



Control Number: 48787



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SOAH DOCKET NO. 473-19-1265
PUC DOCKET NO. 48785

JOINT APPLICATION OF ONCOR §
ELECTRIC DELIVERY COMPANY LLC §
AND AEP TEXAS INC. TO AMEND §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY FOR A DOUBLE §
CIRCUIT 345-KV TRANSMISSION LINE §
IN PECOS, REEVES, AND WARD §
COUNTIES, TEXAS (SAND LAKE- §
SOLTICE CCN) §

BEFORE THE STATE OFFICE

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PUBLIC UTILITY COMMISSION
FILING CLERK

OF

ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-19-1266
PUC DOCKET NO. 48787

JOINT APPLICATION OF LCRA §
TRANSMISSION SERVICES §
CORPORATION AND AEP TEXAS INC. §
TO AMEND THEIR CERTIFICATES OF §
CONVENIENCE AND NECESSITY FOR §
THE PROPOSED BAKERSFIELD TO §
SOLSTICE 345-KV TRANSMISSION §
LINE IN PECOS COUNTY, TEXAS §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 1

PROJECT DESCRIPTION; GRANTING MOTION TO CONSOLIDATE;
NOTICE OF PREHEARING CONFERENCE; JURISDICTIONAL MATTERS;
DEADLINE FOR INTERVENTION; SETTING DATE FOR HEARING ON THE
MERITS AND BRIEFING; PROCEDURAL SCHEDULE; GRANTING PROTECTIVE
ORDER; CAUTION TO INTERESTED PARTIES;
AND GENERAL PROCEDURES

On November 7, 2018, Oncor Electric Delivery Company LLC (Oncor), AEP Texas Inc. (AEP Texas), and LCRA Transmission Services Corporation (LCRA TSC) (collectively the Utilities) filed joint applications in the captioned dockets to amend certificates of convenience and necessity (CCNs) issued by the Public Utility Commission of Texas (Commission or PUC). On the same date, these parties also filed a joint motion to consolidate these two dockets and for issuance of a protective order (November 7, 2018 Motion). The Commission referred these two dockets to the State Office of Administrative Hearings (SOAH) on November 14, 2018.

I. PROJECT DESCRIPTION

Oncor and AEP Texas propose to amend their CCNs for the proposed Sand Lake to Solstice 345-kilovolt (kV) transmission line project (the Sand Lake to Solstice Project). This is a new 345-kV double-circuit transmission line connecting Oncor's Sand Lake Switch station, located approximately six miles northeast of the City of Pecos on the northwest side of farm-to-market road 3398 in Ward County to AEP Texas's Solstice Switch station located along the north side of interstate highway 10, approximately 2.5 miles east of the Pecos and Reeves county line in Pecos County. The proposed project includes the 345-kV additions to Oncor's Sand Lake Switch station and to AEP Texas's Solstice Switch station. The total estimated cost for the project ranges from approximately \$292.5 million to \$501 million. The proposed project is presented with 408 alternative routes ranging from approximately 44.5 miles to approximately 58.7 miles. **Any route presented in the application could be approved by the Commission, and any combination of routes or route links could also be approved by the Commission.** This Sand Lake to Solstice Project shares a common endpoint with the separate Bakersfield to Solstice 345 kV transmission line CCN project concurrently filed by AEP Texas and LCRA TSC in Docket No. 48787 discussed below

AEP Texas and LCRA TSC propose to amend their CCNs for the proposed Bakersfield to Solstice 345-kV transmission line project (the Bakersfield to Solstice Project). This project consists of a 345-kV double-circuit transmission line with an initial single circuit installed from Bakersfield to AEP Texas's Solstice Switch station. The LCRA TSC Bakersfield Switch station is located approximately six miles north of interstate highway 10 and one mile west of farm-to-market road 1901. The AEP Texas Solstice Switch station is located along interstate highway 10 approximately 29 miles west of the City of Fort Stockton and near Hovey Road. The total estimated cost for the project ranges from approximately \$194 million to \$237 million. The proposed project is presented with 25 alternate routes ranging from approximately 68 miles to approximately 92 miles. **As with the Sand Lake to Solstice Project, any route presented in the application could be approved by the Commission, and any combination of routes or route links could also be approved by the Commission.**

The Sand Lake to Solstice and the Bakersfield to Solstice Projects are part of the Far West Texas Project 2 submitted by the Utilities to the Electric Reliability Council of Texas (ERCOT). ERCOT's independent review confirmed the reliability need to expand the 345 kV transmission system in the region. On June 12, 2018, the ERCOT Board of Directors designated the Sand Lake to Solstice and the Bakersfield to Solstice 345 kV lines as critical to the reliability of the ERCOT System.

