 of the Commission's order in Docket No. 38324?*
 - (b) *If Oncor did violate the order in Docket No. 38324, what is the proper remedy?*
4. On March 6, 2013, the Vinsons filed an Amended Complaint alleging that the as-built WC-Hicks Line deviates from the route approved by the Commission, and seeking, *inter alia*: (a) an emergency cease and desist order to halt construction of the WC-Hicks Line on the Vinsons' property; (b) action by the Attorney General to seek temporary and permanent injunctive relief; and (c) a declaratory order from the Commission.
5. On March 7, 2013, a prehearing conference was convened. Counsel for the Vinsons, Oncor, and Staff were present.
6. On March 29, 2013, the ALJ issued SOAH Order No. 4 returning the matter to the Commission for consideration of the Amended Complaint and the new issues it raised.
7. On April 12, 2013, the Commission ordered that the parties submit briefing on certain threshold legal and policy issues related to the Amended Complaint.

8. On May 21, 2013, the Commission issued an Amended Preliminary Order dividing the proceeding into two phases. The issues to be addressed in Phase I of the proceeding are:
- (a) *What is the location of the settlement route, as it crosses the Vinsons' property approved by the Commission in Docket No. 38324? In answering this issue, please address the location, relative to other existing easements on the property, property lines, and other routes proposed in Docket No. 38324.*
 - (b) *How precisely can the approved settlement route be located on the ground given the scale of the maps that identify the settlement route?*
 - (c) *Has Oncor begun construction of its transmission line on the Vinsons' property? If so, when did it start and when did it complete construction or when does it anticipate completing construction on the Vinsons' property? If not, when does Oncor anticipate starting and completing construction on the Vinsons' property?*
 - (d) *When does Oncor anticipate energizing the transmission line?*
 - (e) *Has Oncor deviated from, or will Oncor's planned route deviate from the settlement route approved by the Commission in Docket No. 38324 on the Vinsons' property? If so, what is the location of the deviated route in relation the Commission-approved route?*
9. On December 3, 2013, the Vinsons filed a Second Amended Complaint.
10. The hearing on the merits commenced on December 12, 2013, and concluded on December 16, 2013.

Docket No. 38324

11. On June 16, 2010, Oncor filed an application to amend its certificate of convenience and necessity (CCN) for the 345-kV CREZ WC-Hicks Line. *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek-Hicks 345-kV CREZ Transmission Line in Denton, Parker, Tarrant and Wise Counties*, Docket No. 38324 (Dec. 13, 2010). The WC-Hicks Line was proposed to connect the Oncor Willow Creek Switching Station to a new Oncor Hicks Switching Station, traveling approximately 40 miles through Denton, Parker, Tarrant, and Wise Counties.
12. The Vinsons, owners of a 3,500-4,000 acre ranch in the WC-Hicks Line study area, intervened and participated in Docket No. 38324. The Vinsons' property at issue in this proceeding is located in the northwest corner of the ranch, also designated as Tract No. 147 on maps attached to the Application.
13. On June 17, 2010, Docket No. 38324 was referred to SOAH.

14. On October 4, 2010, the first day of the hearing on the merits, Oncor reached agreement with all parties participating in the hearing, including the Vinsons, which resolved all the routing issues (Settlement Agreement). The settling parties agreed to support approval of Modified Route 368. This included Link PPPP and Modified Links ZZ, BBB, and EEE crossing the Vinsons' property.
15. On October 14, 2010, Oncor filed the Settlement Agreement with the signatures of some of the parties thereto.
16. On October 19, 2010, Oncor filed a Motion for Approval of Previously Filed Settlement Agreement and Remand of Settled Case, which included additional signatures to the Settlement Agreement received since its initial filing.
17. The Vinsons' signature was not included in the October 14, 2010, or October 19, 2010, filings of the Settlement Agreement.
18. Between October 14, 2010 and early November 2010, Oncor and the Vinsons continued to negotiate the routing of the WC-Hicks Line on the Vinsons' property.
19. On November 2, 2010, Oncor submitted a proposed final order for Commission consideration (Proposed Order).
20. On November 5, 2010, Oncor and representatives for the Vinsons attended a settlement meeting.
21. On November 9, 2010, Oncor filed a Second Supplement to the Settlement Agreement, supplementing its earlier filings to include, among other things, the Vinsons' recently-acquired signatures.
22. On November 15, 2010, the Vinsons filed a Joint Request for Corrections to Proposed PUC Order, asking the Commission to modify Finding of Fact No. 44 in the Proposed Order to include the following underscored language: "Oncor will underbuild on the same structures as the Proposed Transmission Line Project the existing Oncor 138-kV Sunset - Rhome transmission line on a portion of Link ZZ, and Links BBB and EEE (as those links have been modified by the Settlement Agreement or by agreement with landowners) until approximately the southern border of Tract 154."
23. On December 2 and 8, 2010, the Commission held Open Meetings, during which Oncor's Application was considered.
24. On December 13, 2010, the Commission entered its Order in Docket No. 38324, which approved Oncor's Application (CCN Order).
25. Modified Route 368 is depicted on a map attached to the Settlement Agreement.

