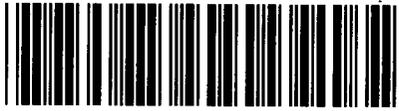




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Addendum StartPage: 0

SOAH DOCKET NO. 473-17-1552
PUC DOCKET NO. 46429

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APPLICATION OF BRAZOS ELECTRIC
POWER COOPERATIVE, INC. TO
AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
138-KV TRANSMISSION
LINE PROJECT IN COLLIN COUNTY,
TEXAS

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

PUBLIC UTILITY COMMISSION
FILE NO. 46429

COMMISSION STAFF’S RESPONSE TO ROUTE ADEQUACY CHALLENGES

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff’s Response to Route Adequacy Challenges. In support thereof, Staff shows the following:

I. BACKGROUND

On October 14, 2016, Brazos Electric Power Cooperative, Inc. (Brazos) filed an application to amend a certificate of convenience and necessity (CCN) for a proposed 138-kV transmission line in Collin County. The proposed Project is designated as the “Kittyhawk Transmission Line and Substation Project.”

This matter was referred to the State Office of Administrative Hearings (SOAH) on December 7, 2016. SOAH Order No. 4 instructed parties to file statements and motions for a hearing on route adequacy by March 3, 2017. Allen Economic Development Corp., Briar Ridge Investments, Ltd., Cottonwood Creek Baptist Church, Johnson Centre, Ltd., Meadow Road/Ford, L.P., The P. Bush Elkin Property Co., Ltd., William R. and Karen R. Wines, Wines Family Irrevocable Trust, Wines Property Trust, Wines Grandchildren Trust, and MGA Family, L.P. (Joint Intervenors) timely filed a joint motion. The City of Allen and Allen Independent School District (Allen ISD) also timely filed motions. SOAH Order No. 4 also instructed parties to file responses to statements and motions to route adequacy by March 10, 2017. Therefore, this pleading is timely filed.

516

II. STAFF'S RESPONSE TO JOINT LANDOWNERS

The Joint Landowners' challenge to route adequacy fails to meet the standard for a challenge and their request for hearing on the matter should be denied. There is no requirement in PURA or the substantive rules, and no Commission precedent to support the Joint Landowners' assertion that an application is inadequate if it does not include an underground route. The standard for adequacy questions is whether there are sufficient viable routes over a diverse geographic area from which the Commission may choose a route.¹ The relief requested by the Joint Landowners is an inappropriate consideration for a route adequacy hearing, and, if granted, the relief requested could create precedent that essentially would require each utility to incur the cost of preparing underground alternatives regardless of whether overhead routes had been determined to be inadequate.

The Joint Landowners do not challenge the viability of any of the twenty-five proposed routes presented in the Brazos application. Nor do the Joint Landowners assert that the twenty-five proposed routes are inadequate for the Commission to select an above-ground route. The Joint Landowners do not even propose a new route that they contend would make the Brazos application adequate. Rather, the Joint Intervenors express their preference for the method of transmission line installation, alleging that the Brazos application is inadequate only because it does not propose an underground installation for Route 11.²

There is no statute, Commission rule, Commission policy, or precedent that requires or encourages a transmission CCN applicant to include underground routes in its application. Furthermore, the Joint Landowners present no facts regarding this application that would necessitate such a requirement. They allege no facts that differentiate this application from any other transmission CCN application, and they allege no facts that would differentiate themselves from any other affected intervenor in any other transmission CCN case. To Staff's knowledge, a

¹ See *Application of Oncor Electric Delivery Company LLC to Amend a Certificate and Necessity for the Riley-Krum West 345-kV CREZ Transmission Line (Formerly Oklaunion to West Krum) in Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger, and Wise Counties, Texas*, Docket No. 38140, SOAH Order No. 9 Ruling on Route Adequacy Issue; Request for Expedited Consideration of Appeal (if any) of this Order at July 30 Open Meeting at 12 (July 20, 2010); *Joint Application of Electric Transmission Texas, LLC and Sharyland Utilities to Amend their Certificates of Convenience and Necessity for the North Edinburg to Loma Alta Double-Circuit 345-kV Transmission Line in Hidalgo and Cameron Counties, Texas*, Docket No. 41606, SOAH Order No. 6 Order on Route Adequacy Hearing; Establishing New Procedural Schedule; and Intervention at 24-25 (Oct. 21, 2013).

² Joint Landowners' Statement Challenging Routes and Request for Preliminary Hearing on Route Adequacy at 2 (Mar. 3, 2017).

transmission CCN application has never been deemed inadequate for not including an underground route; and the Joint Intervenors' mere preference for an underground line, unaccompanied by any distinguishing facts, does not warrant a departure from that precedent.

Any such departure from that precedent could have costly effects on Texas ratepayers. If the Joint Landowners are allowed at the adequacy phase to force Brazos to abate proceedings to include an underground route, the Commission can expect that many, if not all, intervenors in future contested transmission CCN cases will make similar adequacy challenges. Consequently, applicants will be compelled to incur the cost of underground route studies with their initial applications to avoid adequacy challenges. The cost of each of these underground route studies will ultimately be passed on to the ratepayers.

As Staff understands the Joint Intervenors' position, the Joint Intervenors believe that the cost to underground the route as they propose will be the same or less than the above ground route when taking into account the costs of private easement acquisition. It is Staff's position that the Joint Intervenors will have the opportunity during their direct case to put on evidence supporting their position and that Brazos at that time will be able to agree with or rebut the evidence. Direct testimony of intervenors is not due until April 28, 2017, which provides sufficient time for the Joint Applicants to conduct a study and propose their own route, including an underground route. Placing the financial burden (a route study, testimony, etc.) associated with the Joint Applicants' desire for an underground route on the Joint Intervenors appropriately assigns costs to the party seeking the underground route. Staff is also unopposed to intervenors proposing underground routes during settlement negotiations, so long as the intervenors provide the necessary information to support their position.

III. STAFF'S RESPONSE TO THE CITY OF ALLEN AND ALLEN ISD

Staff takes no position on the City of Allen's or Allen ISD's requests for a hearing on route adequacy at this time. Staff reserves the right to supplement its response subsequent to reviewing filings by Brazos and any other parties.

IV. STAFF'S REQUEST FOR SEPARATE RULINGS ON EACH ROUTE ADEQUACY CHALLENGE

Staff requests that the Administrative Law Judge (ALJ) rule on the Joint Intervenors', the City of Allen's, and Allen ISD's requests independently to keep the record clear regarding the basis for the hearing, if any.

IV. CONCLUSION

Staff respectfully requests that the Joint Intervenors' motion for a hearing on route adequacy be denied, as the relief requested under the facts presented is an inappropriate consideration for a route adequacy hearing and could create precedent that would cause the company and subsequently the ratepayers unnecessary costs. Staff further requests that each motion for a hearing on route adequacy be ruled on separately.

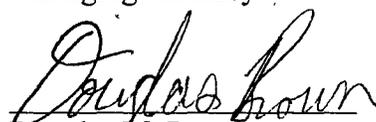
Dated: March 10, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 10, 2017, in accordance with 16 TAC § 22.74.



Douglas M. Brown