II. MOTION TO CONSOLIDATE

The Utilities filed their November 7, 2018 Motion in accordance with Public Utility Regulatory Act (PURA)¹ § 37.0541, which states that the Commission shall consolidate CCN proceedings if it is apparent from the applications in either proceeding that the proposed transmission lines share a common point of interconnection. The projects subject to these two dockets share a common point of interconnection at the Solstice Switch station. Accordingly, the motion to consolidate is **GRANTED**. From the date of this order, all documents filed in this consolidated matter **SHALL** be filed only in SOAH Consolidated Docket No. 473-19-1265/PUC Consolidated Docket No. 48785. This consolidated docket is re-styled as the “**Joint Application of Oncor Electric Delivery Company LLC, AEP Texas Inc., and LCRA Transmission Services Corporation to Amend Their Certificates of Convenience and Necessity for 345-KV Transmission Lines in Pecos, Reeves, and Ward Counties, Texas (Sand Lake to Solstice and Bakersfield to Solstice)**.” Parties should no longer file documents in SOAH Docket No. 473-19-1266/PUC Docket No. 48787.

III. NOTICE OF PREHEARING CONFERENCE

The undersigned Administrative Law Judges (ALJs) will hold a prehearing conference in this case starting at **10 a.m., November 27, 2018**, at SOAH, 300 West 15th Street, 4th Floor, Austin, Texas.²

¹ Public Utility Regulatory Act, Tex. Util. Code § 11.001-66.016.

² Parking in this area is limited. Parking is available for a fee at the Bob Bullock Museum, located at 1800 Congress and the Capitol Visitors' Parking Garage, located at 1201 San Jacinto, several blocks away from the hearing site. All visitors will need identification to check in with the building security desk in the lobby of the hearing facility (it helps to also have the SOAH docket number, 473-19-1265).

Parties are strongly encouraged to come to the prehearing conference to learn about the rules and procedures that will govern this case and to ask questions about the process.

The ALJs will discuss the following matters at the prehearing conference:

- (1) A procedural schedule to be proposed by the parties based on the date for the hearing on the merits set forth below.
- (2) Motions to Intervene and any other motions **filed by noon on November 26, 2018;**
- (3) The Utilities' notices and notice procedures applicable to these dockets;
- (4) Procedures to be followed before and during the hearing;
- (5) Dates for filing briefing on uncontested issues and Findings of Fact and Conclusions of Law;
- (6) Any other matter that may assist in the disposition of this proceeding in a fair and efficient manner.

The prehearing is open to the public. After the prehearing, the hearing room will be available for the parties to hold an informal technical conference without the participation of the ALJs. Oncor, AEP Texas, and LCRA TSC may have their engineers and staff available to answer questions about their applications.

IV. JURISDICTION, SUFFICIENCY OF APPLICATIONS, AND DEADLINE FOR DECISION

On November 14, 2018, the Commission issued its Order of Referral and Preliminary Order (Preliminary Order), referring both of these dockets to SOAH and requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary. The Commission delegated authority to the Commission Advising and Docket Management to issue the Preliminary Order, as required under Texas Government Code § 2003.049(e). In the Preliminary Order, the Commission sets forth the issues to be addressed and one issue not to be addressed in this proceeding.

The Commission has jurisdiction and authority over this matter pursuant to PURA §§ 32.001, 37.053, 37.056, and 37.057, and 16 Texas Administrative Code §§ 25.101 and 25.102. SOAH has jurisdiction, pursuant to Texas Government Code § 2003.049 and PURA § 14.053, over all matters relating to the conduct of a hearing in this matter.

The procedural schedule to be proposed and discussed at the **November 27, 2018, prehearing conference SHALL** include proposed dates for the Utilities to file affidavits of notice. The Utilities and Commission Staff are strongly encouraged to resolve as soon as possible, and before the prehearing conference, any concerns regarding the Utilities' notices and proposed notice procedures.