26. Finding of Fact No. 42 in the CCN Order directed Oncor to use monopoles on the portion of the WC-Hicks Line crossing the Vinsons' property: "In accordance with the settlement agreement, Oncor will construct the proposed project on monopoles for the portion of the settlement route that begins on the east side of FM 718 on Link PPPP and ends at the Hicks Switching Station, for the portion of Link R that crosses tracts 309 and 310."
27. Finding of Fact No. 43 in the CCN Order directed that Oncor underbuild an existing 69-kV Newark-Rhome transmission line owned by Brazos Electric Cooperative, Inc. (Brazos) on the same structures as the WC-Hicks Line on Link PPPP and a portion of Link ZZ: "Oncor will underbuild on the same structures as the proposed transmission-line project the existing Brazos 69-kV Newark-Rhome line on Link PPPP starting on the western boundary of Tract No. 147 and continuing approximately due east on Link PPPP and Link ZZ until Link ZZ turns to the southeast just west of Farm to Market Road 3433."
28. Finding of Fact No. 78 in the CCN Order stated: "The settlement route does not present any engineering constraints that cannot be resolved without additional consideration during the design and construction phase of the proposed transmission-line project."
29. The term "additional consideration" in this context is not defined and has not been interpreted by the Commission or court order. The term "additional consideration" provides Oncor with the flexibility to address engineering constraints during design and construction of the WC-Hicks Line. This flexibility provides Oncor with the ability to construct the WC-Hicks Line in the immediate vicinity of Modified Route 368 in a safe and reliable manner using good utility practice.
30. Ordering Paragraph No. 9 in the CCN Order stated: "Oncor shall cooperate with directly affected landowners to implement minor deviations in the settlement route to minimize the impact of the transmission line. Any minor deviations in the settlement route shall only directly affect landowners who were sent notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation."
31. Ordering Paragraph No. 17 in the CCN Order stated: "Oncor 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. First, Oncor shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line. Unless these two conditions are met, this paragraph does not authorize Oncor to deviate from the approved route except as allowed by the other ordering paragraphs in this Order."

Line Construction and Location

32. Oncor completed construction and energized the WC-Hicks Line on June 30, 2013.

33. Modified Route 368 approved in Docket No. 38324, tracked an existing Brazos 69-kV transmission line and pipeline easements across the northwest corner of the Vinsons' property.
34. While Modified Route 368 was approved by the Commission, the actual physical location of the route cannot be determined until design and construction activities occur after a final order is issued in a CCN proceeding.
35. The Brazos 69-kV transmission line easement width is 45 feet. The requisite easement width for the WC-Hicks Line is 100 feet.
36. Five pipelines (four gas and one water) are located parallel to and in the immediate vicinity of the Brazos 69-kV transmission line on Tract No. 147. These five pipelines are immediately north of the as-constructed location of the WC-Hicks Line.
37. Oncor's environmental consultants used pipeline data received from the Railroad Commission of Texas (RCT) to locate pipelines on maps in the Environmental Assessment. Because such data can be flawed, utilities must specifically locate the pipelines before physical construction of a transmission line can begin.
38. The RCT makes no claim as to the data's accuracy or completeness of the pipeline data provided to persons using the data such as Oncor.
39. While Oncor and the Vinsons knew there were pipelines in the immediate vicinity of the routing corridor on Tract No. 147 while Docket No. 38324 was pending, neither party knew the exact number and location of the pipelines.
40. The Vinsons representatives in Docket No. 38324 communicated to Oncor that they did not know the number and location of the pipelines on the Vinsons' property when settlement discussions were being held.
41. The easement for one of the pipelines on Tract No. 147 was not recorded when Oncor developed its Environmental Assessment.
42. At least one of the gas pipelines on Tract No. 147 is physically located outside of its recorded easement in the northwest corner of the Vinsons' property.
43. In multiple locations, the pipeline easements cross under the Brazos 69-kV transmission line.
44. Overlapping high voltage transmission lines with gas and water pipelines can be dangerous during construction, operation, and maintenance of all of the facilities. Typically, electric utilities do not overlap new transmission line easements with existing pipeline easements.
45. Oncor is obligated to construct, operate, and maintain utility facilities in a safe, reliable, and cost effective manner, consistent with good utility practice.