Further, no later than **noon on November 26, 2018**, the Commission Staff **SHALL**, and any interested party **MAY**, file recommendations regarding the sufficiency or completeness of the Utilities' applications.

Under 16 Texas Administrative Code § 25.101(b)(3)(D), the Commission shall render a decision approving or denying an application for a CCN within 180 days of the date of filing a complete application for such a certificate, unless good cause is demonstrated for extending such a period. Therefore, unless good cause is demonstrated, the Commission must issue a decision on this application by **May 6, 2019**. The Commission's current open meeting calendar does not show the dates that it will convene open meetings in May of 2019.³ Because the Commission's deadline to render a decision is May 6, 2019, and because of the compressed schedule for this case, there may be need to find good cause to extend the Commission's deadline beyond May 6, 2019 once the open meeting agenda for May 2019 becomes available.

V. DEADLINE FOR INTERVENTION

The deadline for intervention is December 27, 2018. Any interested party is encouraged to file a motion as soon as possible because of the expedited schedule and the

³ <http://www.puc.texas.gov/agency/calendar/OpenMeetings.aspx>.

upcoming holiday season. **Any motions to intervene filed by noon on November 26, 2018, will be considered at the November 27, 2018, prehearing conference.**

VI. NOTICE OF HEARING ON THE MERITS AND POST-HEARING BRIEFING

The hearing on the merits in this matter will convene at **10:00 a.m. on February 4, 2019, at a location in Austin to be determined and established in a future order**, and will continue until concluded. The hearing is currently expected to conclude on February 8, 2019. On the first day of the hearing on the merits, the parties must arrive at the hearing location by 9:00 a.m. to have exhibits marked by and provided to the court reporter. Direct, cross-examination, and rebuttal exhibits will be admitted at the beginning of the hearing to the extent possible. Post-hearing initial briefs will be due by 3 p.m. on **February 15, 2019**. Post-hearing reply briefs will be due by 3 p.m. on **February 22, 2019**. The ALJs anticipate issuing a Proposal for Decision on or before **April 5, 2019**.

To facilitate the issuance of a proposal for decision in this expedited case, the Utilities **SHALL** file briefing on uncontested issues, either immediately before or after the hearing on the merits. Such issues shall include, but may not be limited to: Description and Background of the Project; Notice and Jurisdiction; and Procedural History. The deadline for this briefing will be discussed at the prehearing conference. In addition, the Utilities **SHALL** file proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs on all issues with their initial briefs on **February 15, 2019**. Any party that does not agree with one or more of the proposed Findings of Fact, Conclusions of Law, or Ordering Paragraphs **SHALL** file their proposed alternative language to these items with their reply briefs on **February 22, 2019**.

VII. PROCEDURAL SCHEDULE

The ALJs do not adopt the procedural schedule proposed by the Utilities in their November 7, 2018 Motion. Instead, as stated above, the ALJs have set dates for the first prehearing conference, the hearing on the merits, and post-hearing initial and reply briefs. At the November 27, 2018, prehearing conference, the Utilities and interested parties who have filed

motions to intervene by noon on November 26, 2018, **SHALL** propose an agreed procedural schedule that accounts for the dates set forth above.

VIII. GRANTING PROTECTIVE ORDER

The November 7, 2018 Motion includes as Attachment 1 a proposed protective order, which the Utilities request the ALJs approve to manage protected and commercially sensitive information associated with both applications. The Utilities state that their proposed protective order is consistent with and substantially similar to protective orders recently adopted in similar matters before the Commission and SOAH. As of the date of this SOAH Order No. 1, no party has filed comments in opposition to the form protective order proposed by the Utilities. Therefore, the protective order submitted as Attachment 1 to the November 7, 2018 Motion is **ADOPTED** and shall apply in this docket, subject to the docket number and style revisions set out above to recognize this as a single consolidated docket.

IX. CAUTION TO INTERESTED PARTIES

In this proceeding, the Utilities have described a large number of alternative routes that the proposed transmission lines may ultimately follow. It is the duty of the ALJs and, ultimately, the Commission, to choose the route that best meets the criteria described in the Commission's Preliminary Order. **Any proposed route, or any combination of properly noticed proposed links of routes, could be selected.** It is the duty of interested parties (such as landowners) to intervene and provide the decision-makers the information needed to reach a just and reasonable decision.

X. PROCEDURES

A. Filing

The procedures regarding filing are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper

number of legible copies are presented to the PUC filing clerk for filing. **All pleadings must contain both the SOAH and PUC docket numbers to allow for efficient processing.**

For intervenors who may not be familiar with the PUC processes, all PUC filings in this case are available for viewing and downloading from the Commission's website (www.puc.state.tx.us). Once there, click at the top under "Filings." Then go to Filings Search, click on "Filings Search" and type in control number (PUC Docket Number) 48785 and press "enter." For documents filed prior to the date of this order, parties should also access PUC Docket No. 48787. A list of documents filed in this docket will appear and you may access those documents by clicking on the document number. The PUC's procedural rules are also available at the PUC website.

B. Service of Filed Documents on All Parties

Note that all documents filed in this case must also be delivered, mailed, or "served" to all other parties.

C. Request that Parties Sign Up for Service of SOAH-Issued Orders by Email

SOAH's orders must also be provided to, or served on the parties. This means that when the ALJs issue an order (or other document in this case such as a Proposal for Decision) in this case, SOAH must serve every party with that document by traditional service methods such as mailing. If, however, a party has signed up for service of SOAH's orders by email, then the document may be transmitted much more efficiently than by regular mail. Service of SOAH documents by email saves a tremendous amount of SOAH's time and resources otherwise spent to mail or fax documents to the parties. As a result, **parties are strongly encouraged to provide an email address to SOAH so that they can be served with notice of SOAH's documents in this case by email.** To sign up to receive SOAH's orders by email, go to SOAH's website at www.soah.texas.gov, click on SOAH's "E-Services" link at the top of SOAH's webpage, follow the directions for "Email Service," and complete a short form. The service list will also be updated with the party's email address.

Only one address per party will be included on the official service list maintained by SOAH. Corrections to the service list should be filed at the Commission and also directed to the ALJs' assistant, Erin Hurley, by email at erin.hurley@soah.texas.gov.

D. Motions and Responses to Motions and Other Pleadings

Unless otherwise specified, responses to any motion or other pleading shall be filed within **five working days** from receipt of the pleading to which the response is made. Such responsive pleadings shall state the date of receipt of the pleading to which a response is made. Failure to file a timely response will be considered acquiescence to the relief requested.

E. Discovery

Pursuant to this SOAH Order No. 1, formal discovery shall begin immediately and be governed by the Commission's procedural rules. All discovery requests and responses shall be filed with the PUC in accordance with the Commission's procedural rules.⁴

XI. RESPONSIBILITY OF ONCOR, AEP TEXAS, AND LCRA TSC

The Utilities must review the service list immediately upon receipt of this order to ensure that all parties who have filed motions to intervene (and Commission Staff) are on the service list. If the service list is inaccurate, the Utilities must file a statement immediately, indicating which proposed intervenors are not on the list and need to receive notice of the prehearing conference. The Utilities must also review the service list prior to the filing of Staff's direct testimony, and file a written list of all intervenors who did not file testimony or a statement of position. The Utilities (and any other party) may obtain the service list by requesting it from the ALJs' assistant at the email address listed above.

⁴ Due to the 180-day deadline in this case, the parties may agree to altered procedures and deadlines to facilitate expeditious discovery responses.

XII. IMPORTANCE OF DEADLINE FOR FILING POSITION STATEMENTS OR PREFILED TESTIMONY

Pursuant to 16 Texas Administrative Code § 22.124(a), parties will be required to either file written testimony or a statement of position in this case. **A request to intervene is not a statement of position.** A statement of position clarifies a party's position but is not sworn-to, is not considered evidence, and is not subject to cross-examination. Prefiled direct testimony, on the other hand, is sworn-to, is evidence, and is subject to cross-examination.⁵ Any party who does not timely file either written testimony or a position statement in accordance with the procedural schedule to be adopted in this consolidated docket **will be dismissed from this proceeding and prohibited from participating in the hearing on the merits and briefing** in accordance with 16 Texas Administrative Code §§ 22.124 and 22.161.

XIII. UTILITIES' WITNESSES PRESENTED AS A PANEL

At the hearing on the merits, the Utilities will offer their witnesses (direct witnesses and, after intervenor and Staff witnesses, rebuttal witnesses) for cross-examination in a panel, instead of one at a time. The ALJs understand that the hearing on the merits may be bifurcated such that the routing issues applicable to the Sand Lake to Solstice Project may be addressed first and separately from the routing issues applicable to the Bakersfield to Solstice Project. Any party who has timely filed testimony or a position statement prior to the hearing and who wishes to cross-examine the Utilities' witnesses, as well as Staff's witness or witnesses, will be allowed to do so.

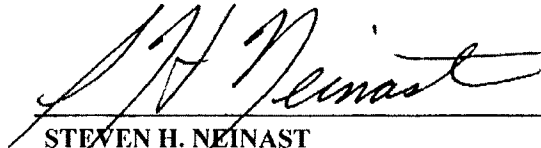
XIV. LIMIT ON CROSS EXAMINATION TIME

At the hearing on the merits, the parties are strongly encouraged to spend no more than one hour cross examining a witness or panel of witnesses. Direct testimony and rebuttal testimony are counted separately. If a party anticipates the need for longer cross examination, they may use discovery procedures, such as depositions, to preserve witness testimony and offer


⁵ Attached hereto is an information sheet for unrepresented parties, which reviews the prehearing and hearing process in greater detail.

page and line excerpts at hearing. Parties may also address this matter through normal motions practice or by making the ALJs aware of the need for longer cross examination at the final prehearing.

SIGNED November 15, 2018.



STEVEN H. NEINAST
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

INFORMATION FOR UNREPRESENTED PARTIES

Overview of Contested Case Process

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

Prehearing Conference

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

The Prehearing Phase

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

The Hearing

- The hearing will be convened in Austin.
- All witnesses who prefiled testimony must appear at the hearing unless all parties waive cross examination.
- Prefiled testimony will be admitted (subject to objections based on the rules of evidence), and witnesses will be cross-examined. Testimony not admitted because the witness failed to appear will be treated as a statement of position.

The Post-Hearing Phase

- After the hearing, parties will file written closing arguments (briefs) according to the deadlines that will be established in the schedule.
- The ALJ will issue the PFD recommending an outcome, including a route for the transmission line if the application is granted.
- The ALJ's analysis will be based on the facts (established through evidence introduced in the hearing) and the applicable law (involving a consideration of factors such as community values, number of habitable structures, recreational and park areas, historical and aesthetic values, environmental integrity, and use of compatible rights of way).
- The preferred route carries no special weight in the analysis. Any route consisting of identified links may be recommended and approved.
- Parties who disagree with the ALJ's proposal will be able to file written objections (exceptions) to the PFD.
- The Commission will make a decision at a meeting open to the public. The Commission can adopt or reject the ALJ's proposal. If the Commission rejects the ALJ's proposal, it will likely choose another route.
- The deadline for Commission action in this case is May 6, 2019.

Filing and Serving Documents in the Case

- Whenever any party formally files any document in this case (such as a motion, request for discovery, response to discovery, testimony, or statement of position), it must file the document with the PUC.
- Filings at the Commission shall occur by 3:00 p.m. on the date in question unless otherwise specified.
- The procedures regarding filing are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper numbers of legible copies are presented to the PUC filing clerk for filing. All pleadings must contain both the SOAH and PUC Docket numbers to allow for efficient processing. (See the top of the first page of this information sheet.)
- At the same time a party files a motion, testimony, or a statement of position with the PUC, **the party must also serve all other parties in the case by sending them a copy of the document.** The ALJ's SOAH Order No. 1 includes the service list, setting out each party and the party's address (and e-mail address, if available).
- Discovery requests and responses must be filed with the PUC, but only have to be served on the party to whom the request or response is directed.

- The PUC has an on-line document interchange that is a convenient way of keeping track of documents filed in a case. All PUC filings are available for viewing and downloading from the Commission's website at <http://interchange.puc.texas.gov>. Once there, type in the control number and press "enter." A list of documents filed in this case will appear and you may access those documents by clicking on the document number, provided that the document number is underlined and in blue font.

Receiving Documents from SOAH

- Parties may elect to receive documents from the ALJ via email. To do so, access SOAH's webpage, www.soah.texas.gov, click on SOAH's "E-Services" link at the top of SOAH's webpage, follow the directions for "Email Service" and complete a short form.