46. The Commission did not prescribe specific techniques to use during transmission line construction in the CCN Order.
47. In the context of the electric utility industry, an "engineering constraint" is an impediment to the safe, reliable, and efficient construction, maintenance, and operation of a transmission line. Engineering constraints could consist of almost any physical constraint, including pipelines, property lines, wells, transmission lines, and tombstones.
48. Good utility practice is defined in P.U.C. Subst. R. 25.5(56) as follows: "Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region."
49. As required by P.U.C. Subst. R. 25.195(b), a transmission service provider such as Oncor must "plan, construct, operate and maintain its transmission system in accordance with good utility practice...."
50. Good utility practice and safety concerns prevented Oncor from constructing the WC-Hicks Line within the pipeline easements. Specifically, Oncor had concerns about compromising the integrity of the pipelines during excavation.
51. Engineering safety standards could have been violated by operating the energized WC-Hicks Line in close proximity to the pipelines.
52. Consistent with good utility practice, Oncor determined that the WC-Hicks Line must be constructed south of the pre-existing utility corridor.
53. The as-constructed WC-Hicks Line in the northwest corner of the Vinsons' property runs parallel and south of the pre-existing utility corridor, including the Brazos 69-kV transmission line.
54. The as-constructed WC-Hicks Line is approximately 159.57 feet south of the mapped Settlement Route, on average, as it crosses the northwest corner of the Vinsons' property.
55. There is an approximate 40-foot gap between the WC-Hicks Line easement and the pre-existing pipeline easements to the north on the Vinsons' property.
56. The easement for the WC-Hicks Line is not adjacent to the southernmost pipeline easement along their entire lengths because the pipeline easements are variable in width and divert from a straight direction at different locations up and down along the WC-Hicks Line.

57. The Vinsons were compensated for the approximately 10 acres stranded between the WC-Hicks Line easement and the pipeline easements in the condemnation case filed in Wise County, Texas.
58. The landowner to the north of Tract No. 147 on the Vinsons' property was not a party to Docket No. 38324, was not a signatory to any form of settlement agreement, and would not give Oncor an easement across his property for the WC-Hicks Line.
59. The WC-Hicks Line was constructed in the same routing corridor as the Brazos 69-kV transmission line and five pipelines on Tract No. 147.
60. The physical location of the WC-Hicks Line is in very close proximity to Modified Route 368 on Tract No. 147 as depicted on photographs at the western edge of the Vinsons' property. The northern edge of the easement for the WC-Hicks Line is approximately 40 feet from the easement of the southernmost pipeline lying south of the Brazos Line in the northwest corner of the Vinsons' property.
61. The as-constructed location of the WC-Hicks Line is reasonable and consistent with the route approved in the CCN Order when taking into consideration the constraints identified during ground survey and investigations conducted by Oncor after the CCN Order was issued.
62. The CCN Order provides Oncor with the latitude to address constraints to construction, many of which can only be realized once a route is selected and the utility has an opportunity to survey the selected route.
63. While the as-constructed line is not in the exact location represented on the map attached to the Settlement Agreement, a variance is expected, expressly contemplated, and approved by the CCN Order. The variance in this case is consistent with industry practice concerning transmission line siting, design, engineering, and construction concepts.
64. Oncor will underbuild the Brazos 69-kV transmission line on the WC-Hicks Line once this proceeding is completed. The underbuild includes removal of the existing 69-kV structures.
65. The easement upon which the Brazos 69-kV transmission line is currently located will revert back to the Vinsons once the Brazos 69-kV transmission line is underbuilt on the new monopoles constructed for the WC-Hicks Line.

B. Conclusions of Law

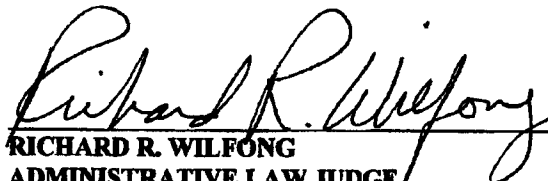
1. The Commission has jurisdiction over this matter pursuant to Texas Utilities Code §§ 14.001, 15.051, and 17.157.

2. SOAH has jurisdiction over matters related to the hearing of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code § 2003.049 and Texas Utilities Code § 14.053.
3. Notice of the prehearing conference and hearing on the merits complied with Subchapter D of the Commission's Procedural Rules and with Texas Government Code § 2001.052.
4. The CCN Order in Docket No. 38324 provided Oncor flexibility to adjust the location of the WC-Hicks Line when engineering constraints were encountered during the design and construction phases, and taking into consideration good utility practice and safety concerns.
5. Oncor constructed the WC-Hicks Line across the Vinsons' property in a manner consistent with the CCN Order in Docket No. 38324.
6. Oncor has not deviated in constructing the WC-Hicks Line and therefore, the Vinsons' request for the Commission to grant relief should be denied. Accordingly, there is no need to consider the Phase II issues.

C. Ordering Paragraphs

1. The Vinsons' complaint against Oncor is denied.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted, are denied.

SIGNED March 25, 2014.


RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS